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; appeal allowed.

Re: Ask Royal York Hotel, Broad Street, Bath, BA1 5LW

APPEAL NUMBER: CHG100161981

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BETWEEN:	Azzurri Group	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

BEFORE: Mr MH Smith (Senior Member) and Mr PJ Hickson

CLERK: Miss K Hendry

REMOTE HEARING: Tuesday 25 January 2022

APPEARANCES:

Ms H Edwards of Gerald Eve (on behalf of the Appellant)
Mr R Albert (Respondent's representative)

Summary of decision

1. Appeal is allowed. The panel determined the rateable value (RV) of £97,500 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. Ms Edwards 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 her 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. Ms Edwards declared that she was not instructed under any conditional fee arrangement. She confirmed that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her 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: Ask Royal York Hotel, Broad Street, Bath, BA1 5LW, which was entered in the 2017 Rating List as restaurant and premises at £114,000, effective from 1 April 2017. Following the appellant’s challenge, the Valuation Officer (VO) served a Notice to reduce the assessment to £106,000, with effect from 1 April 2017.

8. The appellant’s Challenge to the VO was made on 31 January 2020. The appeal to this Tribunal was made on 9 September 2021 following the VO’s Decision Notice of 11 May 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 located in Bath. It is a period property situated in a tertiary retail pitch with a mix of national and local operators. It is situated on Broad Street which slopes steeply towards George Street. As a consequence, the appeal property is partly below street level at its northern end. The net internal area of the appeal property is 413.95m^2 with restaurant, kitchen and wash-up area on the ground floor. The public toilets are in the basement.

10. The appeal property has been valued by reference to Scheme 350955 which is applicable to restaurants, bistros, bars and cafes that have at least some of the main accommodation on the ground floor located in district of Bath and North East Somerset and that have been valued on an overall basis. An unadjusted main space rate of £325/m^2 had originally been applied to the appeal property’s assessment. Following the challenge, the VO reduced the main space rate to £300/m^2. The appellant is seeking for the rate to be reduced to £275/m^2.

11. 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

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

Evidence and submissions

13. Mr Albert was representing the VO as expert witness and advocate. He advised the panel that the case had been passed to him by another caseworker but he had reviewed all the evidence.

14. 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.

15. Ms Edwards referred to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 and contended that the correct starting point was the rent passing on the appeal property.

16. Azzurri Restaurants took a 30 year lease of the property from 18 October 1999 with reviews every five years. The rent review clause states that the rent is to be reviewed upwards only to market rent. The last review took place in October 2014, only five months before the antecedent valuation date (AVD). The rent was increased from £99,500 to £100,000 devaluing to £288/m^2 compared to the rate adopted in the assessment of £325/m^2.

17. Ms Edwards referred to available rents of similar properties to confirm the level of value indicated by the actual rent on the appeal property. Having regard to the evidence she had presented, she considered the current assessment of £106,000 RV, which was based on a main space rate of £300/m^2 was excessive. She sought a reduction to £97,500 RV, which was based on her proposed main space rate of £275/m^2.

18. Having regard to the character of the appeal property, its passing rent and the comparable properties provided, Mr Albert contended that the amended assessment of £106,000 RV was in the bounds of reasonable. Accordingly, he sought dismissal of the appeal.

Decision and reasons

19. 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.

20. 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.'

21. 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.

22. Ms Edwards argued that the rent passing on the appeal property was set just prior to AVD and is the best evidence. This was a nominal increase in rent of £500 at the 2014 review from the rent agreed in 2009. A rent of £100,000 devalued to £288/m^2. Mr Albert confirmed he was in agreement with the analysis of the rent.

23. She referred to the location of the appeal property on the steeply sloping street of Broad Street meaning that the appeal property was partially below street level. Furthermore the street was very narrow with no on-street parking and was a one-way system. Internally the appeal property floor area had a change in levels by the way of steps which broke up the customer area and was a disadvantage to the appellant.

24. Ms Edwards argued that comparable properties supported a lower rate per m^2.

a) **4A Princes Buildings, Bath, BA1 2ED**
Occupied by Pierre Bistrot.
The rent passing is £65,000 with effect from September 2014 as a new lease. This lease is one month prior to the rent review on the appeal property. This devalues to £272/m^2.
This property is situated on George Street which is in close proximity to the appeal property. The VO has attached a significant amount of weight to the analysis of this property, which Ms Edwards agreed with. The difference between the rent passing on this property and the appeal property is just under 6%. However, this property has been assessed by the VO at an rate adopted rate of £250m^2 in comparison to £300/m^2 for the appeal property, equating to a difference of 20%. Mrs Edwards argued that should the same percentage be applied to the rating assessment as the analysed rents then a rate of £262.50/m^2 should apply to the appeal property.

b) **Wagamama, York Buildings, Bath BA1 2EB**
Also situated in The Royal York Hotel like the appeal property, but benefits from its frontage onto George Street which is a main thoroughfare through Bath. It is

situated in a superior position. This property does not have disadvantages of sloping frontage or split floor level unlike the appeal property.
There was a rent review in 2015 with a nil increase. Mrs Edwards confirmed she does not attach much weight to the rent passing on this property. The rateable value has not changed between the 2010 list and 2017 list. Based on 300/m^2.

25. Ms Edwards argued that Wagamama had always remained at a higher rate per square metre in the previous lists compared to the appeal property. In her opinion she argued that a hypothetical tenant coming fresh to the scene would not pay the same rate for the appeal property as they would for Wagamama.

26. Ms Edwards referred to the VO's comparable of 36 Broad Street which was a new letting in January 2013. She contended that little weight should be attached to this evidence as it is 26 months prior to the AVD. Furthermore it is situated in a far stronger pitch as it is closer to the prime retail area for Bath city centre. The rent on this property analysed to £390.27/m^2 and with an adopted rate of £350/m^2, no meaningful comparison can be made.

27. In response to the comparable properties Mr Albert stated that 4A Princes Buildings has a lower adjusted rent because of its location to Bath's city centre as demonstrated in the rent achieved. The rent of £65,000 from September 2014 is on the terms of a new letting on a 25 year lease with five yearly rent reviews with the Landlord responsible for buildings insurance. This is further from the central core and the analysis of the rent is £272.85/m^2. This supports the price in the scheme as this property is valued at £250/m^2.

28. Mr Albert did not agree that Wagamama is a good comparable. The rent of £150,700 has had nil increase every five years at the rent reviews since the start of the lease in 2000.

29. Ms Edwards stated that if you search for the appeal property by its postcode, it leads you to the main entrance to the hotel on George Street and as a consequence, Azzurri Restaurants believe that the frontage on to Broad Street results in a loss of trade and has a negative impact.

30. In the 2010 rating list the appeal property was assessed at £250/m^2 with an RV of £85,000. 4A Princes Buildings had an adopted rate of £250/m^2 in the 2010 rating list and Wagamama was valued at an adopted rate of £300/m^2.

31. In defence of the current rateable value, Mr Albert confirmed he had considered the rent on the appeal property. As it was a rent review, despite being close to the AVD he considered it not to hold much weight in considering the rating hypothesis and a new tenant coming fresh to the scene. The tenant for the appeal property had been in situ since 1999. He had considered a basket of evidence in determining the adopted rate.

32. He referred to the following comparable properties;

a) **36 Broad Street, Bath BA1 5LP**
This is a new letting in January 2013 just a few doors away from the appeal property.
Rent analysed at £390.27/m^2 and is currently valued at £350/m^2.

b) **5 Princes Buildings, Bath BA1 2ED**
Located by 4A Princes Buildings, further from the central core.

Had a rent review in February 2015 with a passing rent of £32,000 on a clean FRI lease.
Rent analysed to £473/m^2, supporting the price in the scheme as the property is currently valued at £250/m^2.

33. Mr Albert disagreed that the appeal property had an inferior pitch in comparison to Wagamama. He stated that restaurants are not entirely based on the prominent view and it could be argued that a restaurant less prominent may have more exclusive position. In terms of Broad Street, there are quite a few restaurants and hotels and would not deflect from the value of £300/m^2 at Wagamama.

34. Mr Albert considered the best evidence to be the new letting at 36 Broad Street. This is a new letting and whilst it is some time before AVD, it is stronger evidence than a rent review. It is a new letting of a similar restaurant in the same location as the appeal property. Based on this comparable property the appeal property was reduced from £325/m^2 to £300/m^2. This reflects the appeal property's position being a bit further from Bath's central core in comparison to 36 Broad Street which is closer to the shopping area and has regard to the slightly lower rent achieved for it.

35. Mr Albert considered the rent on 5 Princes Buildings which analysed at £473/m^2 and stated this rent appeared to be out of kilter with the basket of evidence which is why it had an adopted rate of £250/m^2. He also stated that 36 Broad Street was high at an analysed rent of £389.27/m^2, which is why the VO had adopted £350/m^2.

36. In response to Ms Edwards' reference to the 2010 rating list, he argued that you cannot compare the 2010 and 2017 lists are they are two distinct lists.

37. Mr Albert was asking the panel to dismiss the appeal as he did not consider the revised RV of £106,000 to be excessive.

38. The panel after weighting the comparable evidence considered that £300/m^2 was too high and was in agreement with Ms Edwards that the appeal property should have an adopted rate of £275/m^2.

39. The panel had regard to the new letting of 36 Broad Street and considered this evidence to be too far removed from the AVD. In considering the analysed rent of £390.27/m^2 with the basket of rents, this rent along with £473.02/m^2 on 5 Princes Buildings was higher for the locality, as confirmed by the VO adopting a lower adjusted rate for 36 Broad Street of £350/m^2.

40. The panel considered the basket of rents, in particular 4A Princes Building. The rent on this new lease had been analysed to £272.85/m^2 only one month prior to the appeal property in September 2014 in comparison to the analysed rent on the appeal property of £288/m^2. Yet 4A Princes Building had been valued on an adopted rate of £250/m^2. The VO had adopted a lower tone for this property as he considered it to be in a poorer location to the appeal property as it was located further away from the city centre. However the panel held that the location of the appeal property on Broad Street also had disadvantages, such as the very narrow steep road and one-way system and for that reason it should not be valued on the same adopted rate of £300/m^2 as Wagamama. Not to mention the internal disadvantage of the split levels.

41. Furthermore, whilst the panel did not place too much weight on the comparison between the 2010 and 2017 rating list, the fact that the appeal property had been valued previously on a lower adopted rate than Wagamama also indicated that the adopted rate of £300/m^2 was excessive.

42. The panel therefore allowed the appeal and confirmed £97,500 as the correct RV with effect from 1 April 2017.

Order

43. As a consequence of the above decision, the VO is ordered to reduce the 2017 Rating List entry to RV £97,500 with effect 1 April 2017 for Ask Royal York Hotel, Broad Street, Bath, BA1 5LW within two weeks of the date of this order.

44. A refund of the paid fees will now be arranged in accordance with regulation 13E(1) (a) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 1 February 2022

Appeal number: CHG100161981