THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; restaurant and premises; accuracy of rateable value in list; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: 9-10 St Thomas Street, Weymouth, Dorset DT4 8EW

APPEAL NUMBER: CHG100402085

BETWEEN:	Parbat Catering Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mrs M J Cole (Senior Member)
Mr K Sutch

CLERK: Mrs A Keohane

REMOTE HEARING ON: Thursday 28 October 2021

APPEARANCES: Mr R Storr of Altus Group on behalf of the appellant as advocate
Mr J Sweet of Altus Group on behalf of the appellant as expert witness
Mr T Keen on behalf of the respondent as both advocate and expert witness

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Summary of decision

1 Appeal dismissed. The appeal property's assessment was confirmed at £34,750 rateable value (RV), with effect from 1 June 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 The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The panel was satisfied that all parties were able to fully participate in the hearing.

5 This is a 2017 rating list appeal that has been brought in respect of 9-10 St Thomas Street, Weymouth, Dorset DT4 8EW (the 'appeal property'), entered into the rating list as a 'restaurant and premises' at £34,750 RV with effect from 1 June 2017.

6 The challenge proposal was submitted by Altus Group on behalf of the appellant and was received by the Valuation Officer on 21 September 2020. The proposal sought a reduction in the appeal property's assessment to £25,750 RV.

7 The Valuation Officer issued a challenge case decision notice on 19 April 2021 which stated that based upon the evidence and information available, the current rating list entry was considered to be reasonable, and the rating list would not be altered.

8 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal was made on the grounds that the valuation for the hereditament was not reasonable. The appeal was received by the Tribunal on 8 June 2021.

9 The appeal property is a terraced three storey property, of brick construction with coloured supports and a tiled roof. It is located in a retail parade within the pedestrianised section of St Thomas Street with nearby occupiers including New Look, WH Smith and Specsavers. Parking is a three-minute walk away. The property is occupied as a restaurant and premises and only open for lunch and evening periods. At the date of the proposal, the property was held on a leasehold basis and the passing rent was £25,000 per annum.

10 Mr Storr appeared on behalf of the appellant as advocate. Mr Sweet's declaration confirmed that he appeared as expert witness and surveyor-advocate on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Sweet confirmed that he understood 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 regardless of whether or not the evidence supported the client's case.

11 The panel considered the "expert" evidence and assessed what weight, if any, to give it in the context of the matters at issue.

12 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 before coming to its decision. Consequently, the absence of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issues

13 The appellant's representative contended that the appeal property should be assessed as a restaurant on an overall basis using £180/m^2, which gave a reduced assessment of £25,750 RV. Mr Keen sought confirmation of the existing assessment of £34,750 RV based on £350/m^2 using the zoning method of valuation.

Evidence and submissions

14 The bundle provided by the appellant's representative comprised all of the documents exchanged between the parties as part of the challenge process, together with an Expert Witness Report. This bundle included: a copy of the challenge submission and supporting evidence; the Valuation Officer's initial response; lease details, rental and assessment evidence; photographs of the appeal property; respective valuations; summary valuations for properties cited as comparable; location plans; floor plans; reference to case law and relevant legislation and the Valuation Officer's challenge case decision notice.

15 Mr Storr invited Mr Sweet to present evidence as he had inspected the appeal property in February 2020. The following information was confirmed:

i. The current occupier had installed a substantial kitchen which took up 40% of the zone B area.
ii. The property operated as a restaurant and traded lunch and evening times only.
iii. The appeal property had been marketed from March 2016 but had only been let in 2017, with the rent agreed at £25,000 per annum. This was a new letting for a period of five years. Most weight had been attached to this letting.
iv. The appeal property was zoned and valued as a shop. In accordance with the 'City Duck' case (the Lands Tribunal decision in *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* RA-480-1993 (LT) and the subsequent Court of Appeal decision in *Williams (VO) v Scottish & Newcastle Retail Ltd and another* [2001] EWCA Civ 85, the appeal property should be viewed in the mode or category of occupation currently applicable, and this was as a restaurant.
v. A schedule of comparable restaurants that had been valued on an overall basis on unadjusted rates of between £120/m^2 and £190/m^2.
vi. The property had A3 use.
vii. The rating representative's revised valuation was based on £180/m^2 as this level of value brought the rating assessment in line with the 2017 rent.

16 Having regard to the above, a revised assessment of £25,750 RV with effect from 1 June 2017 was sought, which was considered to be fair and reasonable when taking a stand back and look approach in the final part of the valuation process.

17 On behalf of the Valuation Officer, Mr Keen explained that he was in attendance as advocate and due to his experience, as an expert on rating matters.

18 With reference to the rental evidence submitted by the appellant's representative, Mr Keen stated that, whilst the Valuation Office had a Form of Return (FOR) for a March 2019 rent of £25,000 as set out in the appellant's evidence, this rent was four years after the antecedent valuation date (AVD) and therefore not reliable. In relation to the 2017 rent of £25,000 put forward by the appellant's representative, Mr Keen confirmed

that the Valuation Office did not hold a FOR for this rent and therefore he was unable to comment on the terms on which it had been set.

19 Mr Keen confirmed that the appeal property had been occupied as a restaurant during the 2010 rating list and it had been valued using the zoning method of valuation. In 2013 the rent paid had been £38,000 and this had been for an 11- month term subject to a review in December 2013. In December 2013, this rent was reduced to £35,000. Mr Keen indicated that in the absence of rental evidence at the AVD, the Valuation Officer preferred to place most weight to evidence of rents set prior to the AVD.

20 Mr Keen confirmed that the appeal property was situated within a retail parade and currently valued on a zoned basis. He contended that the comparable properties submitted by the appellant's representative were not within retail locations but situated predominantly by the harbour. Mr Keen considered that a landlord would not accept a lower rental bid for a property because an occupier had installed a new kitchen within the premises. He argued that whatever method of valuation was used to assess a property, it was necessary to have regard to the rental evidence available around the AVD. In pursuance of this he considered that the January 2013 rent of £38,000 (analysing to £375.61/m^2) and the December 2013 rent of £35,000 (analysing to £345.79/m^2) provided the best evidence in this appeal and supported the appeal property's current assessment based on £350/m^2.

Decision and reasons

21 The appeal hereditament must be valued for the purposes of non-domestic rating on 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).

22 In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

23 The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the parties agreed that the material day was 1 June 2017.

24 In this appeal, the matter for consideration was whether the appeal property should remain valued on a zoned basis at £350/m^2 or be valued to reflect its restaurant use at £180/m^2.

25 Within the submissions was reference to the decision of *Lotus and Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA141. This decision provided guidance on the weight to be attached to rental and assessment evidence; the starting point being the rent passing on the subject property.

26 Addressing the rental evidence provided for the appeal property, the panel considered that it was not determinative in this appeal as none of the rents quoted had been set close to the AVD. The rent relied on by the appellant's representative was from March 2017 and reflected a new letting but was achieved almost two years after the AVD. There was no evidence to show the rental market trends in the appeal property's locality between the AVD and the date of this rent. The January 2013 rent provided by the

Valuation Officer reflected a new letting on an 11-month lease, but again this was distant from the AVD being over two years prior. A rent review had taken place in December 2013, 15 months prior to the AVD. The panel noted that this December 2013 rent was the closest to the AVD, and it analysed to £345.79/m^2.

27 Both parties had submitted comparable properties for the panel's consideration. In support of the revised basis of valuation, the appellant's representative provided the following comparable properties, valued on a restaurant basis:

- Harbourside Bistro, Custom Quay House. (£140/m^2)
- 19 Trinity Road (£185/m^2)
- The Snug, 38 Maiden Street, (£135/m^2)
- The Stables Restaurant, 13 Custom House Quay, (£130/m^2)
- The Galley Bistro, Brewers Quay, Hope Square (£166/m^2)
- Unit 2, Brewers Quay, Hope Square, (£120/m^2)
- The Dorothy Inn, 48 The Esplanade, (£190/m^2)

28 The Valuation Officer submitted the following comparable properties:

- 104D St Marys Street, zoned using £400/m^2.
- 86 St Thomas Street, zoned using £350/m^2.
- The Nautico Lounge at 66 St Thomas Street. This had recently been agreed on a restaurant basis at £165/m^2, following a challenge case. However, it was a former Post Office, larger than the appeal property, with a non-standard frontage.
- Prezzo at Townbridge House, was located at the end of St Thomas Street, had a non-shop frontage and its valuation included an uplift for harbour views. It was valued on a restaurant basis at £240/m^2.

29 In consideration of the comparable properties, the panel placed most weight to those provided by the Valuation Officer. From the evidence, the panel ascertained that the comparable properties submitted by the appellant's representative were predominantly closer to the harbour area, not within retail parades and in the majority of cases had non-standard frontages. Some of these were converted public houses or in the case of Unit 2, Brewers Quay, a converted industrial building.

30 The panel held that the more reliable comparable properties were 104D St Marys Road and 86 St Thomas Street. 104D St Marys Road had been formally occupied by Bella Italia, was situated within a retail parade and had been valued by the zoning method using £400/m^2. 86 St Thomas Street was a restaurant located in the pedestrian section of town, within a retail parade opposite the appeal property. It had been zoned and its valuation was based on £350/m^2.

31 During discussions, the parties raised points over an outside seating area. As this was not a matter that appeared to have been raised during the challenge process, the panel did not find sufficient evidence in relation to this issue.

32 During questions, the following was ascertained:

- Although the appellant's representative had confirmed that the appeal property had A3 use, it also retained A1 use.

- The substantial kitchen installed in the appeal property taking up 40% of the zone B area, had not been in place at the material day, it was put in around March 2019.
- The lunch and evening opening hours were not the result of a restriction in the lease or of planning but the occupier's choice.

33 After consideration of the evidence, the panel was not persuaded that the appeal property's assessment should be amended in the way proposed by the appellant's representative. The panel was satisfied that the appeal property should remain valued on a zoned basis.

34 The photographs of the external area of the property confirmed that it had a double shop frontage. The panel accepted that the property had a kitchen in situ at the material day, but no photographs were provided to show its proportions. On balance, the panel was not persuaded that anything done to the property to facilitate restaurant use could not easily be undone by any tenant wishing to take the premises for retail use. Therefore, reverting the property to retail use would not, in the panel's opinion, offend the *rebus* principle as outlined in the 'City Duck' cases. The panel was satisfied that an incoming tenant would be at liberty to use the space differently to the appellant with only minimal physical changes.

35 The panel found that, when viewing the appeal property vacant and to let, its inherent character and nature was that of a retail unit within a locality of other retail units. It was not unreasonable to assume that any hypothetical landlord looking to let the vacant appeal property at the AVD, would expect to negotiate a rent with comparability to that achieved by other similar units in the same locality.

36 In appeals of this nature the burden of proof rests with the appellant's representative to prove that the appeal property had been incorrectly assessed. The panel concluded that insufficient evidence had been provided to show this and therefore the current assessment of £34,750 RV was confirmed. As the grounds for the appeal had not been made out, the appeal was dismissed.

Date: 22 November 2021

Appeal Number: CHG100402085