THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; bar, restaurant and premises; subject rent; overall v zone method; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; RV was reasonable; appeal allowed in part.

Re: Le Bistrot Pierre,Unit 1 Abbey Sands,Torquay,TQ2 5FB

APPEAL NUMBER: CHG100291973

BETWEEN:	Bistrot Pierre 1994 Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

BEFORE: Mr J Rockliff (Senior Member sitting alone)

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 19 May 2022

APPEARANCES:

Roger Wiggins of DMA Property for the Appellant
Helen Moffatt for the Respondent

Summary of decision

1. The appeal was allowed in part; I found the revised rateable value (RV) of £67,500 effective from 23 July 2021 to be fair and reasonable.

Introduction

2. On the day of the hearing, my colleague who was due to sit with me was experiencing IT issues and was unable to connect to the remote hearing of this appeal. As a senior member to the Tribunal and in such circumstances, in accordance with the Tribunal's Business Arrangements, I was authorised to hear this appeal sitting alone.

3. This appeal has been brought in respect of the following: Le Bistrot Pierre, Unit 1 Abbey Sands, Torquay TQ2 5FB (the 'appeal property') which was shown in the 2017 Rating List at £53,500 RV, effective from 1 April 2017.

4. The appeal property is a purpose-built restaurant situated in a popular holiday destination, set in a prominent sea front position with extensive sea views at ground and first floor levels. It was situated within a development, rebuilt into a six-storey building providing four A3 retail units on the ground and part first floor and twenty-seven luxury apartments on the upper floors: providing a mix of domestic and self-catered holiday accommodation. The retail units are occupied as either cafes or restaurants.

5. The proposal was made on the grounds that the RV was unreasonable and Mr Wiggins, for the appellant, originally sought a reduction in RV to £35,500 on an overall basis or £43,000 on a zoned basis.

6. The challenge decision was issued on 23 July 2021, and it was the Valuation Officer's (VO) decision that the RV was too low and should be valued on an overall basis as opposed to the zoning method. Consequently, the RV was increased to £74,500. To comply with the effective date restrictions in accordance with the Non-Domestic (Alteration of Lists and Appeals) Regulations 2009, it was increased from the date the list was altered; this being 23 July 2021.

7. The appeal was previously listed to a remote hearing on 15 December 2021. This hearing was adjourned, and bespoke directions were issued. Mr Wiggins provided a copy of the lease agreement and the VO, having reviewed the lease, considered that there appeared to be factual inaccuracies.

8. The appeal was then re-listed to a hearing on 4 February 2022 which was postponed. The VO carried out an inspection on 25 January 2022. As Mr Wiggins had only received the VO's revised survey data the week leading up to the hearing, the parties both considered that he would require time to consider this and for the parties to discuss the areas to agree the facts before the hearing of the appeal.

9. Following the inspection, the VO concluded that some areas were not contiguous and therefore needed to be entered into the rating list as a separate assessment, following the rules set out in *Woolway v Mazars* [2015] UKSC 53 and as amended by the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. The area concerned was not included in the original assessment for the compiled list entry, so did not fall under the scope of this appeal. The VO made the decision that this would be brought in as a separate entry by way of a Valuation Officer Notice which is to be arranged outside of this appeal.

10. Whilst the above was accepted for the purpose of this appeal, following discussions between the parties, the areas for the appeal property remained in dispute.

11. Ms Moffatt, for the VO submitted that the revised RV should be £67,500 with effect from 23 July 2021.

12. Mr Wiggins, still considered the revised RV to be unreasonable and questioned the valuation method, submitting that the appeal property should be valued on a zoned basis.

13. Having compromised on the disputed areas (but still not agreed by the VO), he proposed a rate of £360/m^2 in terms of zone A, resulting in a RV of £51,250. His revised valuation did not include the £161 for plant and machinery (CCTV) but at the hearing he confirmed he was not disputing this element.

14. Mr Wiggins appeared on behalf of the appellant as both advocate and expert witness. 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. 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 not instructed on a contingency fee basis.

15. 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 before coming to my decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

16. The issue outstanding between the parties concerned the RV of the appeal property, specifically, the valuation method and price per/m^2 to be adopted. The area of the appeal property also remained in dispute.

Evidence and submissions

17. In advance of the hearing, I was presented with a bundle of evidence, which comprised of the submissions exchanged between the parties as part of the challenge process; the evidence admitted following the adjournment of an earlier hearing; and subsequent email exchanges between the parties, which included the RICS' code of measuring practice. To comply with the evidential restrictions imposed on such appeals, in accordance with regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the parties agreed for the email exchanges to be admitted into evidence.

18. At the hearing, both parties provided an explanation as to how they had calculated the areas for the purpose of their respective valuations.

19. In support of his case, Mr Wiggins referred to the neighbouring assessments which were developed and marketed at the same time and were valued on a

zoning approach. Furthermore, he stated that the appeal property itself was originally zoned.

20. Broadly, his position was that the approach should not be to look at one rent and say that is the tone; the basket of rents should be considered. He therefore submitted that his position was clear in that all the restaurants within the same development, all fronting the sea, were constructed at the same time, and let as restaurants. He therefore considered these assessments to be genuine comparable properties. He reiterated the rating manual that in all cases local evidence is key to determining the appropriate approach to valuation and considered that there was no evidence to substantiate the overall rate adopted by the VO.

21. Having regard to the evidence he presented, he submitted that the tone for restaurants had been established within the same parade. The other three properties within Abbey Sands had all been agreed and determined by the Valuation Office on appeal at a Zone A rate of £360 or £400 less 10% for size which followed the approach set by the Valuation Tribunal under the 2010 list. Unit 3 Abbey Sands has since been reduced to £360/m^2 in terms of zone A. This has also been agreed and applied for Unit 4. As such, he considered the tone is now set for the 2017 list within that locality. He accepted that the appeal property included a first floor and had offered in his valuation to increase the valuation for the first floor but did not agree that a different method should be adopted because of this.

22. Mr Wiggins also commented on the assessments put forward by the VO, submitting that in his opinion, they were not directly comparable, especially in terms of locality.

23. Mr Wiggins therefore requested a reduced rate of £360/m^2 in terms of zone A resulting in a RV of £51,250.

24. Ms Moffatt referred to the differences of the appeal property to that of the neighbouring properties and therefore in her opinion, it was not appropriate to value the appeal property with reference to these rents as they were not comparable. The appeal property has been adapted to provide licensed dining and is individual within the development as the only retail unit that also has first floor dining space with additional access, external terrace seating and extensive sea views across the bay from both floors. She referred to the rating manual in support of the valuation approach adopted.

25. In support of her valuation, she referred to other assessments for other ground and first floor restaurants to demonstrate that they attracted a premium and referred to the rent achieved on the appeal property.

26. Ms Moffatt submitted that the VO had been generous in the adjustment and analysis of the rent on the subject property and the RV was reasonable when considering the amount of rent agreed close to the valuation date. Having regard to the subject rent and the unique character of the appeal property, she submitted that £250/m^2 on an overall basis was reasonable.

27. Ms Moffatt therefore sought confirmation of the revised RV of £67,500 with effect from 23 July 2021.

Decision and reasons

28. I firstly considered the dispute over the area. I noted that there were slight differences in the dimensions provided by each party and that there was a dispute over whether a lobby area and a corridor should be included.

29. Mr Wiggins submitted that the property was a unique shape which could account for the variations between the parties. He provided his revised measurements in this regard, which essentially took an average. Further, whilst he works with imperial measurements, the imperial measurements could easily be converted to metric by dividing by 3.281.

30. He stated that permanent walls and corridors for access are excluded from the area when they are not considered useable areas. He therefore submitted that the access corridor which is an essential corridor to the fire escape should not be incorporated.

31. Ms Moffatt submitted that a computer system had been utilised to input the measurements from the survey and it was particularly helpful when establishing the area of a property with an unusual shape. Furthermore, the VO had measured to the nearest centimetre which is more accurate than to the nearest inch. Layout plans and the calculations had been provided to demonstrate the level of detail of these calculations.

32. Referring to the RICS' code of measuring practice, Ms Moffatt submitted that notional lift lobbies and notional fire corridors were included in the net internal area (NIA) and whether a wall defining a corridor is structural or permanent is a matter of fact. The NIA does exclude stairwells, lift wells, and permanent lift lobbies. It also excludes corridors and circulation areas when used in common with other occupiers. However, she submitted that this was not the case here as the walls were partitioning as opposed to permanent structures, furthermore there was a keypad entry. She submitted that the lease plan just shows the position of the stairs, lift and pillars, which she confirmed had all been excluded from the NIA. The landlord let out the whole space outlined in the lease as useable, and a different occupier may adopt a different layout, but the landlord would not accept less rent.

33. The code of measuring practice provided demonstrated that notional lift lobbies and notional fire corridors were included in the NIA, and it was clear from the lease plan that the areas referred to were created by partitioning added by the tenant. I also considered that the VO had input the measurements from the survey as opposed to taking an average. Making a finding of fact based on the submissions put before me, I attached greater weight to the VO's measurements, accepting that it had correctly calculated the NIA to assess the property on an overall basis.

34. In considering the value, and valuation method, of the appeal property I 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".

35. 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.

36. In reaching my decision, I 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.'

37. Bearing these six propositions in mind, I acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. Whichever valuation method is adopted, ultimately, I am considering whether the RV reflects what a hypothetical tenant, fresh to the scene, would be willing to pay, having regard to the above assumptions.

38. The appeal property had a lease agreed on 15 June 2015, which is less than two months after the AVD. It was a new 20-year lease with five yearly rent reviews at £90,000 per annum. It had a rent commencement date of 1 November 2015, equating to a rent-free period of 4 ½ months. However, the full terms and conditions were agreed in September 2013 and based on the contractual term of the lease which stated to be until 30 June 2034, it suggested that the 20 years began prior to the actual lease. As such, the VO had valued based on the terms contained with the Agreement to Lease dated September 2013 so had generously included a 12-month rent free period as well as the additional 4 ½ months. This adjusted the rent to £73,478 per annum.

39. I noted that no fit-out costs had been referred to specifically and no schedule of costs provided, but noted that if the VO ignored three months, this would increase the rate per/m^2. This too supported that the analysis of the rent had been favourable to the appellant.

40. I attached little weight to the submission that the appeal property was let at too high a figure given the rent was agreed by a national company who used professional agents. In my view, the hypothetical tenant could be either a national or local company. The rent was a new lease agreed close to the AVD which demonstrated that a tenant would be willing to pay an unadjusted rent of £90,000 per annum.

41. Therefore, I found that the analysed subject rent was a good starting point, having been a new lease agreed close to AVD. In my view, it strongly supported that the appeal property was reasonably assessed.

42. In line with the structured decision-making approach in *Lotus*, I also considered the other evidence of value presented.

43. Ms Moffatt submitted that there were not many ground floor and first floor restaurants in this location. She referred to an assessment on a very similar restaurant with two floors and sea views in Exmouth. This was Unit 1, Sideshore, Queens Drive, Exmouth, Devon EX8 2GD and was situated on the sea front the other side of the estuary from the appeal property. It is a similar distance from the town centre and is assessed at £250/m^2 overall.

44. I noted that the rent was set in March 2021 and therefore was far removed from the AVD, and that it was in a different locality, but I did find that this supported the overall valuation approach on a property of this type.

45. Ms Moffatt also referred to older properties at 29 Torwood Street and 7 Strand, Torquay; photographs of which had been provided. They were rated on an overall basis at £185/m^2. In my view, the appeal property was superior in comparison because it was in a more prominent location and had sea views. Standing back and looking at other restaurants as part of the valuation process, this evidence further supported that the valuation approach and unadjusted rate of £250/m^2 was reasonable.

46. I also had regard to paragraph 8.7.2 of section 5a of the rating manual which refers to the zoning method and states that “It will not be appropriate to zone where there have been significant alterations. For example, kitchen enlargement or extension, installation of quality customer toilets or improvements to rear parts to make attractive customer seating, particularly if there is, for example, an outlook onto a garden or a view.”

47. I was not persuaded that the zoning method was more appropriate. I accepted that Mr Wiggins was considering other properties within the immediately locality and he had referred to 2010 assessments determined by the Valuation Tribunal in respect of Unit 1 and Unit 3 Abbey Sands and agreements reached on the 2017 rating list. Other decisions of the Tribunal are not binding on me, and they related to the 2010 rating list. I am of the view that each list should be considered *de nova*, this being especially relevant with the 2017 Rating List, with the AVD for the 2010 and 2017 Rating Lists being seven years apart. In any case, I found that the other properties referred to were not directly comparable to the appeal property which was unique to its locality. They were terrace ground floor units and had not had the same degree of alterations. The appeal property had a first-floor dining space with additional access, external terrace seating and extensive sea views across the bay and I considered that all of those factors would have influenced the actual rent the occupier agreed to pay close to AVD.

48. In conclusion, the burden of proof rests with the appellant to demonstrate that the appeal property’s RV is unreasonable. Ultimately, I was not persuaded that it was excessively valued. I attached greatest weight to the subject rent, which was agreed close to the AVD, and found that the proposed RV of £51,250 was not supported by the amount a tenant fresh to the scene was willing to pay at this time.

49. I found that the VO's revised RV of £67,500 (valued on an overall basis at an unadjusted rate of £250/m^2) to be fair and reasonable. The appeal was therefore allowed in part, to the extent conceded by the VO.

Order

50. Under the provisions of regulations 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 show the following:

    Le Bistrot Pierre,Unit 1 Abbey Sands,Torquay,TQ2 5FB

    £67,500 effective from 23 July 2021

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

Refund of Appeal Fee

52. 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: 8 June 2022

Appeal number: CHG100140236