THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; restaurant and premises; price per m^2; relativities; Lotus & Delta v Culverwell (VO) & Leicester City Council [1976] RA 14; Masala Zone Ltd v Golding (VO) [2016] UKUT 0328 (LC); rental evidence set closest to the AVD demonstrated the appeal property's current assessment was excessive; appeal allowed in part.

APPEAL NUMBER:	CHG100467138	
BETWEEN	Amazonico UK Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent
RE:	Bst & Gnd Floors, 10 Berkeley Square, London, W1J 6EF	
BEFORE:	Ms C Edwards (Senior Member)	
CLERK:	Mrs A Keohane	
REMOTE HEARING 2:	Thursday 28 March 2024	
APPEARANCES:	Mr R Stoney of Gerald Eve on behalf of the appellant, as advocate and expert witness Ms L Pokuaa-Amofah on behalf of the valuation officer, as advocate and expert witness	

Summary of decision

1 Appeal allowed in part. I found the appellant's case for a reduced assessment was made out, but not to the extent argued for. The assessment was reduced to £1,790,000 rateable value (RV), based on a revised rate of £2700/m^2 and the relativities applied in the assessment by the valuation officer (VO).

Introduction

2 The second member allocated was unable to join the hearing on the day. Paragraph 11 of the Tribunal's Business Arrangements allows me to sit alone in these circumstances to avoid postponing the hearing.

3 This is a 2017 rating list appeal in respect of Bst & Gnd Floors, 10 Berkeley Square, London, W1J 6EF (the 'appeal property'), which was entered in the 2017 rating list as 'restaurant and premises' at £1,890,000 RV with effect from 9 November 2019.

4 The challenge proposal was submitted to the VO by Gerald Eve on 20 November 2020. After various extensions agreed to by the parties, the VO issued a challenge case decision notice on 7 October 2022, which revised the assessment from £1,910,000 to £1,890,000 RV. As this figure was not in accordance with the challenge proposal, an appeal was made to this Tribunal on 6 February 2023, on the grounds that the valuation for the hereditament is not reasonable.

5 After the decision notice was issued, a rent review memorandum and rent concession letter relating to 4-6 Berkeley Square (Sexy Fish) in respect of its rent review in July 2019 became available. The parties agreed this was admissible at the hearing. Prior to the hearing, Mr Stoney applied for further evidence to be included relating to a settlement for a property on Villiers Street, where the VO had accepted the established method of valuation known as the 'tone of the list', however, the VO objected to this further evidence. After consideration, and whilst noting that the further information had only become available after the challenge decision was issued, I accepted this information and afforded the VO time to provide further evidence as a consequence of its inclusion. In response the VO identified various pieces case law to be relied upon.

6 Mr Stoney submitted a document which summarised the 250 plus pages within the decision notice, and Ms Pokuaa-Amofah initially objected to this, as it was not a requirement of the Check, Challenge and Appeal process. The objection was withdrawn prior to the hearing, and it was therefore admitted. On the hearing date, Ms Pokuaa-Amofah submitted photographs of the appeal property but due to the lateness of these, Mr Stoney objected to their inclusion, as he was unable to confirm they were a true representation of the property at the material day. I declined to admit these photographs.

7 Mr Stoney appeared on behalf of the appellant as both advocate and expert witness and was asked to clarify whether 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).

8 Mr Stoney declared that he was instructed on a success based fee arrangement. He accepted and understood 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 the evidence supported the client's case.

9 I 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). I therefore considered the expert evidence and attached such weight as I saw fit.

10 The appeal property is a former bank converted to a restaurant with customer seating on both ground and basement levels, with kitchens on both floors. The ground floor has a restaurant to the front and one to the rear set at a lower level with a narrow area with steps linking the two. It is situated in Berkeley Square with the closest tube stations being Green Park and Bond Street. The property is held on two leases, both for a 20-year term, effective from 27 March 2019. The ground floor is covered by one lease at a rent of £1,300,000 per

annum (pa) and the second lease relates to the basement at a rent of £100,000 pa. Both leases include a nine-month rent free period.

11 This decision document is not and does not purport to be a verbatim record of proceedings.

Issues

12 The size of the appeal property and a 10% quantum allowance have been agreed between the parties. The issues in dispute relate to the rate/m^2 to be adopted in the appeal property's assessment and whether the rear lower level restaurant and the link area should be valued at a lower rate.

13 Mr Stoney's proposed valuation of £1,270,000 RV is based upon a rate of £2500/m^2, with the link area at 25%, and the rear restaurant at 50% of the adopted rate.

14 The VO's assessment of £1,890,000 RV is based upon a rate of £2850/m^2, with the link area at 75%, and the rear restaurant at 100% of the adopted rate.

Evidence and submissions

15 The substantial bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with Mr Stoney's additional evidence and supporting evidence statement. The following case law was also referred to:

- *Specialeyes plc v Felgate (VO*) [1994] RA 338
- *O'Brien v Harwood (VO)* LT [2003] RA 244
- *Futures London Ltd v Stratford (VO)* [2005] RA/47
- *K Shoe Shops Ltd v Hardy (VO) and Westminster City Council* [1983] RA 26
- *Lotus & Delta v Culverwell (VO) and Leicester City Coun*cil [1976] RA 141
- *Masala Zone Ltd v Golding* UKUT 0328 RA/3/2016.

16 In his evidence and oral presentation, and very briefly, Mr Stoney referred to the following which had been used to inform his opinion of the value attributable to the appeal property.

i. The rent paid under a new lease, effective from July 2014, for a restaurant occupied by Sexy Fish at 4-6 Berkeley Square, situated three doors from the appeal property. The £500,000 premium shown in Sexy Fish's lease should not be included in the rental analysis.
ii. The 2017 rating assessment ascribed to Sexy Fish and its establishment of the tone of the list.
iii. The rent paid by Amazonico UK Ltd for the appeal property in March 2019 and the rent review on Sexy Fish in July 2019.
iv. The 2017 assessment on 9 Marshall Street, London and the Upper Tribunal decision in respect of its 2010 Rating List assessment (*Masala Zone).*
v. The relevance of the six propositions for weighting evidence as set out in *Lotus & Delta*.
vi. Extracts from the Valuation Office Agency manual pertinent to rental evidence and fit out periods.
vii. The 2014 and 2019 rents on Sexy Fish, which gave an indication of the changes to values during this period, and enabled a reasonable level of rent to be established for the appeal property at the AVD.

viii. The publication of the 2023 rating list and the RVs ascribed indicated the appeal property's current assessment was inconsistent with the patterns of value adopted.
ix. A graph showing the RVs and rents relating to Sexy Fish, the appellant's opinion of RV and rent relating to Amazonico UK Ltd, and the VO's opinion of RV relating to Amazonico UK Ltd. This also set out the RV ascribed to both premises in the 2017 and 2023 rating lists.

17 In support of the appeal property's current assessment, and very briefly, Ms Pokuaa-Amofah referred to on the following:

i. The comparable property 4-6 Berkeley Square and the re-analysis of its July 2014 rent.
ii. Information from a Statement of Case prepared for a valuation tribunal hearing on 30 May 2018 in respect of Sexy Fish, which led to the re-analysis of its rent and an increase in the rate/m^2 applied in the appeal property's assessment.
iii. Visits to the appeal property to determine whether different relativities were applicable to distinct parts of the premises.
iv. The graph provided by the appellant which served to confirm there was a dispute over the correct values to be adopted for the appeal property.

Decision and reasons

18 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 is 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality are to be taken at 9 November 2019, (material day) for this appeal.

19 The Lands Tribunal judgment in *Lotus & Delta* provides authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is the correct starting point, but where available, rents on similar properties are also to be considered. The assessments of other comparable properties could also be relevant. All the evidence could then be weighed.

20 The starting point therefore was consideration of the appeal property's rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements have to be taken into account when deciding the weight to attach to it. The appeal property is held on two leases effective from 27 March 2019 at a total rent of £1,400,000 pa. Although I gave consideration to this rent, I concluded that little weight should be attached to it, given its distance of four years from the AVD. Mr Stoney had quoted the VOA manual which indicates that rents agreed significantly after the AVD should not be ignored as they gave a more rounded view and are useful in the absence of other evidence. However, I note that the guidance then goes on to say that substantially more weight should be given to rents agreed near to the AVD where available.

21 In this case there is rental evidence available in respect of a new letting on a property both parties accept is comparable to the appeal property. This is situated only three doors away and the rent was set just over eight months prior to the AVD. The VO submits that the markets in 2015 and 2019 were substantially different and Mr Stoney argues against this, given the rent of Sexy Fish in 2019 shows only a modest increase from the rent set in 2014. Rather than speculate about the economic factors and rental market at the AVD, I prefer to

rely on the 2014 rent of Sexy Fish set close to the AVD. I therefore place substantially more weight to this 2014 rent than the appeal property's 2019 rent and the Sexy Fish rent review in 2019.

22 Both parties had adjusted and analysed the 2014 rent of Sexy Fish. There is reference to a turnover rent in the lease but neither party has taken account of this in their adjustments. Mr Stoney does not include the £500,000 premium, as he argues it is a one-off payment to the landlord to compensate for the cost of the removal of the bank vaults. He has also included four months of the rent-free period, the remaining three being the normal fit out period. The VO has included the £500,000 premium and amortised this over the life of the lease. In addition, having had sight of a statement of case for Sexy Fish from 2018 indicating that the assessment was reduced to nil for a 16 month period from 1 July 2014 whilst undergoing fit out works, the VO has taken the view that the rent free period is extinguished by the length of the works and none of the rent free period is included in the rental analysis.

23 Upon consideration, I find the £500,000 premium should be included in the rental analysis, I am not persuaded that this was not paid as a premium for the lease. I include four months of the seven month rent free period, leaving the remaining three months as the normal fit out period. As there is a rent review at year five, where the headline rent can be increased to reflect the open market rate, I consider any amortisation of the premium should be done to year five. I have analysed and adjusted in a similar way to Mr Stoney, but in respect of the premium, in line with Parry's Valuation & Investment Tables, I have adopted the following: Premium is £500,000 x Present Value of £1 over five years at 6% = 0.7472582 = £373,629/5 = £74,725.82 pa. I have added this to the annual rent of £1,100,000 to reach a rounded figure of £1,174,725. Adjusting this for the rent-free period up to the first rent review, adding 10% for fit out and dividing by the property's area in terms of main space of 441.6m^2, I reached a figure of £2731.09 say £2700/m^2.

24 I therefore determine the appeal property's assessment should be based on a rate of £2700/m^2. Mr Stoney has argued that a tone has been established at £2500 by the fact the assessment of Sexy Fish remained in the 2017 list based on that rate without amendment. In response, I consider the correct rate to be £2700/m^2 and to value the appeal property in line with the rate applied to Sexy Fish is against the corollary of the case in *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* [1932], that correctness should not be sacrificed for uniformity.

25 Mr Stoney referred to the discussions and resolution of the 2019 rent review for Sexy Fish. Although there was no supporting evidence of this, he explained that the parties to that review had analysed the appeal property's 2019 rent to arrive at a unit price on which to value Sexy Fish. In doing so, they had made comparisons between the two and on the basis they were not physically identical, adjustments and allowances were made to reflect the differences. The appeal property was said to be of an irregular shape, with steps, and considered to be operationally awkward. In recognition of this, different relativities were adopted for the link space and the rear dining area, and it is these relativities that Mr Stoney has incorporated in his revised assessment, arguing it was correct to have regard to market valuation practice. He also refers me to the Upper Tribunal decision in *Masala Zone Ltd* where a 0.66 relativity was determined for a lower-level dining area, and this has been carried forward in that property's assessment in subsequent rating lists.

26 Ms Pokuaa-Amofah has inspected the appeal property and considered the *Masala Zone Ltd* decision. She concludes that the appeal property's front and rear ground floor restaurants should remain valued at the same rate. However, she concedes that the value applicable to

the space linking the two requires adjustment, and this had been valued at a relativity of 75%. Although the plan of the rear restaurant shows it contains a number of steps, she believes these to be part of the tenants fit out, which Mr Stoney confirmed is the case. She argues the presence of these should not be used to discount the value applicable to this area.

27 Upon consideration of the evidence and the plans of the internal layout of the appeal property's ground floor, I find two regular rectangular shaped restaurants linked by a narrow area that contains three steps down. I am not persuaded that the lower rear restaurant should be valued at the relativity decided by parties that undertook the review of the Sexy Fish rent; given there is no evidence of how these figures were reached, nor any evidence that the market would have valued the appeal property in this way at the AVD. Mr Stoney has argued that the market had valued properties in this way as shown in the *Masala Zone Ltd* decision, however, the allowance for the Marshall Street property reflected issues specific to that particular property.

28 I accept relativities are applied to parts of a property in certain circumstances but consider that each property should be dealt with on its own merits. I would expect to see evidence showing the areas in dispute, namely, the link space and lower rear restaurant on the ground floor, such as photographs, to assist in assessing what reduction in value, if any, is applicable due to these factors. I also find some merit in Ms Pokuaa-Amofah's argument that it is difficult to view the internal steps within the rear restaurant as a value effective disability, given they appear to have been put in by the tenants. Having regard to the valuations of the appeal property submitted by the parties, I also note that the basement restaurant area has been valued at 50% of the main rate. I am not persuaded that the rear ground floor restaurant area should be valued at the same relativity as the basement restaurant.

29 Mr Stoney has indicated that the rear restaurant on the ground floor does not have frontage to Berkeley Square, and whilst I accept this, I am not persuaded it would have a significant effect on its value.

30 Addressing the area that links the front and rear restaurants, which contains three steps down and an amount of circulation space, I accept this area should be valued lower; however, I am satisfied that the level of reduction applied by the VO is reasonable.

31 On balance, none of the factors raised in relation to the 2019 rent of the appeal property and the 2019 rent review of Sexy Fish, nor the graph provided by Mr Stoney, persuaded me that the appeal property should be valued differently to the valuation I have produced below. The appeal property's assessment should be based upon a rate of £2700/m^2, with both the front and rear restaurants valued at this rate and the link space at 75% of the rate. The 10% quantum allowance fairly reflects the difference in size between the appeal property and Sexy Fish and the addition for air conditioning is included in the valuations of both parties. My revised valuation is therefore as follows:

Ref	Floor	Description	Area (m2/unit)	£ per m2/unit	Value £
1.1	Ground	Restaurant – front and rear	521.86	2700	1,409,022
1.2	Ground	Restaurant – link area	57.43	2025	116,296
1.3	Ground	Kitchen	119.92	1350	161,892
1.4	Ground	Public toilets	43.57	1350	58,820
1.5	Basement	Restaurant	105.48	1350	142,398
1.6	Basement	Office	3.83	675	2,585
1.7	Basement	Mess/staff room	33.39	675	22,538
1.8	Basement	Store	29.39	675	19,838
1.9	Basement	Kitchen Prep	79.06	675	53,366
			Subtotal		1,986,755
Less discount for quantum			10%		1,788,080
Addition for air conditioning			638.48	7	4469
			Total RV		1,792,549

Say £1,790,000 RV with effect from 9 November 2019.

Order

32 As a consequence of the above, the VO is ordered to amend the appeal property’s 2017 Rating List entry to £1,790,000 RV with effect from 9 November 2019, within two weeks of the date of this Order.

Refund of fees

33 The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible, provided no review of the decision takes place.

Appeal Number: CHG100467138
Date: 19 April 2024

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.