THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; 2017 Rating List; Accuracy of compiled list entries; Shop and Premises; Café and Premises; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*; found that weight of evidence supported a reduction in the assessment of subject property; Decision: Allowed in part.*

RE: 147 Kings Road, London, SW3 5TX (1) and 149 Kings Road, London, SW3 5TX (2)

APPEAL NUMBERS: CHG100411493 (1) and CHG100206882 (2)

BETWEEN:	Lucas Hugh Ltd (1) and L'Eto Café Ltd (2) (Represented by Altus Group)	Appellants
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mr F J Rogers (Senior Member)
Mr O Miller

REMOTE HEARING: Monday 6 March 2023

CLERK: Mr J N Massey

APPEARANCES: Mr J McCarthy of Altus Group as expert witness and Mr Stewart Carter of Altus Group as advocate for the Appellant.
Mr C Cates for the Valuation Officer.

Summary of decision

1. The appeals were allowed in part as the panel determined a Zone A value of £2,150 per m^2. The assessments for 147 Kings Road, London, SW3 5TX and 149 Kings Road, London, SW3 5TX were therefore reduced to £72,500 and £70,500 respectively with effect from 1 April 2017.

Introduction

2. These were 2017 Rating List appeals. 147 Kings Road, London, SW3 5TX had been entered in the 2017 rating list as ‘Shop and Premises’ and a RV of £77,500 and 149 Kings Road, London, SW3 5TX as ‘Café and Premises’ and a RV £75,500 with effect from 1 April 2017.

3. Challenge proposals were submitted by Altus Group on behalf of Lucas Hugh Ltd and L’Eto Café Ltd and were received by the Valuation Officer on 4 May 2020 and 1 October 2020 respectively and had been made on the grounds that the RVs shown in the rating list on 1 April 2017 were wrong.

4. After considering the proposals and evidence submitted during the challenge period, the Valuation Officer (VO) decided that the proposals were not well founded and refused to alter the existing assessments. Decision notices to that effect were served on the appellants on 30 September 2021 and their representative then appealed the VO’s decision to the tribunal on 28 January 2022, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

5. The subject properties were retail units in a parade of period buildings on Kings Road. The areas in terms of Zone A (ITZA) had been agreed by the parties and 147 Kings Road was 33.63 m^2 and 149 Kings Road was 32.72 m^2. An addition of £7 per m^2 for air-conditioned areas had also been agreed by the parties.

6. Mr McCarthy appeared on behalf of the appellants as expert witness. In view of the Upper Tribunal’s judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC) Mr McCarthy’s declaration of truth included a statement that he was instructed on a contingency fee basis. He declared that he understood and accepted that 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.

7. 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.

8. This hearing was held remotely via Microsoft Teams.

9. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

10. The issue in dispute before the panel was the correct zone A rate to be applied to the subject properties. The appellants sought reduced entries based on a tone of value of £2,000 per m^2 ITZA. On behalf of the respondent, Mr Cates defended the Valuation Officer’s existing assessments based on a tone of value of £2,300 per m^2.

Evidence and Submissions

11. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during both challenges which included rental evidence and its analysis, the parties' skeleton arguments, expert witness statements and photographs of the subject properties and other shops in their immediate locality.

12. Additional evidence had been introduced by the appellant after the challenge decisions had been issued. As this evidence related to challenge on 163 Kings Road which had been agreed after the conclusion of the challenges, the respondent did not object to its inclusion.

Decision and reasons

13. 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;
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> 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".

14. 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 antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

15. 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 appeals, the material day is 1 April 2017.

16. In the appeals under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

17. The starting point for consideration was the actual rent passing on the subject properties. The rent on 147 Kings Road resulted from a new letting on a ten-year term and was on full repairing and insurance terms. The appellant benefited from a 3 months' rent-free period of which the appellant had analysed two months as incentive. This rent had been agreed one week before

the AVD and had been analysed at £1,895.73 per m^2 by the appellant, who considered this to be the best evidence that the current zone A rate was excessive.

18. Mr Cates however contended that little weight should be attached to the rent on 147 Kings Road, as he believed that it had been agreed on the basis of annual RPI (retail price index) increases, which did not reflect the property market and was advantageous to the landlord. He considered that this was compensated for by a reduced initial rent and this was demonstrated by the basket of rents agreed on other shops in the parade. He had also provided a different analysis of this rent of £1,931 per m^2 as he considered that the full three month's rent-free period was for fitting out and therefore not an incentive.

19. The appellant had also referred to the rent agreed on 149 Kings Road of £93,000 per annum (pa) effective from 8 July 2013 which had been analysed at £2,676.93 per m^2 by the respondent. He considered that this rent held little weight in comparison to that of 147 Kings Road as it had been agreed almost two years before the AVD.

20. In terms of indirect rental evidence, the Valuation Officer referred to the rents passing on 151 Kings Road and 153 Kings Road which were in the same parade as the subject properties. The current rent on 151 Kings Road had been set following rent review effective 15 June 2015 and had been analysed at £2,173.83 per m^2 ITZA. The rent on 153 Kings Road was set following a lease renewal on 18 December 2014 and when analysed devalued to £2,432.43 per m^2 ITZA. Mr Cates contended that this rental evidence indicated that the rent passing on 147 Kings Road was way below the open market rate. Mr McCarthy disagreed as he considered that these were not new lettings and had been agreed too far from the AVD to be of assistance.

21. Mr McCarthy had referred to the rent passing on 155 Kings Road, which had been agreed on a new five year lease effective from 1 August 2014 at £58,500 pa, and he had devalued this to £1,864.35 per m^2 ITZA. Whilst this information had come from COSTAR, Mr McCarthy considered that it was reliable and held weight in determining the correct rate for the subject properties.

22. In terms of comparable assessment evidence, there were five shops (147-155 Kings Road) within the same parade as the subject properties. All of the shops were of similar size to the subject properties and all of them had been uniformly assessed at £2,300 per m^2 ITZA. Mr McCarthy informed the panel that the shops numbered 159-163 Kings Road were assessed at £1,800 per m^2 ITZA which he considered indicated that the rate applied to the subject properties was excessive. Mr Cates explained that there was a Church located at 157 Kings Road, which resulted in a break in the parade of shops and the difference in values. Neither party referred to any challenges on properties on the same parade as the subject properties apart from the subjects of these appeals.

23. Having regard to the evidence submitted before it, the panel was not satisfied that a tone of value had been established for the shops within the same parade as the subject properties. Although the rating list was almost 6 years old, the existing entries had not been tested on appeal. There had been no other appeals and only these two challenges and it was possible that further challenges could be made, if checks are undertaken by other ratepayers. This evidence supported the appellant's argument that the tone was not settled and that instead it was still to be properly tested.

24. In this case, the panel determined, in the absence of an established tone, that the rental evidence before it provided the best evidence. Having had regard to the whole basket of rental evidence, it placed most weight on the rent attached 151 Kings Road which was agreed close to

the AVD and required less adjustment than the rent on 147 Kings Road. Having regard to the analysis of this rent at £2,172.83 per m^2 ITZA and to the basket of rents which ranged between £1,864.35 and £2676.93 per m^2 ITZA, the panel determined that a tone of value of £2,150 per m^2 ITZA was applicable. This resulted in a valuation of £72,500 for 147 Kings Road and £70,500 for 149 Kings Road. The panel therefore concluded that the appellant had demonstrated that a reduction in the RV of the subject properties was reasonable but not to the extent sought and the appeals were therefore allowed in part.

Order

25. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for 147 Kings Road, London, SW3 5TX to £72,500 RV and 149 Kings Road, London, SW3 5TX to £70,500 RV with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

26. The ratepayers are 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: 4 April 2023

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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.