THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2017 Rating List appeal; restaurant and premises; price per $m^2$ in dispute; rental evidence; appeal dismissed.*

RE: Unit G01 Ground Floor, Metropolitan Wharf, Wapping Wall, London E1W 3SS

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| APPEAL NUMBER: | CHG10034885 | |
| BETWEEN: | Bordello Co Ltd | Appellant |
| | and | |
| | Mr A Ricketts, Valuation Officer | Respondent |
| PANEL: | Ms C Caiquo (Senior Member), Mrs L M Stuart | |
| CLERK: | Mrs L Horne | |
| REMOTE HEARING ON: | Friday 16 April 2021 | |
| APPEARANCES: | Mr P Tribe from Conneely Tribe, representing the appellant | |
| | Mr C Cates representing the Valuation Officer | |

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## Summary of decision

1 Appeal dismissed. The Rateable Value (RV) of the appeal property is confirmed at £82,500 with effect from 1 April 2017.

## Introduction

2 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.

3 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.

4 This is a 2017 rating list appeal. Unit G01 Ground Floor, Metropolitan Wharf, Wapping Wall, London E1W 3SS, (the 'appeal property') had been entered in the 2017 rating list as 'restaurant and premises' at a RV of £82,500 with effect from 1 April 2017.

5 The challenge proposal was submitted by Conneely Tribe on behalf of Bordello Co Ltd and was received by the Valuation Officer on 18 October 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £66,500 was proposed with effect from 1 April 2017.

6 The Valuation Officer issued a challenge case decision notice on 7 January 2021, which stated that based upon the evidence and information available, the rating list entry of £82,500 RV was considered to be reasonable and there would be no amendment.

7 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 2 February 2021.

8 Mr Tribe 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), his declaration of truth included a statement that he was instructed under a conditional fee arrangement. He 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 The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

10 The appeal property is a unit on the ground floor of Metropolitan Wharf, a six-storey brick building, built circa 1910. It is located in the Wapping Wall area of the East End. The property has a total area of 236.3 $m^2$ and is presently valued at £350 per $m^2$.

11 The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

## Issue

12 The issue in dispute is the price per $m^2$ to be adopted in the valuation of the appeal property.

## Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge; Valuation Officer's challenge case decision notice; and appellant's challenge submission.

14 On behalf of the appellant, Mr Tribe stated that the current RV of £82,500 was excessive and should be reduced. The relevance of the Valuation Officer's comparable properties was disputed, due to their location, and method of valuation. Mr Tribe contended that the best guide to the rental value of the appeal property was the subject rent, which analysed at £281.42 per $m^2$. He therefore requested that the panel confirm a revised RV of £66,500 with effect from 1 April 2017.

15 On behalf of the Valuation Officer, Mr Cates contended that £350 per $m^2$ was supported by the basket of rental evidence. He disputed Mr Tribe's reliance on the subject rent, which was agreed sometime after the antecedent valuation date (AVD) of 1 April 2015. He requested that the panel dismiss the appeal and confirm the RV of £82,500 with effect from 1 April 2017.

## Decision and reasons

16 In arriving at the decision, the panel is governed by rating legislation laid down by Parliament where 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;
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> (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.

17 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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

18 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.

19 The appeal property was subject to a lease which had commenced on 18 July 2018 at a rent of £70,000 per annum, subject to five yearly rent reviews. This was on a full repairing and insuring (FRI) basis, with an initial six months' rent free period, and tenant options to break at five yearly intervals.

20 In the challenge decision, the Valuation Officer had queried the rent of £70,000, as information obtained from particulars delivered stated a rent of £84,000 agreed in July 2018. Mr Tribe explained that whoever had filled out the form had included VAT at 20%. He referred to the subject lease which confirmed the rent at £70,000. Mr Cates accepted that this was correct.

21 The case for the appellant was based upon the contention that the subject rent was the best evidence. Mr Tribe calculated that the average rent over the first five years of the lease was £66,500 per annum. This assumed that three months of the six months' rent free period was given as a concession. Based upon a total floor area of 236.3 $m^2$ the average rent equated to £281.42 per $m^2$.

22 Mr Tribe recognised that the date of the subject rent was sometime after the AVD, however as there were very few restaurants in the locality, he considered that this was the best evidence.

23 In consideration of the subject rent, the panel was guided by the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which was referred to in the challenge case decision notice. This case had 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.

24 The rent passing on the subject property was the starting point for the analysis of rental evidence, as stated in the first proposition. However, as the effective date of the lease was 18 July 2018, the panel held that this was too far removed from the AVD, and therefore in accordance with the second proposition, less weight should be attached to it.

25 The panel noted that there was some debate between the parties regarding Mr Tribe's decision not to adjust for rental growth between 1 April 2015 and January 2018. This served to support the panel's decision to not attach significant weight to the subject rent.

26 In accordance with the third proposition, the panel turned to the rental evidence presented by the Valuation Officer. It was acknowledged that there had been broad reliance upon rental evidence some distance from the appeal property, due to a lack of rental evidence of larger restaurants within the immediate locality. The exception to this was a neighbouring retail unit at Unit G02 Metropolitan Wharf. The details are summarised as follows:

| Address | Size $m^2$ | Rent | Analysed rent £/$m^2$ | Adopted £/$m^2$ |
|---|---|---|---|---|
| Unit G02, Ground Floor, Metropolitan Wharf E1W 3SS | 25.06 | £11,500<br>11 Feb 2014 | £526.00 | £500.00 |
| 552 Mile End Road E3 4PL | 320.62 | £83,000<br>19 Aug 2015 | £660.20 | £575.00 |
| 255 Railway Arches, Paradise Row E2 9LE | 179.90 | £51,660<br>26 Mar 2014 | £584.06 | £400.00 |
| 77 Alie Street E1 8EB | 160.10 | £65,000<br>28 Jul 2015 | £375.42 | £375.00 |
| Part Ground Floor Standon House, 21-29 Mansell Street E1 8AA | 352.14 | £120,000<br>5 Aug 2016 | £365.68 | £375.00 |

| | | | | |
|---|---|---|---|---|
| 1 Commodity Quay E1W 1AZ | 348.80 | £160,000<br>1 Dec 2014 | £458.72 | £435.00 |

27 The only rental evidence from the immediate locality was in respect of Unit G02 Ground Floor, Metropolitan Wharf. This was a significantly smaller unit, and as such it did not provide a reliable guide to the rental value of the appeal property. The only assistance it gave to the panel was to indicate that the appeal property would likely attract a lower rent per $m^2$, and in view of the adopted price of £500 per $m^2$ for a unit of 25.06 $m^2$, £350 per $m^2$ for a unit of 236.3 $m^2$ did not appear excessive.

28 The relevance of the restaurants located some distance away was disputed by Mr Tribe. He described 552 Mile End and Railway Arches as being around 3 km away in a different location; 77 Alie Street, Part Ground Floor Standon House and 1 Commodity Quay he described as being located on the city fringe and having the benefit of office occupiers. The appeal property was located in a mainly residential area, with some offices.

29 In the absence of rental evidence relating to similar size restaurants in the immediate locality, the panel preferred the Valuation Officer's approach in looking for rental transactions in respect of comparable properties further afield, rather than solely relying on the subject rent. The panel was not persuaded that at 3km, those properties were too remote to be of relevance. With regards to the character of the locations, the panel did not consider that being in a more residential location would necessarily be a disadvantage.

30 The rental evidence illustrated rents ranging from £365.68 to £660.20 per $m^2$, close to and either side of the AVD. This demonstrated to the panel that at £350 per $m^2$, the assessment of the appeal property did not appear unreasonable.

31 In his adoption of £281.42 per $m^2$, Mr Tribe had relied solely upon his analysis of the subject rent. Ultimately, the guidance from *Lotus and Delta* required consideration of all of the available evidence, not just the subject rent. For that reason, the appeal failed and was dismissed.

**Date:** 23 April 2021

**Appeal Number**: CHG100134885