THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; accuracy of rateable value; rent passing on comparable properties; found that weight of evidence supports a reduction in the assessment of subject premises; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Decision: Allowed in part

RE: Unit 7 at 18 Leake Street, London SE1 7NN

APPEAL NUMBER: CHG100340850

BETWEEN:	Robyn Collins	Appellant
	And	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr C Aggrey (Senior Member)
Mr A Asante

CLERK: Ms J Routledge

REMOTE HEARING on 27 February 2023

APPEARANCES: Mr P Tribe of Conneely Tribe (on behalf of the appellant)
Ms D Castle (on behalf of the respondent).

Summary of decision

1. Appeal allowed in part. The panel confirmed the Rateable Value (RV) of Unit 7 at 18 Leake Street, London SE1 7NN (the 'subject premises') at £50,000 based on a rate of £350 per m^2 with effect from 1 February 2018.

Introduction

2. This was a 2017 Rating List appeal. The subject premises had been entered in the 2017 Rating List as ‘events space and premises’ at a RV of £57,500 with effect from 1 February 2018 when it entered the Valuation List.

3. The challenge proposal was submitted by Conneely Tribe on behalf of Robyn Collins (the tenant) and was received by the Valuation Officer (VO) on 15 May 2020. It had been made on the grounds that the RV shown in the rating list on 1 February 2018 was excessive and proposed a revised RV of £26,150 with effect from 1 February 2018.

4. The VO issued a challenge case decision notice on 16 December 2021 in respect of the subject premises. The VO’s decision was to treat the appellant’s challenge as not well-founded.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 11 March 2022.

6. As Mr Tribe appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with her 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).

7. It was established that Mr Tribe’s company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel’s decision. However, Mr Tribe 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 client’s case.

8. 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 it saw fit.

9. The subject premises is situated in Leake Street, a road tunnel in the London Borough of Lambeth. The street runs off York Road and under the western end of Waterloo Station. It is an events space for hire, it has a bar, cloakroom toilets and a control room, but no food preparation area. It is let for a term of fifteen years from 20 November 2017 at an initial rent of £68,000 per annum. At the commencement of the term was a nine month rent free period.

10. This tribunal decision document is not and does not purport to be a verbatim record of the proceedings.

Issue

11. The issue between the parties concerned the prime rate per m² that should apply. Mr Tribe also sought an end allowance of ten percent due to the lack of natural light as the premises are situated in a tunnel.

12. All relevant factual information regarding the subject premises, including its total floor area of 148.17m^2 was not disputed by the parties.

Evidence and Submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the appellant's challenge submission, the VO's initial response to the challenge, further evidence exchanges and the VO's challenge decision notice. Mr Tribe also provided a google map to show the locations of the comparable premises.

14. Mr Tribe, for the appellant, originally sought a reduction in the RV to £26,150 based on a prime rate of £200 per m^2. Following the challenge he revised his proposed reduction to RV £27,500 based on a prime rate to £235 per m². Ms Castle, for the VO defended the current RV of £57,500 which was based on a prime rate of £400 per m². In support of the proposed prime rate of £235 per m^2, Mr Tribe referred to rental evidence derived from other comparable premises within the SE1 area. He disputed the rental evidence submitted by the VO based on the physical attributes of the subject premises and its location.

15. On behalf of the Valuation Officer, Ms Castle cited the rents of comparable premises in the same road and the immediate locality in support of a main space rate of £400 per m^2. She relied upon the rental evidence of the subject premises and disputed the relevance of the appellant's comparable properties which were further away from the subject premises.

Decision and Reasons

16. The subject premises 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 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 February 2018 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to

be ‘vacant and to let’ and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* 1976, as referred to by the respondent. 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 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 premises.

(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.’

18. The panel turned to the first and second propositions as referred to in the *Lotus & Delta* judgment and had regard to the rent passing on the subject premises. It was let on a new 15 year lease to the appellant on 20 November 2017, with a nine month rent free period. Mr Tribe submitted that it was over two and a half years after the AVD therefore this rent was too far removed from the AVD to be of any assistance. The respondent stated the VOA had taken into account the fact that the lease was post AVD and analysed the rent to £429 per m^2, which she considered supported the assessment of the subject premises at £400 per m^2.

19. The panel was aware in accordance with of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* 1976 that the starting point was the rent on

the appeal property, however taking into account that it was over two years after AVD attached less weight to the rental agreement.

20. As such, the panel turned to the third and fourth propositions outlined in the *Lotus & Delta* judgment and considered rents and assessments placed on comparable properties in the locality. Mr Tribe provided a table giving the assessments on fifteen restaurants and three retail premises based in railway arches in the locality. He argued that this established a tone of value for restaurant premises in SE1, the schedule he provided showed that the fifteen restaurants had rates of £220 per m^2 or £235 per m^2. They were all within the SE1 postal district which in his opinion demonstrated they were all within the locality.

21. He referred specifically to three restaurants in John Street which is a pedestrianised area, all with window frontages and outdoor seating areas. Those restaurants ranged in size from 223m^2 and 867m^2 and were assessed at £220 per m^2. He also referred to four restaurants in Scoresby Street which were all assessed at £235 per m^2.

22. Mr Tribe provided letting particulars for a restaurant unit at 81-83 Scoresby Street which was 191m^2. This letting was for a 15-year lease from 6th August 2018 at a rent of £77,500 per annum with a three-month rent-free period. This rent he submitted would adjust to £389 per m^2. This calculation was based on the VOA's ITMS for the unit. This was very similar to the rate the VO had analysed the lettings for in Leake Street, at around the same time. However, restaurants in Scoresby Street are valued at a rate of £235 per m^2.

23. Mr Tribe argued that these premises were all in locations similar to the subject premises near railway or underground stations. However, they were more attractive with window frontage. Those comparable restaurants benefited from more passing trade than the subject premises, which was in a tunnel under Waterloo Station that suffered from anti-social behaviour in the evenings. He considered that the assessment placed on his comparable properties supported his contention that the subject premises was over assessed.

24. Ms Castle provided details of Unit 6 at 20 Leake Street and Unit 8 at 16 Leake Street, these were within the same street. All were subject to new leases within six months of the appeal property. After adjusting for rent free periods of the same duration as the subject premises, the rent for Unit 6 was £404 per m^2 and for Unit 8 was £342 per m^2. The panel was aware that all of these leases were at least two and a half years post AVD so placed less weight on this evidence.

25. Ms Castle also provided details of Arches 145-146 Railway Arches Hungerford Bridge; this had a lease starting in July 2015 within four months of the AVD. The rent on these premises analysed to £370 per m^2, the RV being £360 per m^2. The lease on Unit 8 Railway Arches Concert Hall Approach commenced December 2013 fifteen months before the AVD. The rent analysed to £360 per m^2 which was also the RV. Ms Castle submitted these

were much closer to the subject premises and provided better evidence of passing rents for that specific location at the AVD.

26. Both parties had provided significant details regarding the relative advantages and disadvantages of their comparable premises in terms of their locations and other attributes in showing that the current rate applied to the subject premises was either reasonable or excessive.

27. The panel questioned the parties regarding the distances and proximity of the comparable premises to the subject premises and the various transport facilities. It was noted that the subject premises and the VO comparable premises were much closer to Waterloo Station which is a major transit hub and would have a higher footfall than those put forward by Mr Tribe. It was also noted that the subject premises was not a restaurant relying on passing trade but a prebooked events venue which would benefit from the proximity to the station. The panel was of the opinion that in such central London locations a short distance could have a marked effect on rental values.

28. Mr Tribe had requested a 10% end allowance for lack of natural light, he did not provide any evidence in support of his contention that the lack of natural light was a disadvantage to the subject premises. He also did not provide any evidence of similar end allowances being granted in such circumstances. In fact the panel considered this was an event space where the lack of natural light may be an advantage. Therefore, the panel did not consider it appropriate to grant an end allowance as no significant disadvantage had been proved.

29. Having considered both parties' evidence the panel concluded that the rate of £400 per m^2 adopted by the respondent was excessive. However, it found that insufficient evidence had been provided to warrant a reduction in the main space rate applied to the appeal property to £235 per m^2 as requested by Mr Tribe. After considering the whole basket of rents and assessments placed on the comparable properties, the panel determined that a rate of £350 per m^2 was reasonable and more fairly reflect the appeal property, its attributes and location. In reaching that conclusion, the panel placed most weight on the comparable premises of the Arches 145-146 Hungerford Bridge, this lease being closest to the AVD and the premises being a similar distance from Waterloo Station on a major route from the station. The panel therefore determined the RV for the subject premises, having made an adjustment for the fact that the entrance to the subject premises was located in a tunnel, to be £350 per m^2 this was rounded to £50,000. The appeal is therefore allowed in part. A breakdown of the assessment has been shown below:

Floor	Description	Area m^2	£/m^2	Value (£)
Ground	Events space	113.48	350.00	39,718
Ground	Bar	5.83	350.00	2,041
Ground	Public Toilets	8.77	175.00	1535
Ground	Reception/Entrance/Cloak	20.09	350.00	7,032
Total				50,326

<u>Say £50,000 Rateable Value, with effect from 1 February 2018</u>

Order

30. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Unit 7 at 18 Leake Street, London SE1 7NN to £50,000 with effect from 1 April 2017, within two weeks of the date of this order.

31. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. The refund will take around six weeks to process.

Date: 20 March 2023

Appeal number: CHG100340850

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.