THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; restaurant and premises; comparable properties; subject rent; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed in part.

Re: Unit Gf01, Resorts World Birmingham, Pendigo Way, National Exhibition Centre, Birmingham B40 1PU

APPEAL NUMBER: CHG100442499

BETWEEN:	The Big Table Group Limited	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mrs L Long (Presiding Senior Member)
Mr S Wood (Senior Member)

CLERK: Mrs C McAvoy

REMOTE HEARING No.2 on 28 February 2023

APPEARANCES:

Mr J Davies of Gerald Eve LLP on behalf of the appellant as both advocate and expert witness
Mr F Hassan on behalf of the respondent as both advocate and expert witness

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Summary of decision

1. Appeal allowed in part; the appeal property's assessment was reduced to £64,500 based on an unadjusted rate of £190/m$^{2.}$

Introduction

2. This appeal has been brought in respect of the following: Unit Gf01, Resorts World Birmingham, Pendigo Way, National Exhibition Centre, Birmingham B40 1PU which was entered in the 2017 Rating List at £119,000 RV effective from 1 April 2017. This valuation reflected an unadjusted rate of £315/m^2 on an overall basis.

3. The appeal property is located on the ground floor of the Resorts World centre, Birmingham which is situated approximately 15 minutes' walk from Birmingham International train station and near the National Exhibition Centre (NEC) and Birmingham airport. The appeal property's floor areas were agreed at check at 378.80m^2 measured on a Net Internal Area basis.

4. In response to the proposal, the Valuation Officer reduced the RV to £98,000 with effect from 1 April 2017. This valuation was based on an unadjusted rate of £287/m^2, and two 5% allowances were awarded following an external inspection.

5. Mr Davies, on behalf of the appellant, disputed the rateable valuation on the grounds that the revised Valuation Officer's valuation was still unreasonable. The proposed RV was initially £71,500 based on an unadjusted rate of £190/m^2. He later revised his proposal to £66,000 based on an unadjusted rate of £175/m^2. At the appeal stage, Mr Davies requested submitted revised proposal for a RV of £58,500 with effect from 1 April 2017 and based on an unadjusted rate of £155/m^2.

6. Mr Hassan appeared in a dual role of advocate and expert witness. In advance of the hearing, he provided a statement of truth declaring that he was not appointed on a contingency fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence.

7. Mr Davies submitted that he was appearing on behalf of the appellant and the administrator as expert witness. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Davis advised that he was not receiving any conditional fee from the appellant, but he was from the administrator. He declared that he accepted and understood that his that his duty was to the Tribunal in giving his evidence regardless of whether or not the evidence supported the client's case.

8. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

9. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. 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 evidence, should not be construed as it having been overlooked.

Issue

11. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply.

Evidence and submissions

12. In advance of the hearing, the panel was presented with the initial challenge decision, the evidence exchanged between the parties during the challenge process, the challenge decision and the appellant's appeal documents.

13. Mr Davies argued that in accordance with the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976 the actual rent should be taken as the starting point. He submitted that the subject rent was agreed close to the AVD, and he submitted his analysis of the rent. He had altered his calculation and proposed RV various times but at the appeal stated that he sought a reduction to £155/m^2.

14. Mr Hassan considered the having regard to the basket of evidence, the current assessment of £287/m^2 was fair and reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

15. In considering this appeal, the panel had regard to the term 'rateable value' as 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".

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

accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 1 April 2017.

17. In reaching its decision, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). 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 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 starting point in this appeal was the actual rent passing on the appeal property. It was let on a new lease effective from 24 August 2015 for £101,925 per annum. There was a rent-free period of fourteen months therefore the rent commencement date was 21 October 2016.

19. Initially Mr Davies had analysed the rent to £193.31/m^2 as the net effective rent payable with effect from 21 October 2016 is £78,075. After the deduction of £4,850 (the RV of the other store included in the lease), he stated that the transaction devalues to £193.31/m^2, he therefore proposed an unadjusted rate of £190/m^2. However, at the appeal stage he revised his proposed rate to £155/m^2. There was no breakdown provided as to how the £155/m^2 had been

calculated, so at the hearing Mr Davies was asked how he had calculated the revised RV. He offered explanation as to how he had arrived at this calculation. He was submitting that there were two store areas both of which are in the rating list based on a rate of £75/m^2. When devaluing the rent, he had used the full area, including the two stores. The panel found that this straight-line approach didn't account for the fact that the restaurant space was more valuable, this was evidenced by the fact that the stores had a lower rate per m^2.

20. The panel recognised that whilst the lease was agreed close to the AVD it included other assessments, therefore it required adjustments to conform with the statutory rating hypothesis. The panel also found that as per *Lotus v Delta*, the subject rent was the starting point, not necessarily the best evidence. The panel therefore found it necessary to turn to the third proposition and examined rents passing on comparable properties.

21. The respondent had included the appeal property on his rental summary and had analysed it to £202.21/m^2. No details were provided as to how this had been calculated and Mr Hassan was relying on the basket of evidence in support of the current valuation. He provided a rental summary which included other assessments also situated on the ground floor. They were in the rating list as 'shop and premises' and ranged in size from 65.20m^2 to 281.75m^2 and were new lettings or rent review agreed between 1 June 2015 to 1 January 2019. He had adjusted the rents accordingly, to reach an analysed rent of between £175.96/m^2 to £463.02/m^2. He provided comments on each assessment stating that some were turnover rent so may not be a true reflection which is why they analysed to less.

22. He stated that the assessments for unit SU01 and SU28 are, in his view, the most reliable. SU01 was also occupied as a restaurant and SU28 as this was a new letting just six months post AVD and was a clean rent with no adjustments to make. SU28 analysed to £322.88.

23. He accepted that the appeal property's rent analysed to less that the rate adopted but submitted that this was because of the basket of evidence and tone for the ground floor. He referred to *K Shoe Shops Limited v Hardy* (VO) [1983] to support that there is a tone of the list established when there is consideration to the passage of time, level of challenge the list had been subjected to, and where there is confidence that relevant rental evidence has been properly and full considered. It was therefore his submission that as a tone of £287/m^2 is accepted on the ground floor of resorts world, the appeal property's assessment was reduced to £287/m^2 in line with this and therefore the current RV is fair and reasonable.

24. The panel was informed that the appeal property's lease was agreed based on restaurant use only and it was limited to such use for 25 years. In response to Mr Davies' comments regarding the comparability of properties referred to by the respondent which were shops not restaurants, Mr Hassan referred to *R F Williams (VO) V Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 18. He

submitted that vacant and to let it could be a shop and that the hypothetical landlord would not be narrowing uses.

25. The panel considered both arguments and had regard to the plans of the ground floor of resorts world. The shop units were all uniform shapes and much smaller to the appeal property. The appeal property was a larger corner unit which was fully glazed. The panel found that if the restaurant were converted to a shop, major works would be required. In the panel's view the unit had a unique presentation owing to the existence of the glazed wall, which made it distinct from the other shops presented by the respondent as comparable.

26. The panel therefore placed less weight on the tonal evidence as the rents were derived from units that were not comparable to the appeal property. The panel therefore found that it must give more weight to the subject rent which was agreed close to the AVD. Ultimately, the panel could only consider the evidence before it and the panel found that the revised proposal of £155/m^2 was not supported and little weight was given to Mr Davies' oral explanation, especially as this did not account for the difference in value for the restaurant space. Furthermore, the panel was not presented with a full copy of the lease to verify his revised calculation, and the original analysis had been provided to the respondent to allow for any comments within the challenge decision. The panel therefore found the original analysis of £190/m^2 to be more persuasive and was not too different from the respondent's rental analysis.

27. As a result of the challenge decision the respondent had applied two 5% allowances to reflect the position and size issues. At the hearing, Mr Davies argued that this allowance should be higher, but no evidence was presented in support of this. Further, this point had not been raised in the challenge or appeal documents. The panel therefore found that it could not consider this point further but upheld the cumulative 10% which had been conceded by the respondent as part of the challenge decision.

28. In conclusion, based on the evidence brought before it, the panel concluded that a rate of £190/m^2 was reasonable. When applying the two agreed 5% allowances, the RV is calculated to be £64,954.73, say £64,500.

29. In view of the foregoing, the appeal was allowed in part.

Order

30. Under the provisions of regulations 38(4) and 38(10) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to show the following:

Unit Gf01, Resorts World Birmingham, Pendigo Way, National Exhibition

Centre, Birmingham B40 1PU

£64,500 RV effective from 1 April 2017

31. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

32. 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: 11 May 2023

Appeal number: CHG100442499

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.