THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Restaurant *and premises; main space price; appeal allowed.*

Amended decision in accordance with Regulation 39 of the valuation tribunal for England (council tax and rating appeals) (procedure) regulations 2009 due to a clerical error. The decision is now amended with the correct valuation and rateable value.

Amended decision in accordance with Regulation 39 of the valuation tribunal for England (council tax and rating appeals) (procedure) regulations 2009 due to a clerical error. The decision is now amended in accordance with the appellant's representative's comments.

RE: Basement and Ground Floors, 144 Camden High Street, London NW1 0NE

APPEAL NUMBER: CHG100171796

BETWEEN:	Mexican Grill Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr M Smith (Presiding Senior Member)
Mr A Jobanputra (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 12 May 2022

APPEARANCES: Miss A Schorb (Appellant's representative)
Mr B Jones (Valuation Officer's representative)

Summary of decision

1. Appeal allowed in part. The panel concluded that the main space price should be reduced to £890/m^2. The resultant rateable value (RV) was £83,500.

Introduction

2. This appeal had been brought in respect of the following: Basement and Ground Floors, 144 Camden High Street, London NW1 0NE was entered in the 2017 rating list as ‘Restaurant and premises’ at RV £94,000 effective from 1 April 2017 based on an unadjusted rate of £1,000/m^2. The appellant was initially seeking an RV of £56,000 based on an unadjusted rate of £600/m^2, however, on reflection the appellant was subsequently seeking an RV of £75,000 based on an unadjusted rate of £800/m^2

3. The appeal property is a restaurant on the ground floor with storage and staff toilets in the basement. It has a Net Internal Area (NIA) of 126.4m^2 which equates to 93.5m^2 in Terms of Main Space (ITMS). There is an addition for air conditioning. It is held on a full repair and insuring basis on a 15 year lease effective from 12 October 2013 at a yearly rent of £80,000. A three month rent free period was granted. It was located close to Camden Town underground station and Camden High Street consists of a mix of retail and restaurant premises. It was placed in scheme number 340205.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appellant made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

5. The appeal to this Tribunal was made on 25 October 2021 following the Valuation Officer’s Decision Notice of 25 June 2021 in respect of the appeal property.

6. There was a preliminary issue in that the appellant provided some additional evidence, this being a settlement on a comparable property and additional correspondence that had been exchanged between the parties and the appellant’s revised valuation. Mr Jones was in agreement to it to be admitted.

7. Miss Schorb had declared that her firm is on a fixed fee basis. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Miss Schorb’s declaration of truth included a statement that she understood and accepted that her duty is to the Tribunal in giving her evidence and she will comply with this as well as the requirements of her professional body regardless of whether or not the evidence supports her client’s case.

8. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of 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).

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

9. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it having been overlooked.

Issue

10. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

11. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, photographs of the appeal property and details of her comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice and an extract of the judgment of *Lotus and Delta v Culverwell (VO)* [1976] RA 141.

12. The appellant argued that the starting point for the RV was the rent. The rent for the appeal property was £80,000 from 29 October 2013 which analysed to £856/m^2 which suggested that the adopted rate of £1,000/m^2 was excessive.

13. Miss Schorb argued that the VOA had made a 'without prejudice' offer to reduce the RV to £75,000 which adopted a rate of £800/m^2. However, the VOA's guidance suggested that without prejudice offers to reduce the RV should not be made as the VO should be determining the correct RV rather than making offers. Therefore, as the VOA had concluded the main space price should be £800/m2 that is what it should be valued at. Furthermore, she argued that Mrs Russell who made the offer knew the locality as she had agreed a challenge that had been made by the same agent for 136-138 Camden High Street.

14. The appellant also argued that most of the VOA's comparable properties were too far from the appeal property or in a different locality such as Hampstead, Fitzrovia, Bloomsbury, Holborn and Kings Cross to be reliable and that she had only included these properties in Kingsway in response to the VOA's comparable properties. She suggested that the VOA had cherrypicked the comparable properties to support the current main space price of £1,000/m^2.

15. Miss Schorb considered Ground Floor, 102 Camden High Street to be the most comparable in terms of size and the rent was agreed 12 months from the AVD and analysed at £810/m^2. This analysis of the rent reflected the stepped rent and further supported her argument.

16. As the rent was agreed 17 months prior to the AVD she considered that this was too far from the AVD to be reliable and Miss Schorb provided the following comparable properties which further supported her proposed RV:

Property	Area (ITMS)	Analysed rent	Unadjusted main space price	Rateable value
Basement and Ground Floors,	93.50m^2	£856.00/m^2	£1,000/m^2	£94,000

144 Camden High Street (appeal property)				
Ground Floor, 102 Camden High Street	117.31m^2	£810.00/m^2 then £586/m^2	£900/m^2	£100,000
Basement and Ground Floors, 136/138 Camden High Street	376.38m^2	£709.39/m^2	£705/m^2	£257,500

17. Miss Schorb accepted that 136/138 Camden High Street was much larger than the appeal property, but she believed that the property assisted the panel to determine the RV for the appeal property. She also argued that the change in the lease for 102 Camden High Street showed that rents had fallen at the AVD as the rent was initially £95,000 and analysed to £810/m^2 but, effective from July 2018, the new tenant agreed the lease at £70,000 which analysed to £586/m^2. This suggested that rents fell by 32% from 2013 to 2018.

18. The appellant suggested that this was a better way to determine the change in rents than the VOA's calculation which she disagreed with for the following reasons:

    a) there was a nil rent increase in 2012 for the rent for 136/138 Camden High Street and therefore the calculation of 19% was based on 2007 rental levels but he then divided that by 60 months to give a linear growth figure;
    b) 136/138 Camden High Street was not comparable in terms of size and it was wrong to compare changes to rent for properties that were not 'like for like';
    c) it disregards rental trends on Camden High Street; and
    d) it assumed linear growth from March 2012 to March 2017, whereas rents would be driven by a number of factors such as size, location, condition and specification.

19. Miss Schorb also disagreed with the VO contending that the tone had been established at £1,000/m^2 as Basement and Ground Floors, 136/138 Camden High Street had been reduced to RV £292,500 based on a main space price of £800/m^2 but, on appeal, the VO agreed a revised RV of £257,500 based on a main space price of £705/m^2. This suggested that the main space price of £800/m^2 was the correct tone for restaurants within the locality and that the further reduction down to £705/m^2 was due to a quantum allowance for larger restaurants. This was also supported by Unit 5, 112/126 Camden High Street where the unadjusted main space price had also been reduced from £1,000/m^2 to £800/m^2 and then further reduced down to £705/m^2 due to a 12% quantum allowance.

20. Given all of the above, Miss Schorb asked the panel to determine that the appeal property should be valued at £800/m^2 with the resultant RV of £75,000 and allow the appeal.

21. Mr James was representing the VOA as advocate.

22. He contended that the appeal property was located in a less desirable location of Camden High Street due to it having less pedestrian access.

23. He explained that although an offer may be made ‘without prejudice’ it would still need approval from a manager, as it was only the caseworkers opinion of the value of a property. With this appeal, the offer was not approved as it was considered to be too low based on the evidence.

24. The respondent VO contended that the starting point was the rent of the appeal property. The rent of £80,000 commenced 17 months before the AVD which then needed adjusting to reflect the rent as at the AVD. This analysed to £856/m^2.

25. To support this value, the respondent provided the following comparable properties:

Property	Area (ITMS)	Analysed rent	Unadjusted main space price	Rateable value
Basement and Ground Floors, 144 Camden High Street (Appeal property)	93.5m^2	£812.83/m^2	£1,000/m^2	£94,000
Ground Floor, 102 Camden High Street	117.31m^2	£890/m^2	£900/m^2	£110,000
Basement and Ground Floors, 136/138 Camden High Street	376.38m^2	£597.80/m^2 effective 25 March 2012	£705/m^2	£267,500
Basement and Ground Floors, 136/138 Camden High Street	376.38m^2	£709.39/m^2 effective 25 March 2017	£705/m^2	£267,500
Basement and Ground Floors, 46 Rosslyn Hill	63.39m^2	£962.30/m^2	£1,000/m^2	£63,000
32-34 New Oxford Street	109.25m^2	£1,282.62/m^2	£1,000/m^2	£109,000
Basement and Ground Floors, 10 Charlotte Street	61.38m^2	£993.81/m^2	£1,000/m^2	£61,000
115 Kingsway	55.78m^2	£1,107.05/m^2	£1,000/m^2	£55,000
Basement and Ground Floors, 40 Charlotte Street	80.20m^2	£947.64/m^2	£1,000/m^2	£80,500
Unit 18 at 6 Pancras Square	103.55m^2	£1,111.69/m^2	£1,000/m^2	£104,000

26. Mr James contended there was limited rental evidence, which is the reason the VOA initially looked further away from Camden High Street to find comparable properties. They were within 1.5 miles of the appeal property and the same billing authority area.

27. However, on reflection, the respondent found that the rent for Ground Floor, 102 Camden High Street to be the most reliable rent. Initially the VOA had not

reflected the storage that was at that property and agreed that it had an area ITMS of 117.31m^2. It was a stepped rent which commenced in April 2014, just one year before the AVD. The VO analysed this rent to £900/m^2 which supported the same value for the appeal property and reflected the VOA's professional judgment. He suggested that the fit out costs should have been ignored as the tenant had paid the equivalent of four years rent which he considered to be too much to be purely fit out costs and a breakdown of the costs had not been provided.

28. He also contended that the two new lettings had suggested there was demand for properties in the locality, especially as the rent for 136-138 Camden High Street had increased on review and therefore he disagreed with Miss Schorb's analysis that rents had fallen by 32%.

29. Mr James also contended that Miss Schorb had analysed the rent incorrectly for 136-138 Camden High Street and 237-239 Camden High Street and that the correct approach to analysing the rent supported the value of the appeal property being £900/m^2. Furthermore, he considered that these comparable properties were not comparable as they were larger than the appeal property and those premises would appeal to different markets.

30. Although the rent for 102 Camden High Street analysed to £839/m^2 which reflect Mr Jones' belief that there has been rental growth from the time the rent was agreed to the AVD, he contended that the basket of rents supported the current unadjusted rate for the appeal property of £1,000/m^2 and that the RV of £94,000 was reasonable. He asked the panel to dismiss the appeal.

31. In response to the respondent VO's argument, Miss Schorb argued that 102 Camden High Street was not identical to the appeal property and suggested that the tenant for that property would not be the same potential tenant for the appeal property but suggested that it was a useful guide to the rents in the locality. Furthermore, she argued that the VOA did not make any attempt to verify the fit out costs and suggested that they were more than fit out costs, such as computer and other equipment; training; like for like kitchen equipment, signage and building improvements.

Decision and reasons

32. The task for the panel was to determine the rateable value for the appeal property which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

33. There is another important date for rating appeals and that is known as the 'material day.' This is the date on which the physical factors have to be taken into account. In this appeal the material day was 1 April 2017.

34. The term 'rateable value' is defined in 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; and

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".

35. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

36. The rateable value should be the amount equal to the rent. The lease for the appeal property commenced in October 2013, which was one and a half years from the AVD although due to the three months rent free period the rent commenced just over 15 months before the AVD. The VO had analysed the rent to £856/m^2, which he rounded up to £900/m^2 to reflect the increase in growth between the time of the rental agreement and the AVD.

37. Although there were arguments about the changes to the rent the panel tested this rent with the comparable properties. Both parties had produced a number of comparable properties but the panel considered that most of them were not comparable in terms of location or size and applied little weight to them. In effect there was just one comparable property, Ground Floor, 102 Camden High Street which was similar in size and location to the appeal property. The panel noted that the rent in April 2014 for that property was £95,000 which had been analysed to £810/m^2 which the VO had uplifted to £838.96/m^2

38. Although Miss Schorb argued that rents fell between 2013 to 2018 and therefore the rent needed to be adjusted to reflect the fall in rental values, without any further supporting evidence the panel applied less weight to this

argument. Furthermore, although both parties had argued about the fit out costs, neither party was able to demonstrate that their method was correct.

39. Given that it was for the appellant to prove their case which Miss Schorb failed to do, the panel concluded that a value of £810/m^2 was too low. However, the respondent had contended that the evidence supported a main space price of £891/m^2, rounded up to £900/m^2, however, Mr James had not explained to the panel why the VOA had rounded the main space price up to £900/m^2 and concluded that the main space price should be £890/m^2.

40. The valuation is set out below:

Floor	Description	Area m^2	£ per m^2	Value
Ground	Retail Zone A	27.20	890.00	24,208.00
Ground	Retail Zone B	24.60	890.00	21,894.00
Ground	Retail Zone C	20.70	890.00	18,423.00
Ground	Remaining Retail Zone	8.70	890.00	7,743.00
Ground	Internal storage	2.90	445.00	1,290.50
Ground	Internal storage	1.10	445.00	489.50
Ground	Staff toilets		0.00	0.00
Basement	Mess/staff room	41.20	222.50	9,167.00
Basement	Staff toilets		0.00	0.00
			Sub total	83,214.50
Air conditioning		87.30	7	611.10
			Total	83,825.60
		Rateable value say		83,500.00

Order

41. Under the provisions of regulation 38(4) 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 entry in the rating list to rateable value £83,500 with effect from 1 April 2017.

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

Refund of appeal fees

43. As the grounds of the appeal have been made out, 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: 22 June 2022

Appeal number: CHG100171796

Addendum

Following the release of the panel's decision the VOA drew the Tribunal's attention to clerical errors in the decision record. The original decision showed an incorrect valuation and resultant RV. The decision record has therefore been altered, following authorisation by the Chairman under Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

Date when amended decision was released: 22 July 2022

Second addendum

Following the release of the panel's decision the appellant's representative drew the Tribunal's attention to clerical errors in the decision record. The decision record has therefore been amended as per her suggestions, following authorisation by the Chairman under Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

Date when amended decision was released: 11 November 2022