THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Local Government Finance Act 1988; Statutory Assumptions; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Specialeyes plc v Felgate (VO) RA387 1992; Base Rate; Appeal allowed.

RE: BST & GND FLR Unit 1, 77 Kingsway, London WC2B 6ST

APPEAL NUMBER: CHG100160548

BETWEEN:	Casual Dining Services Limited T/A Café Rouge	Appellant
	And	
	Mr Andrew Ricketts (Valuation Officer)	Respondent

PANEL:	Mrs Ann Fielder	(Presiding Senior Member)
	Mr Matthew Wyard	(Senior Member)

CLERK:	Mr Duncan Adamson IRRV (Hons)
REMOTE HEARING 4:	5 January 2023
PARTIES PRESENT:	Mr David Price of Gerald Eve LLP, representing the appellant
	Mr Chris Cates representing the Valuation Officer

Summary of decision

1. The appeal was allowed. The rateable value (RV) of the hereditament was determined at £164,000 based on a rate of £630/m^2 with effect from 7 November 2019.

Introduction

2. This 2017 compiled list appeal had been brought in respect of the property at BST & GND FLR Unit 1, 77 Kingsway, London WC2B 6ST occupied by Casual Dining Services Limited trading as Café Rouge.

3. The rateable value was £257,500 based on an unadjusted rate of £1,000/m^2 with effect from 7 November 2019.

4. The appellant appealed against the Valuation Officer's (VO) challenge decision as they sought a reduction of the RV to £164,000 on a rate of £630/m^2.

5. The property was a restaurant and premises with a ground floor restaurant and the kitchen and all ancillary areas in the basement level. There was also an outside eating area of approximately 10m^2. The total area of the property was 397.57m^2 which in terms of main space (ITMS) was 257m^2. It was in a parade of six retail units from number 67 to number 95 Kingsway.

6. During the challenge process the VO offered to reduce the RV to £246,000 based on a rate of £950/m^2 but this was not accepted by the appellant.

7. This is not intended to be an exhaustive record of the proceedings. Consequently, the absence of a reference to any statement or item of evidence should not be construed as it having been overlooked.

8. Mr David Price appeared on behalf of the appellant as expert witness and advocate. 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 on a contingency fee basis. 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). The panel therefore considered the expert evidence and attached such weight to it as they saw fit.

Issue

10. The RV of the hereditament.

Evidence and submissions

11. The evidence bundle submitted by the respondent comprised all of the documents exchanged between the parties as part of the challenge process, the VO's challenge case decision notice and the appellant's challenge submission.

12. The appellant's representative contended that there were two main issues:

- The mode and category. The appellant was an A3 occupier (restaurants and cafes) of the appeal property that had been designated as an A1 property (retail). Rents on shops were higher than those on restaurants in this locality but, in any case, the appeal property should be valued using comparables in the same mode or category.

- The tone adopted in the assessment of the RV was excessive when compared to the rent passing on the property. The rent was agreed on 24 June 2014 of £158,000 per annum (pa) and was a 5 year rent review on an open market basis of the original 25 year lease from 1999.

13. He had analysed this rent to £614.52/m^2. The rent had again been reviewed in June 2019 at £185,000 pa and this analysed at £719.50/m^2. With these two rents in mind, given that they were five years apart, he was of the opinion that the rate at the AVD would be somewhere in between. He had calculated, by interpolation, that £630/m^2 was reasonable. This would reduce the RV to £164,000.

14. He was of the opinion that rent review transactions in the locality and a comparable assessment at Bst & Grd Flr 123 Kingsway provided evidence in support of his contention. He stated that despite the rent reviews of 123 Kingsway not being within six months of the AVD as accorded by the case of *Specialeyes plc v Felgate (VO)* RA387 1992, it was still a useful tool in the property's valuation.

15. The adopted rate at 123 Kingsway was reduced previously by the VO after discussions with the appellant's representative from £1,000/m^2 to £575/m^2 based on the rent due and the rental evidence in respect of 50 – 54 Kingsway occupied by Sushi Hiroba.

16. The appellant's representative was aware that 123 Kingsway had a variety of site differences not reflected elsewhere and so did not think the appeal property should be valued at the same rate. A higher rate was reasonable and, in his opinion, £630/m^2 was a realistic and appropriate rate that would reflect the differences.

17. The respondent stated that it was necessary to consider the whole basket of rental evidence in order to correctly value the appeal property. It was his opinion that a new tenant fresh to the scene would agree a rent that supported the rateable value of £1,000/m^2 at the AVD.

18. In his opinion, the rent on the appeal property appeared to be an outlier and therefore little weight should be attached to it.

19. He stated that the rent review on 123 Kingsway was more than six months before the AVD and therefore not useful. Further, the RV reduction at 123 Kingsway was unique to that property and not applicable to any other units on Kingsway.

20. He had submitted properties that he felt were comparable to the appeal property, were in line with the statutory assumptions and supported the valuation of the appeal property. In particular, the following:

    Bst & Grd Flr Unit 2, 77 Kingsway occupied by LEON. This was a new letting in January 2015, two months before the AVD, at an analysed rate of £1,240/m^2 ITMS.

    Grd Flr West, 71 – 91 Aldwych occupied by ROKA. Again, a new letting in May 2014 that analysed to £1,048.13/m^2.

21. He was of the opinion that he had shown that restaurants were prepared to pay higher retail rents for properties in this area. He therefore contended that the valuation of the appeal property was correct at £1,000/m^2.

Decision and reasons

22. 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;

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".

23. 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).

24. In reaching its decision, the panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had established six propositions giving 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 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 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.

25. The panel found that there was insufficient evidence submitted to demonstrate that the rent on the appeal property was an outlier.

26. In accordance with the rating hypothesis the panel found that it had been demonstrated that the rent on the appeal property when analysed for the two rent reviews in 2014 and 2019 gave rates of £615/m^2 and £720/m^2 respectively. This was very good evidence that the rate of £1,000/m^2 was excessive for the appeal property.

27. In support of a lesser rate the panel found that the property at Bst & Grd Flr 123 Kingsway occupied by Wagamama had been agreed at a rate of £575/m^2, a value agreed by the appellant's representative and the VO previously.

28. The panel noted that it was not a directly comparable unit. There were a number of disadvantages associated with the access, layout, size and lack of natural light that made the premises physically unique. Consequently, the panel found that it would not be appropriate to value the appeal property at exactly the same rate.

29. However, the panel noted that its valuation at £575/m^2 was almost half that of the appeal property and found that there was validity in attaching weight to it as evidence for a reduction in the rate for the appeal property.

30. The panel also noted that the value of £575/m^2 had been arrived at by the appellant's representative by comparing the rents agreed in 2012 and 2017 and that this was a method agreed with one of the valuers. Both rental agreements were too far from the AVD to be of significance on their own but the panel accepted the interpolation calculation by the appellant's representative to arrive at that figure for a value at the AVD.

31. The panel then referred to the property at 50-54 Kingsway occupied by Sushi Hiroba and noted that the respondent had attached little weight to it. However, the panel noted that the nil increase at rent review did analyse at £691/m^2, again, a value considerably less than that on the appeal property at £1,000/m^2. The panel therefore found it useful as supporting evidence for the reduction of the RV of the appeal property.

32. Overall, the panel found that the rental evidence supported a reduction in the appeal property's valuation and that the appellant's representative had provided sufficient evidence in support of his case. Further, that there had been sufficient evidence presented to support that the rate of £630/m^2 was a reasonable and fair rate to use in its valuation.

33. The appeal was therefore allowed and the RV of the hereditament confirmed at £164,000 based on £630/m^2 with effect from 7 November 2019.

Order

34. Under the provisions of regulations 38(4) and 38(10) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the rateable value of BST & GND FLR Unit 1 77, Kingsway, London WC2B 6ST to £164,000 with effect from 7 November 2019.

35. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

36. 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: 13 January 2023

Appeal number: CHG100160548

Rights of appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the Upper Tribunal on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.