THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; café/bar and premises; price to be adopted in the assessment; rental evidence; assessment evidence; the rateable value was found to be excessive; appeal allowed.

RE: 82-84 Vauxhall Street, Plymouth PL4 0EX

APPEAL NUMBER:	CHG100317784	
BETWEEN	The Boston Tea Party	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent
BEFORE:	Mrs N Yang (Senior Member sitting alone)	
CLERK:	Mrs A Keohane	
REMOTE HEARING 2:	Friday 11 February 2022	
APPEARANCES:	Mr G Costello of Cluttons on behalf of the appellant, as advocate only Ms T Steeden of Cluttons on behalf of the appellant, as expert witness Ms S Shand on behalf of the respondent as advocate only	

Summary of decision

1 Appeal allowed. A revised assessment of £36,000 RV was determined with effect from 1 April 2017.

Introduction

2 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.

3 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.

4 In accordance with that Practice Statement, the hearing was conducted remotely via a Microsoft Teams conference call using an audio/video-link.

5 Due to the unavailability of a member, I determined this appeal alone, as provided for under paragraph 11 of the Valuation Tribunal for England's Tribunal Business Arrangements.

6 This is a 2017 rating list appeal in respect of 82-84 Vauxhall Street, Plymouth PL4 0EX (the 'appeal property'), entered in the 2017 rating list as 'café/bar and premises' at £90,000 RV, with effect from 1 April 2017.

7 The challenge proposal, submitted by Cluttons on behalf of The Boston Tea Party, was received by the Valuation Officer on 15 June 2020. A revised assessment of £36,000 RV was proposed with effect from 1 April 2017.

8 The Valuation Officer issued a challenge case decision notice on 24 June 2021, which stated that based upon the evidence and information available, the existing rating list entry was considered to be unreasonable and would be amended to £79,500 RV with effect from 1 April 2017

9 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was received by this Tribunal against the Valuation Officer's decision on 11 October 2021.

10 Mr Costello appeared on behalf of the appellant as advocate and introduced Ms Steeden as expert witness. The clerk asked if there was a success related fee involved and if so whether its existence was compatible with the obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

11 Both Mr Costello and Ms Steeden declared they were instructed under a fixed fee arrangement. They understood that their duty was to the Tribunal in giving evidence and would comply with this as well as the requirements of their professional body, regardless of whether or not the evidence supported the client's case. The expert evidence was considered, and I attached the weight I considered to be appropriate to it.

12 The appeal property is a café/bar and premises, with an outdoor seating area, located on Vauxhall Street in Plymouth. The property has a total area of 539.97m^2 situated over three floors. Customer areas are to the ground and first floors with staff rooms and stores on the second floor. The building is also known as Jamaica House and is a grade II listed building.

13 The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as it being overlooked when I reached my decision.

Issue

14 I was required to determine a reasonable rating assessment for the appeal property. The Valuation Officer contended for the existing assessment based on a rate of £200/m^2. Mr Costello argued that the appeal property's assessment should be based on £72/m^2, as supported by its rental evidence.

Evidence and submissions

15 The bundle of evidence for consideration comprised all of the documents exchanged between the parties as part of the challenge process. This included the appellant's challenge submission and full supporting information; the Valuation Officer's initial response; the exchanges of evidence between the parties; the Valuation Officer's challenge case decision notice; rental and assessment evidence; location plans; photographs and details of the appeal property and details of those cited as comparable.

16 Mr Costello outlined in his challenge documentation and oral presentation his reasons for believing the appeal property's current valuation was excessive. The appeal property was subject to a lease at a rent of £45,000 per annum (pa) for a period of 15 years, effective from 1 April 2015. A two-year rent-free period was included, together with a £70,000 capital payment to the tenant to cover necessary minor repairs, such as work to improve the toilets, pointing work, etc. There was no break clause in the lease, but it included five yearly reviews and following the 2020 review, the rent remained the same. Mr Costello submitted a rental analysis, in which he had adjusted the appeal property's rent to reflect the rent-free period to the first review, then over a 10-year period, and finally to 15 years, the full term of the lease. He preferred the adjustment for the 10-year period, which he explained was accepted rating practice. This had resulted in a main space rate of £72/m^2, giving a revised assessment of £36,000 RV.

17 Mr Costello considered that a tone of value had not been established for properties in the locality and that the appeal property's current assessment was, in the main, based upon the analysis of the rent for 90 Vauxhall Street. The Valuation Officer believed this rent to be more reliable than that of the appeal property as it required no adjustment. Mr Costello considered that rents that required less adjustment were more favourable within a basket of rents used to value properties of a similar character, size, age, style and location, such as a parade of shops. He argued there was little similarity between the appeal property and 90 Vauxhall Street.

18 The Valuation Officer had quoted the rent of 90 Vauxhall Street, as effective from both 1 November 2015 and 1 November 2014 (confirmed to be the latter), however, Mr Costello believed that, either way, due to the distance of the rent from the antecedent valuation date (AVD) some adjustment or assumption would be required. Also, Mr Costello argued that this rent had actually been adjusted in some way, or a mathematical error had occurred, as a simple calculation did not produce the rate relied on by the Valuation Officer. Addressing the size of the appeal property, he pointed out that 90 Vauxhall Street was 34% smaller in terms of main space. He believed quantum was also likely to impact on a rental bid, with a smaller property fetching a higher rate/m^2.

19 Mr Costello introduced Ms Steeden of Cluttons as an expert witness. Ms Steeden outlined her experience within property valuation and confirmed that she lived in the area and used its facilities. She had visited the appeal property and the area numerous times. Within her evidence and in brief, she outlined the following:

- The areas considered to have good footfall in relation to the Barbican, (the prime leisure space). She gave an overview of the location of the comparable properties, the bus routes and positioning of taxi ranks. She believed that natural footfall did not pass the appeal property.
- The appeal property was an historic warehouse and retained the physical appearance of such, with timber framed windows, bare brick walls and concrete flooring. External A frame advertising was not allowed and due to the positioning of the property, it did not have prominence of visibility. The frontage had restricted width, as access was required to reach the Harbour Office. Whilst the property had an outside seating area, it was adjacent to and overlooking the nearby short stay public car park.
- The grade II listed status of the building restricted the tenant's ability to alter its layout and appearance. The property had previously been subject to retail use and specific permission had to be sought before alterations were agreed. Installation of air conditioning was not permitted, and the heating system was simple wall mounted radiators.
- 90 Vauxhall Street, now a restaurant and premises known as Stables, had formally been a nightclub/public house. It was situated at the end of the old Vauxhall Quay with an advantageous frontage overlooking the harbour, a position which would have a positive effect on the marketing of the property and its rental potential. It traded over two floors and had an external glazed balcony, considered to be a substantial asset in an area that relied on summer tourism.
- The higher level of rent achieved by Stables, reflected its superior location and nature, which did not apply to the appeal property.
- The landlord of the properties in this area, including the appeal property and Stables was Sutton Harbour Group. The rent on Stables agreed in November 2014, was substantially higher than that agreed for the appeal property five months later. At that time the appeal property had been vacant for a long period, and to encourage occupation incentives were offered, such as the two-year rent-free period. The capital payment was to allow the tenant to undertake minor necessary repairs.
- As a valuer, she did not consider it unusual or complicated for rents to be adjusted in line with the rating hypothesis. She therefore believed that, whilst the appeal property's rent had required some adjustment, it was still the best evidence in this case.

20 Looking at the Valuation Officer's rental schedule, Mr Costello considered that most of the properties appeared to have been valued in line with their rent, which suggested a consistency between the actual rent and the rates adopted. This did not apply to restaurants at 31A-32 Southside Street and 40 Southside Street, as their rents had analysed to £504.15/m^2 and £617.39/m^2 respectively, but both had been valued at £350/m^2. Mr Costello believed these properties could have been valued to be consistent with each other, possibly because they were similar in size, location and character, however, he argued that the same could not be said for the appeal property and 90 Vauxhall Street.

21 In closing, both Mr Costello and Ms Steeden considered the appeal property's rent to be the best indication of its value at the AVD, and after the required adjustments, this rent analysed to £72/m^2. Confirmation was therefore sought of the revised assessment of £36,000 RV, based on this rate, with effect from 1 April 2017.

22 On behalf of the Valuation Officer, Ms Shand referred to the information contained in the challenge decision notice, which she considered supported the appeal property's current assessment of £79,500 RV, based on £200/m^2. Ms Shand had initially indicated that she was attending in the capacity as both advocate and expert witness; however, after confirming that she had not inspected the appeal property and had no knowledge of the area in which it was situated, she changed to advocate only.

23 Ms Shand considered that it was incorrect to view one rent in isolation when a basket of rents was available. She argued that the appeal property's rent required too many adjustments and that the rent for 90 Vauxhall Street was more reliable, as it was a 'clean' rent (requiring no adjustment), set near to the AVD. This rent supported the £200/m^2 adopted in the appeal property's assessment.

24 Whilst accepting the appeal property did not have a waterfront location, Ms Shand argued that it was located on the main road leading to the Barbican, with a car park outside, which would generate high footfall. It could also be seen from across the water along Quay Road and the Barbican.

25 Referring to the rental schedule within the bundle, Ms Shand explained that rental evidence was available for properties on Vauxhall Street, Hoe Road, Southside Street, North Quay and Exeter Street set in 2013, 2014 and 2015. When analysed these had produced rates of between £101.22/m^2 (the appeal property) and £617.30/m^2. Based on this evidence, properties had been valued at the highest closest to the Barbican, with values reducing the further away around the marina area, (£350/m^2, £200/m^2, £170/m^2 and £160/m^2). This was shown in the assessment schedule for properties on Vauxhall Street, Sutton Wharf, Quay Road, Exeter Street and The Parade. She considered that a tone had been established giving consistency in the assessments within the area.

26 In response to Mr Costello's argument relating to the occupier's restrictions due to the appeal property's listed status, Ms Shand explained that the Valuation Officer had initially included a 10% allowance to reflect these factors, resulting in a revised assessment of £81,500 RV. However, after consulting the Valuation Office Agency's (VOA) rating manual it was found that, whilst such an allowance was applicable to shops, it was not appropriate for restaurant type properties valued on an overall basis. The allowance was therefore rescinded. However, looking at quantum, a decision was made to reduce the relativity applied to the appeal property's second floor, as this area was substantially larger than that of the comparable properties. This reduced the assessment to £79,500 RV, with effect from 1 April 2017.

Decision and reasons

27 The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988).

28 In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841), the date of the hypothetical rent was 1 April 2015 (the AVD). This common date was used to ensure that every property was treated in a consistent way.

29 Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. The material day for the subject appeal was 1 April 2017.

30 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 was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments of other comparable properties may also be relevant. All of the evidence could then be weighted.

31 As outlined in *Lotus and Delta*, the starting point was the consideration of the appeal property's rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account when deciding the weight to attach to it. Mr Costello had given a breakdown and explanation of his analysis of the appeal property's April 2015 rent, which I considered to be reasonable, and this had produced a rate of £72/m^2.

32 Having regard to the evidence before me and following questions to and between the parties, the following was established:

- The Valuation Officer considered the rent of 90 Vauxhall Street to be more reliable than that of the appeal property as it was a 'clean' rent. Mr Costello pointed out that if this was the case then the rate/m^2 shown in the rental schedule was incorrect. Ms Shand could not explain this, but confirmed that the rental information had been input in the VOA computer, which had in turn produced the rate/m^2 shown in the schedule.
- The rental schedule showed the appeal property's rent had analysed to £101.22/m^2. However, the adjusted rent was shown as £45,000, which appeared to illustrate that no account had been taken of the rent free period.
- Four pieces of rental evidence out of the 10 in the Valuation Officer's rental schedule related to properties on Southside Street. These properties were in a retail scheme and valued by the zoning method, given they were similar to nearby retail premises. Ms Shand was unaware of this and accepted that their rental analysis may not be consistent with that of the properties valued on an overall basis.

- Ms Shand considered a tone had been set in the area, Mr Costello had disputed this. He pointed out that Cuisine Spontanee, Century Way, 4 Sutton Wharf, a property shown within the Valuation Officer's comparable property schedule had, in fact, been the subject of a challenge which had reduced the £170/m^2 originally adopted to £120/m^2.
- Given Ms Shand had not seen the appeal property, she explained that her contention that the appeal property was subject to high footfall was based on the information of a colleague and the fact there was a car park outside, in which people could park and walk past the appeal property to the Barbican.
- Ms Shand confirmed that more weight would have been placed to the appeal property's rent, if it had been a 'clean' rent.

33 After due consideration, I found too many anomalies with the rental evidence provided by the Valuation Officer to place most reliance on it. Of the ten rents, doubts had been raised over the analysis of the appeal property's rent and that of 90 Vauxhall Street. Mr Costello provided details of assessments within the appeal property's scheme described as restaurants, cafés, and shops within the PL4 postcode area. He submitted that those described as shops, had survey lines containing restaurant/café rather than retail. I found these properties had been valued on rates of between £30/m^2 and £250/m^2, with the appeal property and 90 Vauxhall Street, being valued at the higher end. There did not appear to be any properties identified on Southside Street, which supported the representative's contention that the four rents on this street related to properties valued on a retail basis placed within a retail scheme. Ms Shand had confirmed that these rents may have been analysed differently to others within the schedule and I therefore placed little weight to this evidence. Of the four rents left, one was distant from the AVD having been set in 2013. The remaining three rents for properties on Hoe Road, North Quay and Exeter Street, were not persuasive as they did not appear to be in close proximity to the appeal property.

34 Consideration was given to the schedule of comparable properties provided by the Valuation Officer. No photographs of these had been provided, other than aerial views of the area. The locations I was able to identify on the maps, for example, Sutton Wharf and Sutton Harbour were, in my view, better locations than that of the appeal property. Whilst being a little further from the Barbican area, they were still within reasonable proximity and close to the appeal property and to the waterfront. One of the properties on Sutton Wharf had just had the rate on which its assessment was based reduced from £170/m^2 to £120/m^2, which suggested that a tone had not yet been established for properties within this area.

35 The property closest to the appeal property was 90 Vauxhall Street and both had assessments based on a rate of £200/m^2. After considering the photographs I found the appeal property to be the least valuable of the two, a view supported by the difference in their rents set only five months apart. Ms Shand indicated that both properties had been valued at similar levels in previous rating lists. However, I accept that each rating list is distinct and separate, and the values applied in a latter list did not necessarily correlate to those in an earlier list. The evidence showed that in the prior rating list, 90 Vauxhall Street had been a public house/nightclub and the appeal property had had retail use. The rental evidence available for these properties from November 2014 and April 2015, related to the properties as they stood close to the AVD and for their present category of occupation.

36 All things considered, I was satisfied that Mr Costello and Ms Steeden's evidence was the most persuasive. I found a demonstrable difference between the appeal property and 90 Vauxhall Street, which did not support them both being valued at the same rate. In my view, 90 Vauxhall Street was distinctly more valuable, in a substantially better location on the waterfront and benefitted from uninterrupted views over the waterfront/harbour to the East and South side. The appeal property did not have any of these advantages, which I consider would be reflected in the rental bid of a hypothetical tenant coming fresh to the scene. Having regard to the evidence, I was convinced that Mr Costello had made out good grounds for the appeal property to be valued in accordance with its analysed rent.

37 In reaching this decision, I accepted the appeal property had inherent disadvantages due to its character and in the absence of photographs of the comparable properties, I was unable to consider the nature of those on a like for like basis. I was also persuaded that the appeal property's size and positioning would be reflected in the rent, which had been set in April 2015, and therefore represented its rental value at the AVD. The appeal property's rent was reflective of its grade II listed status, the issue over usable space, the excess space on the second floor, and that the tenant was restricted in relation to the alteration of its layout and appearance. Also, the inability to install air conditioning and the fact that the heating system comprised simple wall mounted radiators, would, in my view, cause detriment to an occupier and there would be some reflection of this in the rent. The appeal property was not enhanced by its outdoor seating area to the same extent as 90 Vauxhall Street, given it only had views to the West over a public car park and road, as opposed to a view over the harbour and waterfront.

38 The Valuation Officer's evidence had also indicated that the appeal property could be seen across the water from Quay Road and the Barbican. However, Ms Steeden confirmed that as the building was effectively sideways on, it was not visible until The Parade was reached. I found the aerial plans confirmed this to be the case.

39 On balance, in this particular case, I considered that the appellant's representative had demonstrated that the appeal property was different enough to warrant its assessment being based on its own rental evidence. Accepting the representative's analysis of the appeal property's April 2015 rent, I determined his revised assessment of £36,000 RV with effect from 1 April 2017.

Order

40 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the appeal property's entry in the Rating List within two weeks of the date of this order to show a revised assessment of £36,000 RV with effect from 1 April 2017.

Refund of fees

41 The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 8 March 2022

Appeal Number: CHG100317784