THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; shop and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; correct Zone A rate to be applied to the subject property's assessment; double unit; appeal allowed in part as the evidence showed that the existing valuation was unreasonable.

Re: 362-364 Kings Road, Chelsea, London SW3 5UZ

APPEAL NO: CHG100380097

BETWEEN: Sheridan UK Ltd Appellant

and

Mr A Ricketts (Valuation Officer) Respondent

BEFORE: Mr AB Jobanputra (Presiding Senior Member) and Mrs T Watson

CLERK: Mrs R James

REMOTE HEARING 1: Wednesday 22 June 2022

APPEARANCES: Mr S Carter of Altus Group (on behalf of the appellant as advocate)
Mr J McCarthy of Altus Group (on behalf of the appellant as expert witness)
Mr C Cates (respondent's representative as advocate only)

Summary of decision

1. Appeal allowed in part; the appeal property's assessment was reduced to £110,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 362-364 Kings Road, Chelsea, London SW3 5UZ, which was entered in the 2017 Rating List as shop and premises at £122,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 21 August 2020. The appeal to this Tribunal was made on 22 December 2021, following the VO's Decision Notice of 20 August 2021, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The subject property was a ground floor shop unit. It was located on Kings Road in the Royal Borough of Kensington and Chelsea, where many independent retailers, bars and restaurants were located.

5. Mr McCarthy was appearing on behalf of the appellant as expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his 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).

6. Within his signed declaration, Mr McCarthy had confirmed that he was representing the appellant in this appeal on a contingency fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

7. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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.

8. 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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Preliminary Issue

9. Prior to the hearing, Mr Cates provided photographs of the appeal property and the two comparable properties, which the clerk forwarded to the panel. The appellant's representatives had also received copies of the photographs and accepted that they represented a true reflection of those properties. As such, the panel proceeded to hear the appeal having regard to all the evidence presented.

Issue

10. The correct assessment for the appeal property, with effect from 1 April 2017.

Evidence and submissions

11. The panel had been provided with a bundle of evidence, which comprised the challenge submission, VO Decision notice and the representative's expert witness report.

12. The appellant's representative stated that Kings Road in Chelsea was an affluent and very image concussion location. He compared the more modern block in which the appeal

property was located to the neighbouring blocks, which were more traditional Georgian builds. He stated that historically, finding a tenant for the subject property had been a struggle. He highlighted that there was little rental evidence in the locality; the panel had just been provided with the rent on the appeal property, plus the rents in respect of two other units on Kings Road.

13. The appellant's representative detailed the specifics of the subject property in comparison to the two comparable properties, which were substantially smaller shops. He considered the subject property to be more akin to a showroom than a shop and premises. Whilst it had been constructed in 2008/2009, it was now looking dated and unattractive. The subject property's rent was stepped over five years with an initial rent-free period of 12 months. Mr McCarthy, had taken the straight line average rent of £69,500, which he had analysed to £742.44/m^2. Allowing for rental growth from August 2013 to April 2015, Mr McCarthy proposed a Zone A rate of £800/m^2, which equated to a revised assessment of £75,500 Rateable Value.

14. To summarise, Mr Carter stated that in line with the six propositions outlined in the Lands Tribunal case of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976], the rent passing on the appeal property was the correct starting point. In this case, the subject rent had been tested against the rents passing on the two comparable properties, namely 370 and 374 Kings Road. Due to the size differential of the subject property an adjustment was required; the premises were too large for what was required in that locality. Accordingly, he sought a reduction to the current assessment.

15. Mr Cates explained that the subject property had been a new retail space and was a shell when the lease had been agreed in August 2013. The building had been to its bare bones and had not been capable of beneficial occupation in August 2013. He added that the appellant's representative's analysis of the subject property's rent was unsafe as he had not accounted for the £270,000 of fit out costs. In support of the current Zone A rate of £1,300/m^2, Mr Cates referred to the rents passing on the two comparable properties, namely 370 and 374 Kings Road. Having regard to the evidence he had presented, Mr Cates considered that the current assessment of £122,000 Rateable Value was not excessive. Accordingly, he sought dismissal of the appeal.

Decision and reasons

16. 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). The date of the hypothetical rent was 1 April 2015, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

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 both parties. This case had established six propositions that 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.'

18. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration to how that rent compared to the statutory definition of rateable value.

19. The panel noted that a new ten year lease had been agreed in respect of the subject property with effect from 2 August 2013. The rent had been stepped as follows:

Year 1 – Rent free
Year 2 - £75,000
Year 3 - £80,000
Year 4 - £85,000
Year 5 - £90,000

20. The appellant's representative had assumed the rent for Year 1 would have been £70,000 and applied the usual three months free rent for fit out (£17,500). He then proposed a straight-line average rent of £69,500. This figure gave an analysed rent of £742.44/m^2. Allowing for rental growth from August 2013 to April 2015, the appellant's representative proposed a Zone A rate of £800/m^2.

21. However, after having regard to the second proposition out in *Lotus & Delta*, the panel agreed with the VO that the terms of the lease had been too far removed from the statutory definition of rateable value. The panel heard that the appellants had spent approximately £270,000 on fit out costs. The VO explained that the subject premises had been let as a shell. As a shell, the subject premises would have been incapable of beneficial occupation in August 2013. The fit out would have included items such as the installation of WC's, services, finishes and fittings. The panel agreed that it was fair to assume that some of those fit outs would have been rateable. As such, the panel placed a degree of caution on the subject property's rent.

22. The VO had attributed £75,000 (twelve months' rent) to the fit-out costs and analysed the rent to £863/m^2. The panel noted that this was somewhat lower than the current Zone A rate of £1,300/m^2.

23. Due to the amount of adjustments that were required to bring the subject rent in line with the statutory definition of rateable value, the panel went onto to examine the third and fourth propositions outlined in *Lotus and Delta*, and had regard to the rents and assessments placed on comparable properties.

24. The panel acknowledged that very little rental and assessment evidence had been presented in this appeal. With only two properties being referred to, namely 370 and 374 Kings Road. The details for those two properties were as follows:

    i) 370 Kings Road – a rent passing of £63,000 per annum (pa) with effect from 23 August 2013, which analysed to £1,268.44/m^2. This property had been valued at a Zone A rate of £1,300/m^2.
    ii) 374 Kings Road – a rent passing of £50,000 pa with effect from 25 March 2013, which had been analysed to £1,446.61/m^2. This property had been valued at a Zone A rate of £1,300/m^2.

25. The appellant's representatives had referred to the fact that the appeal property was a 2008/2009 build that now appeared dated and was unattractive. He had also contended that it did not fit well in the locality of Kings Road, which mainly comprised more traditional Georgian properties. However, the panel noted that 370 Kings Road was also a more modern building located within the same block as the appeal property. 374 Kings Road was situated within the neighbouring block and was a Georgian building. The panel did not find a markable differential between the rents achieved on the two units. As such, the panel placed less weight on that argument.

26. The panel then addressed the appellant's representative contention that a reduction was appropriate to reflect the subject property being a double unit. The panel noted the following:

Address	Area (ITMS)	VO's analysed 2013 rent
Subject property	93.61	£863/m^2
370 Kings Road	48.83	£1,268.44/m^2
374 Kings Road	38.02	£1,446.61/m^2

27. At 93.61 m^2, the panel found that the subject property was approximately twice the size of 370 Kings Road and substantially larger than 374 Kings Road. Due to the amount of adjustments required to bring the subject property's rent in line with the statutory definition of rateable value, the panel had not been convinced by the appellant's representative's argument that the Zone A rate should be reduced to reflect its rent. However, given the substantial differential in the analysed rents, even allowing for an element of fit out costs to be reflected, the panel found that an allowance was warranted. The panel accepted that, on the evidence presented, there appeared to be no substantial difference in the rents passing in the more modern units in comparison to those in the Georgian buildings. However, the panel determined that an end allowance was warranted to reflect the fact that the appeal property was a double unit, which the panel heard had historically been difficult to let. The panel found that the rents passing demonstrated that the larger subject premises had been let at a markedly lower rent than the single retail units.

28. Accordingly, the panel allowed the appeal in part as it considered that the current assessment was unreasonable. The panel determined that a 10% end allowance was warranted to reflect that it was a double unit. This resulted in the reduced assessment of £110,000 Rateable Value; a breakdown of which has been shown below:

Floor	Description	Area m^2	£/m^2	Value £
Ground	Retail Zone A	61.97	1,300.00	80,561
Ground	Retail Zone B	59.51	650.00	38,682
Ground	Retail Zone C	7.53	325.00	2,447
	Air Conditioning System	114.28	7.00	800.00
		Sub-total		122,490
Less 10% Double unit allowance				12,249
				110,241
Say £110,000 Rateable Value, with effect from 1 April 2017				

Order

29. As a consequence of the above decision, the VO is ordered to reduce the 2017 Rating List entry to £110,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

30. 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: 19 July 2022
Appeal Number: CHG100380097

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.