THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Shop and premises; Appeal dismissed.

RE: 245 Portobello Road, London W11 1LT

APPEAL NUMBER: CHG100133162

BETWEEN:	Ms Sarah Caldecott	Appellant
	and	
	The Valuation Officer	Respondent

BEFORE: Mr M Smith (Senior Member sitting alone)

CLERK: Mr A Johnson Tech IRRV

ON: 11 January 2022

APPEARANCES: Mr M Davenport of Hartnell Taylor Cook LLP (for the Appellant)
Mr D Barber (for the Respondent)

REMOTE HEARING

Summary of decision

1. This appeal was dismissed. I determined that the rateable value of 245 Portobello Road, London W11 1LT was, at £53,500, not unreasonable.

Introduction

2. This is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that all of the evidence presented was fully considered by me before coming to a decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. Prior to the hearing my fellow Panel member became unavailable and was unable to consider this appeal with me. In accordance with the tribunal's business arrangements I, as a Senior Member, was authorised to consider and determine this appeal alone.

   Hearings where a member is unable to sit

   Where a panel member is unable to sit for any reason or fails to attend, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing.

4. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant challenged the Valuation Officer's decision that a rateable value of £53,500, effective from 1 April 2017, for the appeal property was reasonable.

5. The appellant had sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the appeal property on the compiled date of 1 April 2017 should be reduced to £45,000 (having initially sought a reduction to £39,000).

6. Mr Davenport 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 Davenport advised that he was instructed on a fixed fee basis (not a conditional or success related fee basis). In any event, Mr Davenport also confirmed 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.

Remote hearings

7. 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.

8. 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. I was satisfied that the parties present at the remote hearing were able to fully participate in the proceedings and that it was just and equitable for a remote hearing to be held.

Issue

9. The issue in dispute was whether the valuation for 245 Portobello Road, London, W11 1LT was reasonable or whether it should be reduced.

Decision and reasons

10. I considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process.

11. The appeal property was a mid-terrace ground floor retail shop which had been let on a twelve-year lease from November 2012 with a four yearly rent review. The rent was £41,500 per annum and, at the first rent review in 2016, there was no uplift.

12. I understood that Mr Davenport was, at the time of this hearing, seeking a reduction of the adopted Zone A rate to £1,150 per m^2 (or thereabouts) which would result in a revised rateable value of £45,000. In response, it was Mr Barber's opinion that, when considering the basket of rental evidence, the adopted tone for Zone A of £1,375.00 per m^2 was not unreasonable.

13. In support of their contentions, the parties referred me to rental evidence of other retail premises within Portobello Road, which I summarise hereunder:

Address	Rent per annum	Rent start date	Zone A Analysis (appellant)	Zone A Analysis (VOA)	VOA adopted Zone A	2017 RV
245 Portobello Road (appeal property)	£41,500 £41,500	Sep 12 Sep 16	£1,056.24 £1,056.24	 £,1062.00	£1,375.00 £1,375.00	£53,500
232 Portobello Road	£33,000 £34,000 £35,000 £36,000 £35,000	Sep 13 2014 2015 2016 Sep 18	£1,101.00 £1,117.00		£1,300.00 £1,500.00	 £40,500
235 Portobello Road	£42,500 £53,750	Mar 15 2012	£940.06	 £1,189.00	£940.00 £1,500.00	 £68,000
236 Portobello Road	£33,500	Jul 14		£1,764.00	£1,500.00	£28,250
239 Portobello Road	£39,000	Nov 13	£1,142.00	£1,134.00	£1,375.00	£42,000
247 Portobello Road	£55,000	Jan 13	£1,142.00	£1,396.00	£1,375.00	£54,000
251 Portobello Road	£55,000	May 16	£1,849.00	£1,849.00	£1,443.75	£38,750

14. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the rateable value of a non-domestic property, 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 property might reasonably be expected to let from year to year based upon three assumptions. These assumptions are:

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

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

(c) 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 property in a state to command the rent mentioned above.

15. 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.

16. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the appeal property is 1 April 2017.

17. I was also guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case set out the six propositions to have regard to when considering the weighting of evidence and expert opinion. These are:

    1. Where the property 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, 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.

18. The dispute between the parties concerned the appropriate base rate to be applied to the subject property in the calculation of its rateable value. In short, was £1,375.00 per m^2 reasonable or should it be reduced?

19. In determining this dispute, I had due regard to *Lotus and Delta* and I considered the passing rents for the appeal property as my starting point. In doing so, I noted that it commenced in September 2012 at £41,500 and remained at this level following a rent review in 2016. I considered that the initial lease agreed in 2012 was too remote from the AVD to be a reliable indicator of the rent for the purposes of assessing its rateable value for the 2017 rating list. The 2016 rent review, which resulted in no change, did not accord with the concept of the hypothetical tenancy as the tenant was not coming fresh to the scene. For these reasons, I preferred to have regard to the full basket of rental evidence from the locality rather than to consider the rent in respect of the appeal property in isolation.

20. I then considered the rents of the comparative properties, and in doing so, it was apparent that levels were dependent upon their location on Portobello Road. I concluded that the evidence relating to 239, 247 and 251 Portobello Road was the most compelling. These were in the same parade as the appeal property and the Zone A rate had been analysed by Mr Barber to range from £1,134.00 to £1,849.00 and Mr Davenport's analysis ranged from £1,142.00 to £1,849.00, which was not dissimilar.

21. In view of this, I found that the adopted rate for the appeal property of £1,375.00 was not unreasonable and that it was in line with the values applied to shops closest to the appeal property located either side of it. I therefore dismissed the appeal and confirmed the Valuation Officer's decision in relation to the RV of the appeal property.

Date: 3 February 2022

Appeal Numbers: CHG100133162