THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Local Government Finance Act 1988; Statutory Assumptions; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Base Rate; End allowance; Appeal dismissed.

Re: Unit 318, Victoria Centre, Nottingham NG1 3QN

APPEAL NUMBER: CHG100550631

BETWEEN:	Tiger UK Ltd	Appellant
	And	
	Ms Jo Moore (Valuation Officer)	Respondent

PANEL:	Dr John Johnson (Chair)
	Mr Simon Hooberman
CLERK:	Mr Duncan Adamson IRRV (Hons)
REMOTE HEARING 1:	14 June 2022
PARTIES PRESENT:	Ms Jessica Hand of Jones Lang LaSalle Ltd representing the appellant
	Ms Paula Bailey representing the Valuation Officer

Summary of decision

1. The appeal was dismissed. The rateable value (RV) of the hereditament remains at £104,000 with effect from 1 April 2017.

Introduction

2. This 2017 compiled list appeal had been brought in respect of the property at Unit 318, Victoria Centre, Nottingham NG1 3QN occupied by Tiger UK Ltd.

3. The rateable value was £115,000 on a Zone A (ZA) rate of £1,050/m^2 less 10% as an end allowance for the location of stairs near the property. During the challenge process the Valuation Officer (VO) reduced the RV to £104,000 on a ZA rate of £950.00/m^2 less 10%.

4. The appellant appealed against the VO decision as they sought a reduction of the RV to £96,000 on a ZA rate of £876/m^2 less 10%.

5. The property is situated on the upper floor of the Intu Victoria Centre, Nottingham near to the new part of the centre of the Clocktower restaurant area. At the front of the shop there are some steps and a ramp on the opposite side of the mall and a 10% end allowance had been given for this. The Intu Victoria Centre underwent a £40 million refurbishment scheme commencing February 2014 and completed November 2015.

6. 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 a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

7. Ms Jessica Hand appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), her declaration of truth included a statement that she was instructed on a contingency fee basis. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's case.

8. 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 they saw fit.

Issue

9. The RV of the hereditament.

Evidence and submissions

10. The evidence bundle submitted by the respondent comprised all of the documents exchanged between the parties as part of the challenge process, the VO's challenge case decision notice and the appellant's challenge submission.

11. The appellant stated that there were two areas of the property valuation in contention:

    - The devaluation of the rental evidence
    - The weight attached to the rental evidence of the comparable properties

12. Tiger (UK) Midlands Ltd took a 10 year lease of the appeal property with a five year rent review and a tenant only break on the unit from the 10 August 2015 on a stepped rental basis:

    - 10/8/15 to 10/12/15 £0
    - 10/12/15 to 10/8/17 £55,000 p.a.
    - 10/8/17 to 10/8/20 £120,000 p.a.

13. The tenant also received a capital contribution of £43,000 at the start of the lease and the fifth year break option was subject to a break penalty of £45,000. This, when devalued, gave a ZA rate of £876/m^2 and with a 10% end allowance for the stairs gave an RV of £96,000.

14. The appellant contended that the incentives should not be ignored and should be taken into consideration when devaluing the rent. This was because the stepped rent from 10/12/15 was after the Victoria Centre refurbishment works were completed and the agent who acquired the property stated that all incentives were market incentives and not related to the works.

15. Thus, the rental evidence for the appeal property was the best evidence for its valuation as it requires little adjustment, is close to the Antecedent Valuation Date (AVD) of 1 April 2015 and is between an unconnected landlord and tenant. She also contended that the £200,000 fit out costs should not be factored into the devaluation.

16. The rental evidence for Unit 214 should carry less weight as it was a renewal.

17. The rental evidence for Unit 216 was an open market lease and the appellant devalued this to a ZA rate of either £993/m^2 or £905/m^2 depending on the lease term, both values lower than the current appeal property devaluation.

18. The respondent Valuation Officer (VO) stated that the revised RV of £104,000 at a ZA rate £950/m^2 was reasonable and had been based on three factors:

- The comparable properties
- The rental evidence
- The relevant weighting

19. She stated that the appeal property's rental evidence should be analysed over the full 10 years of the lease, the capital contribution and break penalty should be excluded and the four months' rent free period should be part of the devaluation. She also expressed some caution over the lease agreement as it was 8 months after the AVD. In her opinion, these factors meant that this evidence was unreliable.

20. She argued that the best rental evidence was that of Unit 216 as it was a new open market agreement and was only one week prior to the AVD. She also referred to a new settlement on Unit 216 where the ZA rate of £1,050/m^2 had been reduced to £950/m^2. This had not been appealed. She had therefore used this ZA rate as the basis for the valuation of the appeal property.

21. The rent for Unit 214 was a lease renewal and therefore little weight should be attached to it.

Decision and reasons

22. The panel referred to the Local Government Finance Act 1988. The term 'rateable value' being defined in paragraph 2(1), Schedule 6 to the Act:

> "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".

23. 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).

24. In reaching its decision, the panel had regard to the Lands Tribunal judgment of Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141. This case had established six propositions giving 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.

25. The panel found that there was limited rental evidence presented to them and this was because there was little rental evidence available. Any rental evidence prior to 2015 had been disregarded due to the refurbishment of the centre.

26. The rental evidence for this part of the Victoria Centre for these three units analysed as follows:

    - 214 analysing to a ZA rate of £977.11
    - 216 analysing to a ZA rate of £951.27
    - 318 analysing to a ZA rate of £949.77

27. The panel found that rental evidence in respect of the appeal property required many adjustments in order for it to be useful for its valuation at the AVD and therefore that it should not be considered as the most reliable evidence.

28. However, the rental evidence in respect of Unit 216 was most useful and the panel found that the revised ZA rate of £950/m^2 for this unit being used for the appeal property was most appropriate.

29. The panel noted the location of the appeal property being on the same side of the centre as the House of Fraser and John Lewis stores and so was in a better position than Units 214 and 216 that were adjacent to each other but on the opposite side to Unit 318. The panel found that, whilst this would not necessarily give rise to a higher ZA rate, as different businesses in different locations may generate different ZA rates, it would not cause the ZA rate for the appeal property to be lower than for the two other units.

30. The appeal is therefore dismissed and the RV of the hereditament remains at £104,000 with effect from 1 April 2017.

Date: 4 July 2022

Appeal number: CHG100550631

Rights of appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the Upper Tribunal on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.