THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; club and premises; comparable properties; subject rent; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141*appeal dismissed.*

Re: The Gaslight Club, Basement, Bray House, 4-5 Duke of York Street, London SW1Y 6LA

APPEAL NUMBER: CHG100144720

BETWEEN:	Secrets Group	Appellant
	and	
	Mr D Ricketts	Respondent
	(Valuation Officer)	

PANEL: Mr K Sutch (Senior Member) and Dr J Johnson

CLERK: Mrs S Morgan

REMOTE HEARING: Wednesday 23 March 2022

PARTIES PRESENT: Mr P Wilmore of Rupert David Ltd representing the Appellant

Mr C Cates – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a club and premises at £139,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. The Gaslight Club, situated in the basement of Bray House, 4-5 Duke of York Street, London SW1Y 6LA (the 'appeal property') had been entered in the 2017 rating list as 'club and premises' at a RV of £139,000 with effect from 1 April 2017.

3. The challenge submission was made by Rupert David Ltd on behalf of Secrets Group and was received by the Valuation Officer on 22 November 2019. It had been made on the grounds that the appellant believed that the rent of £100,000 per annum from June 2015 and the comparable property details, made the main space rate of £650/m^2 more appropriate. He therefore sought a revised RV of £90,000 with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice in which it was stated that based upon the evidence and information available, the existing rateable value based on £1,000/m^2 was reasonable.

5. Mr Wilmore 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 Wilmore 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 cases.

6. 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

7. 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 item of evidence, should not be construed as it having been overlooked.

Issue

8. The appellant's representative contended that the main base rate adopted in the assessment was excessive. He sought a reduction to £650/m^2 whilst the Valuation Officer's representative contended that the unadjusted rate of £1,000/m^2 (£855/m^2 adjusted rate) was reasonable.

Evidence and submissions

9. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; comparable properties; rental evidence, a location plan; photographs of the appeal property and comparable properties; summary valuation reports, detailed assessment reports, the definition of rateable value and case law.

10. In support of his case, the appellant's representative had taken the rent passing on the appeal property from June 2015 of £100,000 per annum, believing £650/m^2 was more appropriate. This figure was also supported by other comparable property evidence from within the same Westminster area. The club and premises at Basement and Ground Floors, 13 Masons Yard, London was situated at the rear of the appeal property. These premises had a total area of 129m^2 and a main space rate of £650/m^2. Basement, Ground and First Floor, 4 Carlisle Street, London, also in the Westminster area, had an unadjusted rate of £650/m^2.

11. The appellant's representative also provided detailed assessment reports and summary valuation reports for other clubs in the Camden area.

    - 51 Parker Street, London was also part of the Secrets Group, although now closed. It had an unadjusted rate of £430/m^2.

    - 3 Grays Inn Road, London had an unadjusted rate of £442/m^2. This property had since closed.

    - Bst-Gnd Floors, 34-38 Eversholt Street, London had an unadjusted rate of £250/m^2. This property had since sold.

12. The appellant's representative believed that having taken all the evidence into account, that £650/m^2 for the appeal property seemed fair and reasonable. He sought a revised assessment of £90,000 RV with effect from 1 April 2017.

13. The respondent had provided rental details for the appeal property beginning in February 2013 for a 7-year term at a rent of £120,000 per annum. This rent began two years prior to the antecedent valuation date (AVD). There were no rent reviews. A capital sum was paid by the incoming tenant of £1 million with the refurbishment at an additional cost of £500,000. This adjusted to a rent of £358,550, which analysed to £2,564.74 per annum. The respondent believed that this figure supported the current RV of £139,000. He explained that the details of the rent were taken from a Form of Return completed by the appellant. The additional information concerning the premium paid for the lease and the fit-out costs was confirmed by the manager of the club. The Land Registry also confirmed details in accordance with this lease. No revised lease was provided by the appellant's representative to support the June 2015 rent of £100,000. The respondent therefore sought a dismissal of the appeal.

14. The appeal property was a private Gentlemen's lounge and bar located in the basement of a period property in the Westminster area of London. The premises had a total area of 193.53m^2 or 139.80m^2 in terms of main space (ITMS).

Decision and reasons

15. The main issue in dispute concerned the level of value to be adopted for the appeal property.

16. The term ‘rateable value’ is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “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”.

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. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. The panel noted that the appellant’s representative had put forward a June 2015 rent of £100,000 per annum as part of his evidence to support his revised figure of £650/m^2 for the appeal property. The respondent, on the other hand, had relied on a February 2013 rent of £120,000 per annum to support the existing assessment of £139,000 RV based on an unadjusted rate of £1,000/m^2. The panel understood that the appellant’s representative had not produced a copy of the 2015 rent despite requests from the Valuation Office Agency. However, the 2013 rent referred to by the respondent was supported by the Form of Return, confirmation from the club manager and the details held by the Land Registry. As the rental details suggested by the appellant’s representative for June 2015 were not confirmed, and no other rents were provided to support the appeal property’s value, the panel had no reason not to believe that the 2013 rent was anything other than accurate.

21. The panel was mindful that the rent in 2013, being approximately two years prior to the AVD was not decisive, although the panel was of the opinion that the rent did provide a useful but far from conclusive starting point.

22. The panel went on to consider the comparable properties put forward by the appellant's representative. His main comparable property was that in Masons Yard, situated to the rear of the appeal property. The panel noted that the photographs of this property suggested that it was inferior to the appeal property. It was also understood that this club was held on a different licence to the appeal property. With that in mind, the panel attached less weight to this comparable property.

23. In relation to the assessment and summary reports for the other comparable properties, the panel found that they did not add any weight to the appellant's representative's arguments for a lower base rate. These properties were situated in different locations, one was in a different valuation scheme, and all were much larger than the appeal property.

24. Having examined the evidence from both parties, the panel determined that the assessment should not be reduced. The panel found that after taking into account the capital sum paid by the incoming tenant for the 2013 lease together with the refurbishment costs, that the analysed rent of £2,564.74/m^2 more than supported the £1,000/m^2 main space price applied to the assessment for the appeal property.

25. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated, and the appeal was dismissed.

Date: Tuesday 19 April 2022

Appeal number: CHG100144720