THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Shop and premises; Rental evidence; Unadjusted base rate; No allowance for size; Appeal dismissed.

RE: Burger King UK Ltd, 128 Lewisham High Street, London SE13 6JG

APPEAL NUMBER: CHG100253006

BETWEEN:	Saxby Ltd (represented by DMA Property)	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mr M F Hunt (Senior Member)
Ms N Chesterman

CLERK: Ms S Hodgson

ON: 4 February 2022

REMOTE HEARING

APPEARANCES: Mr R Wiggins of DMA Property for the appellant
Mr C Cates of the Valuation Office Agency for the respondent

Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £111,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £111,000 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017.

The challenge stage was completed on 24 May 2021. The appellant sought a reduction in the RV to £91,000.

3. The appeal hereditament was a shop unit currently used as a Burger King restaurant that measured 243.67m^2. The unit was on the ground floor with customer toilets on the first floor and was located on Lewisham High Street near to the entrance of the shopping centre.

4. 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.

5. 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.

6. 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

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

Evidence and submissions

8. Mr Wiggins appeared on behalf of the appellant as both advocate and expert witness. Mr Wiggins declared that he was not instructed under any conditional fee arrangement. Mr Wiggins declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the appeal.

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).

10. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

11. Prior to the hearing Mr Wiggins submitted an email as additional evidence that was dated 13 January 2022 and included explanations of the rent on the subject property and of an additional capital allowance of £100,000 that was given to the tenant by the landlord. Mr Cates had no objection to this new evidence.

12. Mr Wiggins provided three rents for the subject property from 2013, 2015 and 2018. He contended that the Valuation Office Agency (VOA) had misunderstood the initial lease which subsequently followed through to the 2015 and 2018 agreements. He submitted the rents shown should be adjusted downwards as they included the lease of the first and second floors of the building, which were not part of the subject hereditament, and provided an assessment of what he believed would be the rent on the appeal hereditament alone. He contended that the rent of the subject property was the best evidence on which to assess the RV, subject to this reduction. Mr Wiggins also asked for an end allowance due to the size of the hereditament. He had provided evidence of other properties that were receiving an end allowance as justification. Mr Wiggins asked for the RV to be reduced to £91,000 by way of either reducing the price per square metre (psm) to £810 with no end allowance, or to £900 with a 10% end allowance for size.

13. Mr Cates argued that at no point had the subject rents detailed above been “clean” rents for various reasons, including the capital sum of £100,000 provided to the tenant at the outset, the extent of installation works required to render the hereditament available for separate use (it having previously formed part of a larger shop unit), and the transformation of the upper floors of the premises to flats. He therefore contended that more reliance should be placed on a basket of rents of other premises in the vicinity. He had provided a selection of rents that the VOA held from the area that, in his opinion, demonstrated a tone between £950psm and £1,100psm in the locality with the subject property currently and correctly valued within this range at £1,000psm. In relation to an allowance for size, Mr Cates did not believe this was appropriate as there was no indication that the rent was reduced due to the size which he stated would then be reflected in the psm rate. He submitted that the examples of premises provided by Mr Wiggins to seek to demonstrate the application of such an end allowance were not appropriate, as either the premises were assessed on different valuation bases, or had been given an end allowance due to irregular shape, not size. Mr Cates asked for the appeal to be dismissed and the RV of £111,000 be confirmed in the 2017 rating list.

Decision and reasons

14. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> *2(1) 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.

15. 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).

16. 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.

17. Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    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 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 differing types of evidence depending on the one hand 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. The panel heard that there were three available rents for the subject hereditament from 2013, 2015 and 2018. However, these rents included the first and second floors of the building that the subject hereditament was located in. The rents were as follows:

    September 2013 – 15 year lease with 5 yearly reviews on full repairs and insurance basis. £100,000

    January 2015 (rent effective from December 2013) – Lease variation that allowed for rental accommodation on the first and second floors. £110,000

    September 2018 – Rent review. Rising rent calculated at an average of £118,000.

19. Mr Wiggins stated that the September 2013 lease included ancillary accommodation of 71.03m^2 on the first and second floors. As the appeal hereditament is only the ground floor and toilets on the first floor, Mr Wiggins had analysed the rent to exclude the ancillary accommodation to give a rental figure for just the appeal hereditament. He calculated a value of £6,400 for the ancillary accommodation at a rate that he stated was the normal rate, and therefore came to a value of £93,600 for the current hereditament in September 2013.

20. Following the lease variation in 2015, the first and second floor were converted to residential accommodation and let on assured shorthold tenancy agreements. Mr Wiggins stated there were six bedsits created. Four of the bedsits were let at a total of £1,975 per month. Mr Wiggins allowed a total of £10,000 rent annually for the two vacant units and applied a 30% deduction for management and void periods. Using his calculation, the £110,000 rent analysed to between £86,500 and £93,500 dependent on if the value of the two vacant bedsits was taken into account. Again this would support the RV he had proposed.

21. Mr Wiggins analysed the 2018 rent using the same calculation and figures used for the 2015 rent, which provided an end result of between £94,600 and £101,600 dependent on if the value of the two vacant bedsits was taken into account.

22. The panel heard from the parties that there was a £100,000 capital contribution from the landlord to the tenant at the start of the lease in 2013 which was explained by Mr Wiggins as helping with the costs of splitting the unit, although the sum would likely exceed what was necessary if used solely for that purpose.

23. While the panel acknowledged that the subject rent is the proper starting point in determining the correct RV for the subject property, it did not consider it to be decisive in this appeal. It was the panel's opinion that, whilst not accepting the respondent's case in full, none of the rents provided closely reflected the rating hypothesis, and all required adjustment to reflect various issues. These included the original state of the premises and the capital sum provided to the tenant, and that the upper floors of the original hereditament had been applied to a different use during the course of the original lease, requiring capital expenditure from an existing tenant.

24. At the AVD of 1 April 2015 the passing rent for the property included a rent for residential letting accommodation over two floors of the building, which agreement had been reached with the sitting tenant. It was also noted that the lease variation agreed in January 2015 had an effective date of December 2013 which was only two months after the original lease had been agreed. Consequently, the panel decided to place only moderate weight on the direct rental evidence in this appeal.

25. On this basis the panel turned to the basket of rental evidence which was provided for shops in the Lewisham High Street and Lewisham Centre area.

26. The panel found 118 Lewisham High Street to be the best comparable evidence due to its proximity to the subject property. It was a retail unit in the same parade as the subject and separated by only two other shops. Mr Wiggins contended that 118 Lewisham High Street was in a different location as the two shops in between were not window-shopping destinations and therefore the continuation of the shopping parade had ended.

27. The panel found this to be a rather surprising submission and importantly no objective evidence had been provided to support a decrease in pedestrians past the subject property as had been suggested, in a manner that would have a genuine impact on its RV, especially in circumstances where the appeal hereditament benefitted from being closer to the shopping mall entrance than 118 Lewisham High Street. It may be that different clientele frequent the High Street than the mall, with little passage between the two, but the panel would have needed to see convincing evidence both of that, and of the corresponding impact on rent in this location, before making such a finding.

28. 118 Lewisham High Street had a passing rent of £52,000 effective from 19 September 2013 for five years on a full repairs and insurance basis. Mr Cates had devalued this to £998.46 psm and it was in the rating list at £1,000psm.

29. Similar evaluations had been made for properties within the shopping centre. The panel accepted that a shopping centre may not be directly comparable to a High Street, however the rents for the area showed that shops on the High Street had similar rents to those inside the shopping centre, which was accessed directly from the High Street, and three of the properties on the High Street had higher analysed rents than inside the centre. The panel therefore applied considerable weight to the tonal evidence provided.

30. The panel then considered the issue of size and whether an allowance of 10% was warranted on the subject property. Mr Wiggins had provided evidence of three properties to support his contention.

31. The panel did not consider these to be useful in determining an allowance for the subject property due to the differences between the properties. Iceland was 950m^2 and valued in a different scheme at £190psm due to its size. The subject property was significantly smaller at 243.67m^2 and there was no rental evidence or analysis provided of Iceland.

32. Mr Wiggins had also referred to a property that was previously Sutton Radio but was last used as a restaurant/café bar (assessed as a pub) with an RV of £40,500. There was no rental analysis provided and the panel noted both parties stated it would have been valued on a receipts and expenditure basis, however they were not in agreement that this was the correct way of valuing it. In any event due to the way the RV appeared to have been calculated, the panel did not find this property supported an allowance for size.

33. The final property used to show a size allowance was Santander at 125-127 Lewisham High Street. The panel heard that this was in a different parade to the subject property and was valued at £800psm with an allowance of 8%. Mr Wiggins contended this was a size allowance however Mr Cates confirmed it was a shape allowance for the layout of the premises. The rent stated for Santander was a lease renewal at £100,000 effective from November 2017. The total size was not provided, only the main space at 193.7m^2.

34. The panel considered this evidence however did not find that it supported a size allowance for the subject property. The total size of the subject was 243.67m^2 and the tone in the immediate vicinity did not appear to be impacted by the size of the shops. Within Mr Cates's schedule of rental evidence the sizes ranged from 51.89m^2 to 1,173.63m^2 and there was no evidence to show a reduction in the psm price due to size.

35. When considering all of the evidence, it was the panel's opinion that there was a tone in the immediate vicinity between £950psm to £1,100psm. The subject property at £1,000psm was towards the lower end of the tone and matched that of 118 Lewisham High Street which the panel considered to be the best comparable rent.

36. The panel did not find that sufficient evidence had been provided to support a tone of £900psm for the subject property as the rent of the property itself attracted only moderate weight due to the number of adjustments required. The panel was also of the view that an allowance for size was not warranted on the subject property.

37. Consequently, based on the evidence before it, the panel dismissed the appeal and the RV of £111,000 was confirmed with effect 1 April 2017.

Date: 3 March 2022

Appeal number: CHG100253006