THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the RV in the 2017 Rating List; Restaurant and Premises; Tone; Comparable properties; Appeal allowed in part.

Re: 64 St Giles High Street, London WC2H 8DA

APPEAL NUMBER: CHG100151503

BETWEEN:	Kanada-Ya UK Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Ms U Haque (Senior Member) and Mr M Bhatti

CLERK: Mrs S Morgan

REMOTE HEARING: Tuesday 30 August 2022

PARTIES PRESENT: Mr M Morrison of Altus group acting as expert witness
Mr S Carter of Altus Group acting as advocate
Ms D Castle – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. The panel confirmed the subject property's assessment at £24,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This appeal was brought in respect of 64 St Giles High Street, London WC2H 8DA (the "appeal property"). The appeal property was a restaurant and premises with basement and ground floor accommodation.

3. This is a 2017 Rating List appeal, and the RV of the appeal hereditament was £46,000 with effect from 1 April 2017. The appellant's representative sought a

reduction to £23,000 RV based on a reduction in the level of value from £1,300/m^2 to £650/m^2.

4. The challenge submission was received on 19 December 2019. The grounds for the challenge were that other properties in the locality had been assessed at a lower value.

5. Mr Morrison appeared on behalf of the appellant as an expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO*)* [2018] UKUT 0253 (LC), Mr Morrison's declaration of truth included a statement that he was instructed under a contingency based fee.

6. Mr Morrison also 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 his client's case.

7. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (VTE) functions – general) of the Procedure regulations and is 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).

8. 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

9. The appellant's representative contended that the main space rate adopted in the assessment was excessive. He sought a reduction to £650.00/m^2 whilst the Valuation Officer contended that £1,300.00/m^2 was reasonable.

Evidence and submissions

10. Mr Carter, acting as advocate, confirmed the issue in dispute was the level of value to be adopted for the appeal property. In his introduction, he stated that the Valuation Office agency had refused to reduce the RV in line with other similar units in the locality.

11. Mr Morrison, acting as expert witness, explained that he had inspected the appeal property and had walked around the comparable properties. He described the appeal property as a 1930's built unit situated on the corner of St Giles High Street and Old Compton Street, close to Shaftesbury Avenue in the West End of London. The property is used as a restaurant and premises, and it has in terms of main space (ITMS), an area of 35.37m^2. The restaurant

includes the basement and ground floors. There is residential accommodation in the floors above the restaurant.

12. The appeal property was held on a 15 year lease from 11 January 2012 at £45,000 per annum (pa). This was agreed by the previous occupier. The rent was a stepped rent from 2012 to 2017. The 2017 review saw the rent increased to £47,500 pa. This was agreed by the current occupier who took on the lease in 2017.

13. Mr Morrison had made comparisons with properties in Central St Giles Piazza, a newer, more modern development opposite the appeal property. The level of value applied to the units in the Piazza ranged between £625/m^2 and £650/m^2. There were three 2017 rents provided for units in Central St Giles Piazza. These were larger properties with total areas ranging from 115.30m^2 to 250.25m^2. These had a base rate of £650/m^2.

14. The appeal property had been placed in a stand-alone valuation scheme presumably due to its rental value. Other schemes nearby, including nine other restaurants, were agreed at challenge stage of between £525/m^2 and £650/m^2. The adjoining property at 63 St Giles High Street was a convenience store with a base rate of £700/m^2. It comprised basement and ground floor accommodation and was only 7m^2 larger than the appeal property. The other adjoining property at 42 Old Compton Street also had a base rate of £700/m^2.

15. Although Mr Morrison acknowledged that the rent on the appeal property was the starting point, he believed that the prevailing tone and the basket of evidence provided would suggest that £650/m^2 was fair and reasonable. He sought a revised assessment of £23,000 RV with effect from 1 April 2017.

16. Ms Castle accepted that the base rate for the surrounding units in Denmark Street and Central St Giles Piazza were at £650/m^2. She suggested that quantum or a pioneering allowance may have been the reason behind the £650/m^2 applied to these units. However, Ms Castle was of the opinion that consideration had to be given to the rents passing on the appeal property. These were £45,000 pa in 2012 and £47,250 pa in 2017. The rents, when analysed, would devalue to the higher base rate of around £1,300/m^2 and therefore the current RV of £46,000 did not seem unreasonable. She sought a dismissal of the appeal.

Decision and reasons

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

18. 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".

19. 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).

20. 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.

21. 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.

22. The panel noted that the rents passing on the appeal property were over two and half years away from the AVD and both appeared to be out of kilter with other units in the locality. The panel therefore weighted this evidence accordingly.

23. The panel found that the units within the Piazza development were much larger and more modern than the appeal property. The base rate applied to these units ranged between £625/m^2 and £650/m^2, which may have allowed for quantum. However, the panel found that the best evidence was the base rates applied to the two adjoining properties (63 St Giles High Street and 42 Old Compton Street) where £700/m^2 had been applied. In particular, it found that 63 St Giles High Street was similar in layout and composition to the appeal property and there was little difference in the areas between the two.

24. Having considered all the evidence submitted, the panel determined that the appeal assessment should be reduced. The price per m^2 that had been applied to the adjoining properties despite being in a different valuation scheme, suggested that £700/m^2 was not unreasonable for the appeal property. Although it could be argued that the appeal property held a better position being located on the corner of two streets and having a return frontage, the panel was satisfied that it was more in keeping with the properties either side of it. With this in mind, the panel was persuaded to reduce the level of value for the appeal property to £700/m^2.

Floor	Description	Area/m^2	Price/m^2	Value
Ground	Restaurant	24.4	£700.00	£17,080.00
Ground	Kitchen	5.5	£332.50	£1,828.75
Basement	Kitchen	25.47	£175.00	£4,457.25
Basement	Internal Storage	2.43	£175.00	£425.25
Basement	Public toilets	4.94	£ 87.50	£432.25
Basement	Kitchen	3.24	£166.25	£538.65
			Sub Total	£24,762.15
	Air Conditioning System	24.4	£7.00	£170.80
				£24,932.95
			SAY	£24,500

25. In view of the foregoing, the panel decided that the appeal property's entry should be reduced to £24,500 RV with effect from 1 April 2017. Consequently, the appeal was allowed in part.

Order:

26. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for 64 St Giles High Street, London WC2H 8DA to £24,500 with effect from 1 April 2017, within two weeks of the date of this order.

27. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date: Tuesday 27 September 2022

Appeal number: CHG100151503

Right of Appeal:

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands

Chamber). Any such appeal should be made within four weeks of the date of this decision notice.