THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Rental evidence; Zone A rate; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *Appeal dismissed.*

RE: Dominos Pizza Ltd, Unit A Towerfield Drive, Woolwell PL6 7FG

APPEAL NUMBER: CHG100131538

BETWEEN: D P Realty (represented by Colliers International) — Appellant

And

Daljit Virk (Valuation Officer) — Respondent

PANEL: Mr S P Wood (Senior Member)
Mr M Bhatti

CLERK: Ms S Hodgson

ON: 14 May 2021

APPEARANCES: Mr D Johnstone of Colliers International for the appellant
Mr S Scarry of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £27,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £27,500 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017. The challenge stage was completed on 23 October 2020.

3. The appeal hereditament was a Shop & Premises that was one of three units located in Woolwell, north of Plymouth. The unit was located in a residential area, close to a Lidl and Tesco supermarket and measured 132.93m^2.

4. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

5. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

7. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

8. Mr Johnstone appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Johnstone declared that he was not instructed under any conditional fee arrangement. Mr Johnstone declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

9. Mr Johnstone provided details of the lease and photographs of the subject property. He argued that the rent was agreed on the open market and was much lower than the rent on the two comparable units in the scheme, therefore he contended the RV should be reduced to reflect this. Mr Johnstone requested the RV be reduced to £21,250 by way of a Zone A rate of £250 per square metre (psm).

10. Mr Scarry for the respondent argued that the lease for the subject property was not a standard length at 20 years with a 12-month rent free period. He stated the appeal unit was the most prominent of the three units at the site and therefore should not be valued lower than the two

comparable units which supported the current RV of £27,500 with a Zone A rate of £325psm. Mr Scarry requested this RV was confirmed by the Tribunal.

Decision and reasons

11. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

2(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

(b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

(c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

12. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No.2841).

13. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

14. Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
    2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
    3. Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

4. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

15. The subject property had a new lease agreed with effect from 1 July 2013 with a passing rent of £25,000. The lease was for 20 years and had a 12-month rent free period with a review at year 5.

16. The panel heard from Mr Scarry that the initial quoted rent for the subject property in 2013 was £32,700. He argued that the length of the lease and the agreed rent reflected the strength of the occupier's covenant.

17. Mr Johnstone advised the panel that there was no rent increase at the first rent review in 2018. It was his opinion that this proved the rent at the AVD would be the same as when the lease was agreed in 2013.

18. It was the panel's opinion that the rent on the subject property required a lot of adjusting to meet the definition of rateable value due to the length of the lease and the rent-free incentive. The panel also considered the distance from the AVD, however noted that the comparable rents were from the same month.

19. The panel then reviewed the rents of the two comparable units referred to by the parties. Unit B & Unit C Towerfield Drive adjoined the subject property. Unit B had a passing rent of £50,340 with effect from 9 July 2013 on a 10-year lease, with a 3-month rent free period. Unit C had a passing rent of £30,000 with effect from 15 July 2013 on a 20-year lease with a 3-month rent free period.

20. Unit B Towerfield Drive was devalued to £338psm by Mr Johnstone and Unit C Towerfield Drive was devalued to £323psm by Mr Johnstone. The current Zone A rate on both properties and the subject property was £325psm.

21. The panel noted that the highest rent was for Unit B which was the only unit let on a 10-year lease. Similar to the subject property, Unit C had a lower passing rent and 20-year lease.

22. Both parties confirmed that the subject property was the most prominent unit at the site for traffic entering the complex. It was the panel's view that this was an advantage for the subject property and would suggest that the hypothetical tenant could pay a premium for the location of the unit. The panel were of the opinion that the subject unit in the prime position would not have an RV lower than the adjoining units.

23. The panel had regard for *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 and the propositions it set out. While there was a rent on the subject property, the panel were aware that weight should also be given to comparable rental evidence. In this appeal the comparable rental evidence is of two adjoining units, located in the same scheme, with the same landlord and rents agreed in the same month as the subject property. The panel found that these rents supported the current Zone A rate for the appeal property.

24. When taking into consideration the fifth proposition from *Lotus and Delta,* the decision can be reached by looking at what is referred to as the basket of evidence. It was the panel's view that the rent of the subject property required adjustment and appeared to be out of kilter with other rents on the site. Only three rents were provided and the remaining two supported the current RV.

25. In the absence of any alternative evidence to the contrary, the panel held that the current entry in the 2017 list was not unreasonable and therefore, the appeal was dismissed and the current RV of £27,500 was confirmed.

Date: 10 June 2021

Appeal number: CHG100131538