THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; advertising rights and premises; subject rent; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed.

RE: Advertising Site Singkit Adj 182 Tower Bridge Road, London SE1 2AD

APPEAL NUMBER: CHG100176211

BETWEEN: London Lites Ltd — Appellant

and

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Mrs J Ellis (Senior Member)
Miss L Westwell

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 24 May 2022

APPEARANCES:
Mr R Wackett of Montagu-Evans for the appellant
Mr C Cates for the respondent

Summary of decision

1. The appeal was allowed; the assessment was reduced to £12,500 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Advertising Site Singkit Adj 182 Tower Bridge Road, London SE1 2AD which originally entered the 2017 Rating List at £77,000 RV, effective from 1 April 2017. Following a ‘check’, it was altered to £19,250 RV.

3. The assessment is shown in the list as ‘Advertising Right and Premises’. The property comprises an internally digital portrait panel advertising hoard that is positioned on the side of 182 Tower Bridge Road. It is a non-standard sheet size of 2.4m x 3.6m (approximately 23 sheets), which is visible to traffic and pedestrians travelling south on the arterial A100, that runs south from Tower

Bridge to Old Kent Road. The hoarding is positioned between the first and third floors of a flank wall.

4. Mr Wackett informed the panel that the legal name of the appellant company which was formally known as ‘DayLite LED Media Ltd’ had changed to ‘London Lites Ltd’. This was a change in name of the same entity.

5. Following discussions between the parties during the challenge process, the plant and machinery element was agreed at a value of £1,540 based on the cost of £35,000 decapitalised at 4.4%.

6. The challenge proposed a reduction in value of the site to £10,250 RV. The challenge decision was issued on 28 September 2021 and the Valuation Officer’s (VO) decision was that the proposed revised rateable value of £14,500 (£13,000 value of site plus £1,540 plant and machinery) was both fair and reasonable.

7. Mr Wackett, for the appellant, considered the VO’s revised valuation to still be unreasonable. Consequently, the challenge decision was appealed to this tribunal. He sought a reduction in the RV to £12,500.

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

Issue

9. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

10. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the challenge process.

11. Mr Wackett appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he declared that he was instructed on a fixed fee basis.

12. In summary, Mr Wackett considered the subject rent to be the best evidence. It was agreed close to the antecedent valuation date (AVD) of 1 April 2015. He had applied a 10% uplift to reflect the landlord break clause, which he considered to be reasonable given the break option was limited to a very limited set of circumstances.

13. He questioned the VO's approach to value the assessment with reference to comparable properties, as he failed to see relevance of those supplied in arriving at the RV of £14,500.

14. He also referred to a list of assessments to demonstrate the broad range of values and agreements across a similar type of hoarding. Further, he submitted that there had been settlements for Admedia at £5,500 RV. All of the motorway service area sites are measured at 2m x 4 m(8sqm), contain a digital mechanism and are rented. The agreements follow the rental data for the subjects, properly adjusted.

15. Mr Wackett, for the appellant, therefore considered that the current RV was not supported and having regard to the subject rent and adjusting accordingly, he sought a reduction to £12,500 RV.

16. Mr Cates had picked up this case from a colleague and was appearing as advocate. However, he submitted that the panel may wish to consider him expert witness in respect of general rating, given his vast experience.

17. In summary, the VO's position was that the subject rent was not in line with the rating hypothesis due to the break clause in favour of the landlord (with six months' notice), the exclusion of Part II of the Landlord and Tenant Act 1954 provisions, as well as the top up arrangement on the rent payment. Due to the implications of the lack of continuance and the nature of the rental agreement, it attached less weight to it within the basket of evidence.

18. To support the decision, the VO provided a schedule of rental evidence; Department of Transport data regarding traffic flow; location plans; and photographs.

19. Mr Cates, for the VO, having regard to the basket of evidence, submitted that the current assessment of £14,500 RV was reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

20. In considering this appeal, the panel had regard to the term 'rateable value' as 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".

21. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 1 April 2017.

22. The rateable value for such property is based on the right to advertise and the annual value of the structure. The value of the structure had been agreed by the parties, as such, the panel were concerned with the value of the right to advertise and what, at the AVD, the rent returned for such right would have been.

23. In considering the weighting of the evidence, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). 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 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.'

24. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing for the subject right. It was rented on a lease dated 25 April 2015 at a rent of £7,500 plus a minimum top up of £2,500 (or 20% of the net income). This was agreed for a term of five years.

25. Both parties referred to the lease break clause which allowed the landlord to give notice in the event of redevelopment. Mr Wackett submitted that he had uplifted the rent by 10% to account for the lack of security to arrive at his proposed RV of £12,500; the rent at £10,000 plus 10% plus the structure cost.

26. A copy of the lease was provided, and the panel noted that the clause referred to was as follows:

> '9)(i)In the event of any disposal or redevelopment of the Premises or the Landlord's Larger Premises the Landlord may determine this Lease at any time after the first anniversary of the commencement of the Term upon giving to the Tenant not less than 6 months prior written notice and upon expiry of such notice the Term shall absolutely cease and determination but without prejudice to the rights and remedies of the Landlord in respect of any antecedent breach
>
> (ii)In the event of determination the Tenant will be entitled to compensation equating to 1/60th of the capital costs of the panel for every month remaining of the Term and for the avoidance of doubt the compensation shall not exceed £10,000.00'

27. The panel considered that the tenant bid could have been depressed by the potential lack of continuance but also considered that the definition of rateable value reflects a year to year rent with a reasonable prospect of continuance. The panel found that the lease was for five-years, and even if the break clause was acted on, it provided the tenant with at least eighteen months' security, so there was evidence of a reasonable prospect of continuity. Of course, if at the material date, there had been plans in place for redevelopment, this may have impacted the hypothetical bid further, but there was no evidence of that, it was a clause included for the eventuality. The panel therefore considered that this was not good reason to reject the rent but accepted that some adjustment would be required.

28. Mr Wackett submitted that there had been no re-development and on no occasion had the rent exceeded the £10,000. The panel agreed with Mr Cates, that in respect of the latter point, this could possibly be due to the

operator. Furthermore, the panel considered that the hypothetical tenant, fresh to the scene, would not have known that the rent would not have exceeded this amount in the five years.

29. The panel found the subject rent to be good evidence, as it was agreed just twenty-four days post AVD and only required little adjustment to conform with the rating hypothesis. However, as there was some adjustment required, the panel did also consider the basket of evidence provided by the VO.

30. The panel was aware that various factors can impact the rents paid, including but not limited to, the size, general location, and position. The subject was parallel to a road, providing visibility to vehicles from one direction. The panel noted that it was a bespoke format and therefore did not fit the standard criteria for outdoor advertising hoardings, either a ‘large format’ (48-sheets), nor a ‘small format’(6-sheet).

31. The rental evidence provided was for six assessments in London. They varied in size, one was a 6-sheet, four were 48-sheets and one was 96-sheets. The schedule of evidence provided the rent agreed on each but did not provide any analysis or the unadjusted rate adopted, so the panel could not determine how the VO had arrived at the RV for the subject based on this basket of rents. Furthermore, with the one exception for Advertising Right Corner Wyvil Road, South Lambeth Road, London, SW8 2TJ, the rents were all agreed between September 2016 to June 2018 so too far removed from the AVD to be of great assistance. Advertising Right Corner Wyvil Road was agreed on 30 September 2015, so closer to the AVD, but it was a 96-sheet so, in the panel’s view, little could be achieved with comparing the two. In any case, there was no analysis of this rent or details of the RV to support the RV adopted for the subject advertising right.

32. The VO submitted that the 10% uplift from the rent was Mr Wackett’s opinion and there was no evidence to support this. Through questioning, the panel was unable to determine how the VO’s valuation was arrived at, which was essentially a 30% uplift from the subject rent.

33. The panel concluded that it could not attach significant weight to the basket, they were too varied in size and far removed from the AVD. In the absence of reliable comparable evidence, and given the bespoke size of the hoarding, it found it necessary to attach most weight to the rent agreed on the subject. Given this was agreed so close to the AVD, it was a good indication of the value at this time. Without any compelling evidence to the contrary, the panel was persuaded, given Mr Wackett’s experience with rental agreements for other advertisement sites and his role as expert witness, that the 10% uplift was a reasonable adjustment to the rent based on the terms provided.

34. In view of the foregoing, the panel found the proposed RV of £12,500 to be reasonable and allowed the appeal.

Order

35. Under the provisions of regulations 38(4) and 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 show the following:

    Advertising Site Singkit Adj 182 Tower Bridge Road, London SE1 2AD
    £12,500 rateable value effective from 1 April 2017

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

Refund of fee

37. 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: 20 June 2022

Appeal number: CHG100176211