THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Restaurant and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141;Layout; appeal allowed in part.

Re: Le Boudin Blanc, (56 Shepherd Market) and 5 Trebeck Street, London W1J 7LT

APPEAL NUMBER: CHG100156625

BETWEEN:	Le Boudin Blanc	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mrs A Fielder (Senior Member) and Ms K Riddy

CLERK: Mr L Bertie

REMOTE HEARING: 12 January 2022

APPEARANCES:

Mr J Winbourne of Winbourne Martin French (on behalf of the Appellant)
Ms P Walsh (Respondent's representative)

Summary of decision

1. Appeal is allowed in part. The panel determined the rateable value (RV) of £224,000 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. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.

5. Mr Winbourne was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

6. Mr Winbourne declared that he was not instructed under any conditional fee arrangement. He confirmed 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.

7. This appeal has been brought in respect of the following (56 Shepherd Market) and 5 Trebeck Street, London W1J 7LT which was entered in the 2017 Rating List as Restaurant and premises at £290,000 effective from 1 April 2017. Following the appellant's challenge, the Valuation Officer (VO) served a Notice to reduce the assessment to £236,000 with effect from 1 April 2017.

8. The appellant's Challenge to the VO was made on 17 January 2020. The appeal to this Tribunal was made on 21 August 2021 following the VO's Decision Notice of 21 April 2021, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

9. The appeal property is a Restaurant and Premises and is located in Trebeck Street in Mayfair close to the intersection between Green Park and Hyde Park, nearby Hyde Park Corner Tube Station. The appeal property has an ITMS of 156.61m^2. and is spaced over 4 storeys with dining at basement, Ground and First Floor with the kitchen on the First and Second floors and ancillary areas on the Third Floor. The restaurant is also served by a 'dumb waiter' between floors.

10. 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 when 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

11. The correct rateable value for the appeal property, with effect from 1 April 2017.

Evidence and submissions

12. The panel had been provided with a bundle of evidence, which comprised the challenge submission and VO's Decision notice, photographs of the appeal property, location plans and details in relation to comparable properties.

13. Mr Winbourne contended that there had been an increase in rateable value of 276% between the 2010 Rating List and the 2017 Rating Lists and £ per m^2 of £800 to £1850. Importantly, the direct locality should be considered to be in Shepherd's Market and comparable rental evidence of new lettings supported a reduction in the £m^2 from £1850 per m^2 to £1200 per m^2 with a 12.50% allowance for the fragmented layout.

14. Mr Winbourne referred to available rents of similar properties to confirm the level of value to be attributed to the appeal property. Having regard to the evidence that he had presented, he considered the current assessment of £236,000 RV, which was based on a main space rate of £1500 per m^2 was excessive. He sought a reduction to £169,700 RV with effect from 1 April 2017, which was based on his proposed main space rate of £1200/m^2 with a 12.5% allowance for fragmented layout.

15. Having regard to the character of the appeal property and the evidence from comparable properties provided particularly from Trebeck Street, Ms Walsh contended that the assessment of £236,000 RV which was now based on a main space rate of £1500 per m^2 should be further reduced by the carrying forward of the 5% allowance from previous rating lists to take account of the fragmented layout. Accordingly, she sought a revised assessment of £224,000 with effect from 1 April 2017.

Decision and reasons

16. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd* as referred to by both parties. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    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 is 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 VO. 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 value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on 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. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property, if any.

19. 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".

20. 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).

21. 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.

22. The panel noted that the there was no rent on the appeal property as it was freehold and therefore did not assist the panel in its deliberations.

23. Consequently, in line with the authoritative *Lotus and Delta v Culverwell* judgment, other properties' rents and rateable values should also be considered within the basket of evidence for its valuation.

24. The panel was presented with a schedule of comparable properties from the parties, the most relevant parts of which are shown below:

Address	Area m^2	Rent	2017 RV	Date of rent	Base Rate $/m^2$	Analysed rent
VO Al Hamra (&31-33 Shepherd Mkt) Bst – Gnd Flr 7 Trebeck Street London W1J 7LU	154.03		£129,000	10/05/13 Lease renewal	£1500	£1583.51
3 Shepherd Market W1J 7LU	80.02		£58,500	6/12/13 Lease renewal	£1850	£1858.85
Bst – Gnd Flr 20-22 Trebeck Street London W1J 7LU	70.90		£72,000	11/8/15 Lease renewal	£1500	£1567.63
Agent Kitty Fishers 10 Shepherd Market W1J 7QU	37.29	£50,000	69,000	?/1/15 New letting	£1850	£1340.84
7 Shepherd Market W1J 7QU	65.30	£61,150	38,750	/1/16 Lease renewal	£2000	£936.45
Ground and Bsmnts, 5 Whitehorse Street W1J 7LG	100.67	Average £121,500.	151,000	/2/16 New letting	£1500	£1206.95

25. In examining the rental evidence submitted by the parties, the panel noted the argument of Mr Winbourne that the better rental evidence should be that of the analysed level of rent passing on new lettings rather than lease renewals, which in his opinion, indicated an overall value of £1200 per m^2. However, the panel in acknowledging this argument also noted that Mr Winbourne's rental evidence of two new lease lettings indicated base rates at January 2015 for 10 Shepherd Market of £1850 per m^2 and for 7 Shepherd Market in February 2016 of £2000 per m^2. Moreover, the panel considered that there was good supporting evidence including agreements at £1500 m2 from Ms Walsh at 7 and 22 Trebeck Street for the valuation of the appeal property at £1500 per m^2 as its valuation was now clearly in line with other properties in its immediate vicinity. The panel considered that there was little evidence that the base rate should be reduced to a figure of £1200 per m^2. For completeness , the

panel also refused to allow evidence on another property in Shepherd Market as it had not been brought to Ms Walsh's attention , prior to the hearing, which would have been against the Standard Directions of the Tribunal and disadvantageous to Ms Walsh.

26. The panel then considered whether the allowance of 12.50% that the appellant had contended for was applicable for the fragmented layout of the appeal property. Mr Winbourne had indicated that there had been a previous agreement at this level for the 2010 Rating List which consisted of a combined allowance for layout and disability of 12.50%. Ms Walsh had indicated that in investigations, she had looked at the makeup of assessments through various rating lists for the appeal property , which had highlighted that a 5% layout allowance had historically been applied since 1995. The parties disagreed as to the historical breakdown of the allowance . However, in determining the level of allowance, and based on the evidence before it, the panel found that the appeal property had generally been sufficiently assessed in this respect at 5% to reflect the unusual floor layout and that no further reduction was appropriate.

27. In addition, the Panel found no substance in the argument put forward by Mr Winbourne in comparing changes in Rateable Value between the 2010 and 2017 Rating Lists for the appeal property as a factor to support the inaccuracy of the current assessment. The panel was aware that the purpose of a revaluation exercise, which in this case took place seven years apart, was to value each hereditament appearing in the List completely afresh, taking into account the rental values and economic factors at the antecedent valuation date of 1 April 2015 and the physical factors at the compilation date of 1 April 2017 and it was not a mathematical exercise whereby every entry gets uplifted to the same degree.

28. In appeals of this nature the burden of proof rests on the appellant to prove his case. The panel concluded that Mr Winbourne had not produced sufficient evidence to justify a reduction in the £/m^2. However, because of the general layout of the property with its disadvantages, an end allowance was adjudged appropriate albeit only at the level of 5% and not at the level of that contended for by Mr Winbourne.

29. Consequently, the panel found that the rateable value of the property should be reduced to £224,000 with effect from 1 April 2017. The appeal was therefore part allowed.

Order

30. 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 Le Boudin Blanc, (56 Shepherd Market) and 5 Trebeck Street, London W1J 7LT to £224,000 with effect from 1 April 2017.

31. 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: 8 February 2022

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