THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Local Government Finance Act 1988; Statutory Assumptions; Restaurant and bar; Rental evidence; Base rate £m^2; Tone and comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal allowed.

Re: 29 – 33 Montpelier Vale, Blackheath, London SE3 0TJ

APPEAL NUMBER: CHG100156320

BETWEEN:	Zerodegrees Limited	Appellant
	And	
	Mr Andrew Ricketts, Valuation Officer	Respondent

PANEL:	Mr John Rogers	(Chair)
	Mrs Victoria Hollender	(Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 1:	12 January 2022	
PARTIES PRESENT:	Mr Huw Jones	Appellant's representative
	Mrs Debby Castle	Respondent's representative

Summary of decision

1. The appeal was allowed. The panel determined a revised rateable value (RV) of £89,000 with effect from 1 April 2017.

Introduction

2. This 2017 compiled list appeal was brought in respect of Zerodegrees situated at 29-33 Montpelier Vale, Blackheath, London SE3 0TJ. The property was a restaurant, bar and microbrewery with a RV of £174,000 effective from 1 April 2017.

3. The appellant submitted a challenge on 21 April 2021 against the Valuation Officer's decision statement that the proposal to reduce the rateable value to £89,000 was not well-founded.

4. The hereditament is at the southern tip of Blackheath and Greenwich park south of the river Thames and sits within a range of shops, cafes, restaurants and bars. There is commercial space and kitchen to the ground floor, further commercial space on the first floor with a staff room and a store and office on the second floor. In terms of main space (ITMS) the area is 401.63m^2.

5. 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.

6. 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.

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 a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

8. Mr Huw Jones appeared on behalf of the appellant in a dual role as advocate and as expert witness. 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 cases.

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

Issues

10. The rateable value of the hereditament.

Evidence and submissions

11. The evidence bundle submitted by the respondent’s representative comprised all of the documents exchanged between the parties as part of the challenge process; the Valuation Officer’s challenge case decision notice; the appellant’s challenge submission; photographs and location plans of the appeal property and comparable property assessments.

12. The respondent stated that the current RV was based on a zone A rate of £475/m^2 calculated on an overall basis. He also stated that two other restaurants in the vicinity, 41 Everest Inn and The Ivy Café, were also calculated in the same way. The properties submitted by the appellant are zoned but they are not restaurants and therefore not comparable to the appeal property.

13. The appellant's representative submitted that the RV should be in line with the passing rent which was £80,200 per annum (pa) effective from 29 September 2013, only 18 months prior to the AVD of 1 April 2015.

14. He also contended that the properties in the vicinity of the appeal property were calculated on a zone A rate of £550/m^2, are zoned and that this should be the principle applied to the appeal property valuation. If that were the case, the RV of the appeal property would be reduced to £89,000.

15. Further, the RV for the appeal property had increased disproportionately from the 2010 assessment to the 2017 assessment. Zerodegrees' RV had increased from £83,000 when assessed on a zonal basis to £174,000 when assessed on an overall basis, an increase of 110%. That was an excessive increase and was out of line with other properties in the area as they had increased in the range of between 3 to 8% over the same period.

Decisions and reasons

16. The panel referred to the Local Government Finance Act 1988. The term 'rateable value' being defined in paragraph 2(1), Schedule 6 to the Act:

> "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. The panel found that the total rent on the property at £80,200, although 18 months prior to the AVD, was significant for the valuation of the hereditament as it was in accordance with the statutory definition of rateable value and accorded well with the valuation principles detailed in the authoritative judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141*.

18. The total rent comprised of two separate rents, for 29 – 31 Montpelier Vale and for 33 Montpelier Vale, both in place from 29 September 2013. However, the panel found that had the property been let under one whole rent it is likely that the total rent would have been less than £80,200 because of the quantum effect and by being able to exclude any space perhaps common to both properties when under separate lets. The panel found that this further reinforced the contention that the RV of the appeal property should be lower and be more reflective of the passing rent.

19. The panel also noted that the respondent had previously offered to reduce the RV to £93,500 but that this had been rejected by the appellant. The respondent had stated that, in her opinion, that value, on an overall basis, was the correct value but was unable to inform the panel why the current RV had remained at £174,000.

20. The panel found that the appeal property was overvalued and its current value of £174,000 was not supported by any submitted evidence.

21. The panel further found that the increase from the 2010 RV of £83,000 to the offered RV of £93,500 was an increase of 12.5%, an increase well in excess of the average increase in the area of 3-8% and therefore out of kilter and disproportionate.

22. The 3-8% covered all sizes of properties and the panel found that the lower value increases would have been for larger properties as there is often an element of quantum to be considered, the larger the property the less per m^2 a tenant would expect to pay. The appeal property was a very large property compared to those in its vicinity and, with this in mind, the panel therefore found that any increase from the 2010 list ought to have been at the lower end of the percentage increases.

23. The panel was aware that the appeal property was currently valued in accordance with the VO scheme 399456 i.e. restaurants valued on an overall basis in Lewisham and Blackheath.

24. The appellant's representative presented details of properties within the scheme 397104 (shops, restaurants and other office type uses within the SE3 postcode) that supported the use of the base rate of £550/m^2 in the locality:

Address	Area	RV	UAR	Basis
25-27 Montpelier Vale	138m^2	£34,709	£550	Retail zone A
37 Montpelier Vale	143m^2	£29,750	£550	Retail zone A
49 Montpelier Vale	124m^2	£25,000	£550	Retail zone A
39 Montpelier Vale	59m^2	£23,500	£550	Retail zone A
47 Montpelier Vale	73m^2	£20,500	£550	Retail zone A
Gnd Flr Front, 35 Montpelier Vale	52m^2	£17,250	£550	Retail zone A

25. As the appeal property was previously valued overall and the current valuation had proved quite excessive and without any clear explanation, the panel found that the zoned valuation and the prevailing base rate of £550/m^2 would both be more suitable to its correct valuation.

26. The appellant's representative had provided his own valuation of the appeal property under those terms and this provided an RV of £89,000. At that value, the RV, at a 7% increase, would still be at the top end of the average RV increases for properties in the vicinity.

27. Overall, the panel found that there was clear evidence that the RV of the appeal property should be considerably lower than £174,000 in order to take into account the factors stated above but, in particular, the passing rent on the property.

28. For these reasons, the appeal is allowed and the valuation should be re-calculated on a zonal basis on a UAR of £550/m^2 resulting in an RV of £89,000 effective from 1 April 2017.

Order

29. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of 29 – 33 Montpelier Vale, Blackheath, London SE3 0TJ to £89,000 with effect from 1 April 2017.

30. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 17 January 2022

Appeal number: CHG100156320