THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council 1976 [RA 141]; tone of the rating list, rental evidence; valuation schemes; end allowances; appeal dismissed.

Re: Ground Floor Shop at 129a Pritchards Road, London E2 9AP ("the subject property")

APPEAL NUMBER: CHG100393919

BETWEEN:	Mio Yatai Ltd T/A Tuyo	Appellant
	(represented by Marston Associates)	
	and	
	Mr A Ricketts	Respondent
	(Valuation Officer)	

PANEL: Mrs L Bryning (Senior Member)
Mrs N C Yang

CLERK: Mrs A Sloan

REMOTE HEARING: 17 August 2021

PARTIES PRESENT: Mr M Brownstone (Appellant's representative)
Mr C Cates (Valuation Officer's representative)

Summary of decision

1. The appeal was dismissed and the Rateable Value (RV) of £37,000 confirmed 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. The hearing was conducted via Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. The appeal was brought in respect of the entry in the rating list shown as Gnd Flr Shop at 129a Pritchards Road, London E2 9AP (the subject property), a restaurant located on Pritchards Road opposite the junction with Wharf Place. The proposal was submitted by the Appellant's representative on 9 September 2020 to challenge the valuation in the compiled list at £41,000. The challenge decision notice from the Valuation Officer (VO) was dated 22 March 2021 and it reduced the RV from £41,000 to £37,000 with effect from 1 April 2017. The appeal against this decision was lodged with the Tribunal on 12 April 2021.

5. The antecedent valuation date (AVD) for all 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, the material day was 1 April 2017.

6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel fully considered all the evidence presented before coming to a 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

7. Before the hearing began, the panel was required to decide on a preliminary issue raised by Mr Brownstone. He sought permission to introduce some photographs and a map of the locality. Mr Cates objected to the inclusion of these items on the day of the hearing as they had not been shared with the Respondent in advance for consideration. Mr Brownstone stated that he had not included these items earlier as he had not anticipated it would be an issue to introduce them later and, if not allowed by the panel, he would make his case orally.

8. The panel was aware that the Tribunal's directions state that there is no need to submit photos and plans to the Tribunal in advance '*but there should be agreement before the hearing between the parties that any photos and plans submitted to assist the panel on the day are a true representation of the situation at the material day*'.

9. The panel considered that, as the parties were notified of the hearing on 25 June 2021, Mr Brownstone had sufficient time to share the additional documents with the Respondent in advance of the hearing. To introduce new information on the day of the hearing without sharing it with the Respondent, placed the Respondent at a disadvantage as he was unable to consider the content in good time. The panel therefore refused the application to include photographs and a map into proceedings and asked Mr Brownstone to refer to the content of his appeal submission only.

Issue

10. The facts of the property and its measurements were not in dispute. The issue before the panel was the correct Zone A rate to be applied for the subject property and also to consider whether any allowances should be made for location and width to depth ratio.

Evidence and submissions

11. Mr Brownstone confirmed that he was not instructed on a conditional fee basis and he acknowledged that his duty was to the Tribunal in presenting evidence, regardless of whether or not the evidence supports his client's case.

12. The evidence bundle provided comprised all of the documents exchanged between the parties as part of the challenge process, following the Appellant's proposal to alter the entry in the 2017 rating list.

13. Mr Brownstone explained that the subject property is located in the London Borough of Hackney, near Broadway Market, an area going through a period of gentrification. With reference to the photographs that were contained in his challenge submission, he explained that to the Southern end of Broadway Market is a bridge over the Regent Canal. The subject property is situated on the other side of the bridge. Mr Brownstone stated that he considered the subject property has been placed in the wrong valuation scheme. He stated scheme 411455 is a general valuation scheme and the Zone A rate applied to the 2017 list entry was £600/m^2. He considered that the subject property should be placed into scheme 418805, which is applicable to shops in Broadway Market, where the values ranged between £412/m^2 and £435/m^2. He felt a Zone A rate of £435/m^2 was correct for the subject property.

14. In addition to a change of valuation scheme and base rate, Mr Brownstone sought end allowances for the width to depth ratio of the property and its isolation from other retail properties. He sought a 2.5% allowance for the shape of the property and a further 20% for the location. He acknowledged that, in its challenge decision, the Respondent had applied a 10% allowance for the width to depth ratio, reducing the RV from £41,000 to £37,000, but considered his own valuation to be more appropriate. Mr Brownstone asked the panel to reduce the RV to £23,000.

15. Mr Cates explained that he was acting as advocate in this case, having not been involved with the challenge decision or the appeal until the hearing day, but he could give expert testimony on rating matters in general. He stated that there is a road that runs across Broadway Market before the bridge, so the subject property is separated from the Market by both road and canal. He explained that the valuation scheme into which the subject property had been placed was a general one with a wide range of Zone A rates because it covered a variety of individual properties that did not sit within other schemes.

16. He also pointed out that Mr Brownstone had made no reference to the rent passing on the subject property, agreed at £45,000 effective from 24 June 2015. He felt that this rent fully supported the Zone A price of £600/m^2 applied to the subject property and, with the 10% allowance for width to depth ratio, he considered the current RV of £37,000 to be correct and asked the panel to confirm the existing RV.

Decision and reasons

17. In deciding this appeal, the panel was bound by the governing legislation. The term 'rateable value' is 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".*

18. In accordance with *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* 1976 [RA 141], the panel found that the starting point must be any rent passing on the subject property at the AVD. During questioning it was clarified that the Form of Return (FOR) completed by the previous tenant confirmed a premium of £70,000 had been paid on top of the agreed £45,000 rent. However, Mr Cates confirmed that the VO's analysis of the rent did not include this premium and he believed the rent was an open market rent. Mr Brownstone confirmed that the lease was assigned to the Appellant at this amount but argued that, as it was so much higher than rents in Broadway Market, it must surely be a rogue rent and should be disregarded. He considered the subject property should be valued with reference to the basket of rental evidence in Broadway Market and the passing rent not treated in isolation.

19. The panel noted that the rent on the subject property was a new ten year lease with five yearly rent reviews, no rent free periods, on a full repairing and insuring basis, agreed close to the AVD. It therefore concluded that this was very strong evidence of the amount a hypothetical tenant would pay when taking on the subject property vacant and to let at the AVD. Neither party was able to explain the reason for the £70,000 premium but the panel found that, as it was not included in the rental analysis, the premium did not detract from the value of the passing rent as evidence.

20. The parties were in agreement that the shape of the subject property warranted an allowance to reflect the width to depth ratio. In fact, the VO had given a larger allowance, 10%, than the 2.5% sought by the Appellant. However, the panel was perplexed by Mr Brownstone's argument for a 20% allowance to reflect the isolated location. He had argued that the subject property should be included in the valuation scheme for Broadway Market, due to its close proximity to that retail area, but then appeared to contradict himself by arguing it was disadvantaged by its isolation from that same retail district.

21. After considering all the evidence presented, the panel concluded that the best evidence was the rent passing on the subject property, which supported the Zone A price used in the valuation. A 10% allowance had been given in the challenge decision to reflect any disadvantage from the shape of the property, resulting in an RV of £37,000. The panel therefore found that the subject property was in the correct scheme and its valuation was based on the rent agreed on the subject property very close to the AVD.

22. Whilst separated from Broadway Market by the canal and a road, Mr Brownstone stated the subject property was only around 30 metres from the main retail area. The panel did not find that any allowance was justified for the subject property being in an isolated location.

23. In appeals of this nature, the burden lies with the Appellant to persuade the panel that his appeal should succeed. In this case, the panel was not persuaded that the subject property was isolated or that it should be included in the valuation scheme for Broadway Market. The property may not be surrounded by other retail units, but it is not so far from the Broadway Market that it would not benefit from footfall in that area. The panel found that the best evidence was the rent agreed on the subject property, which analysed to £655.02/m^2, making the Zone A rate of £600/m^2 reasonable.

24. The panel was satisfied that the current RV was correct, and the appeal was dismissed.

Date: 7 September 2021

Appeal number: CHG100393919