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; Base Rate; End allowance; Appeal part allowed.

Re: BST & GRD FLR 14 Frith Street, London W1D 4RD

APPEAL NUMBER: CHG100261155

BETWEEN:	Garlic and Shots Ltd	Appellant
	and	
	Mr Andrew Ricketts (Valuation Officer)	Respondent

PANEL:	Miss Lola Moses (Chair and Senior Member)
	Ms Cynthia Caiquo (Senior Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)
REMOTE HEARING 1:	12 December 2022
PARTIES PRESENT:	Mr David Hill and Mr Stewart Carter of Altus, representing the appellant
	Mr Christopher Cates representing the Valuation Officer

Summary of decision

1. The appeal was part allowed. The rateable value (RV) of the hereditament was reduced by an end allowance of 10% to £72,500 with effect from 1 April 2017. The main space rate was confirmed at £1,100/m^2.

Introduction

2. This 2017 compiled list appeal had been brought in respect of the property at BST & GRD FLR 14 Frith Street, London W1D 4RD occupied by Garlic & Shots Ltd.

3. The rateable value was £80,500 on a base rate of £1,100/m^2.

4. The appellant had appealed against the Valuation Officer's (VO) decision as they sought a reduction of the RV to £57,500 on a rate of £785/m^2 with effect from 1 April 2017 as well as

an end allowance of 10% for non-standard frontage. However, following further discussions in consideration of further rental evidence from the VO, the agent for the appellant now proposed a rate of £975/m^2 along with an end allowance of 10%. This would result in an RV of £64,000.

5. The property was a restaurant and premises on Frith Street, Soho built pre-1900's with a masonry construction over two floors. The total area of the property was 123.1m^2.

6. 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.

7. Mr Stewart Carter appeared on behalf of the appellant as advocate.

8. Mr David Hill appeared on behalf of the appellant as advocate and expert witness. 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.

Issues

10. The base rate and RV of the hereditament and the application of a 10% end allowance.

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. The bundle included photographs of the appeal property and of other Frith Street properties nearby.

12. The appellants' representatives stated that the valuation of the appeal property was excessive and the appeal was now for a reduction in the base rate to £975/m^2 giving an RV of £71,455 and a 10% end allowance thereby reducing the RV to £64,309.50, rounded to £64,000.

13. This was based on a rent agreed on the appeal property on 19 May 2016 of £62,000 p.a. that analysed to a main space rate of £840.95/m^2.

14. The rental evidence submitted by the VO was in respect of properties that had a similar base rate to that of the appeal property but were generally superior properties and in better locations.

15. 44 Frith Street was closer to the main hospitality area of Old Compton Street which would make it more desirable on the open market. It was also much larger and arranged over a whole building thus allowing more trading space than the appeal property.

16. 10 Frith Street was also much larger than the appeal property at nearly four times its area. It was a corner unit and would appeal to a more established operator in the market, currently occupied by Nando's, who would be willing to pay a higher level of rent.

17. It was submitted that 50 Frith Street was a good comparable to the appeal property as there had been a December 2014 rent review, just over three months prior to the antecedent valuation date (AVD) of 1 April 2015, and the rent analysed to £916.56/m^2. The property was of a standard restaurant type of premises and was practically opposite the appeal property.

18. Further, 15 Frith Street also had a December 2014 rent review agreed at £89,000 p.a. analysing to £959.05/m^2 and so was also supportive of a reduced main space rate of the appeal property.

19. The appellants' representatives also submitted that, as the upper floors of the appeal property were missing, the property was disadvantaged in its appearance and this had been evidenced by its rental agreement being more than 10% lower than that of number 15 Frith Street, adjacent to it. They therefore proposed a 10% end allowance for a non-standard frontage.

20. The respondent's representative stated that the appeal property was in valuation scheme 360046, a scheme of valuation for restaurants situated in Frith Street valued at £1,100/m^2.

21. He submitted that the 12 year lease with effect from 20 March 2016 for £62,000 p.a. was not a market rent. It was a rent renewal and there had been no evidence provided by the appellant that it had been negotiated at market rent levels. He stated that this was an outlying rent in comparison to the other rents on Frith Street.

22. There was also a break clause date of 19 May 2022 which allowed the landlord to demolish or reconstruct the property if they so wished. He stated that this was unusual and believed that it would impact the market value of the property and explained the low analysed rent of £845.95/m^2. For this reason he believed that its rent should not be considered as an indicator of market value.

23. He agreed that 50 Frith Street was a useful comparable as it was similar in size and opposite to the appeal property.

24. In his opinion, the basket of rents supported the appeal property's assessment.

25. He also stated that there had been no evidence submitted that the appearance of the building warranted an end allowance.

Decision and reasons

26. 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".

27. 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).

28. 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.

29. The panel made reference to the photographs of the appeal property and its surrounding properties and found that it was quite evident that the appearance of the appeal property

was poor and was considerably different to other properties on Frith Street. The upper floors were completely absent and there were a series of exposed cross beams appearing to support the outside walls of the two adjacent properties.

30. The rental evidence of the appeal property in comparison to its neighbours appeared to indicate that it may not have been agreed at market value whereas there was evidence that other Frith Street properties had. This therefore cast some doubt on its usefulness in the assessment valuation.

31. However, the panel were satisfied that the tone of value for the appeal property assessment, its base rate of £1,100/m^2, was in line with the other properties in Frith Street and found that there was no evidence to support its singular reduction.

32. The panel also found that there had been little evidence to prove that the location of each of the submitted comparable properties would have had a large impact on difference in value.

33. However, the panel found that the appellant's representatives had partly made the appellant's case and that an end allowance of 10% based on its appearance was warranted.

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 apply a 10% end allowance to the 2017 rating list entry to show the following:

    BST & GRD FLR 14 Frith Street, London W1D 4RD

    Rateable Value of £72,500 effective from 1 April 2017

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: 30 December 2022

Appeal number: CHG100261155

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.