THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; shop and premises; accuracy of rateable value; tonal evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: BST-GRD FLR, 10 Little Newport Street, London WC2H 7SJ and
BST-4TH FLRS, 14 Little Newport Street, London WC2H 7EG

APPEAL NUMBERS: CHG100622020 & CHG100749793

BETWEEN:	Viet Food Ltd & Sun Luen Trading Co Ltd	Appellants
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs F Rahman-Cook (Presiding Senior Member)
Mrs AE Fielder (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 13 January 2023

APPEARANCES: Mr S Carter from Altus Group (advocate for the appellant)
Mr D Hill from Altus Group (expert witness for the appellant)
Mr C Cates (advocate on behalf of the Valuation Officer)
Mr A Baird (expert witness on behalf of the Valuation Officer).

Summary of decision

1. Appeals dismissed. The panel confirmed the rateable value (RV) of BST-GRD FLR, 10 Little Newport Street, London WC2H 7SJ (subject property 1) at £60,500 with effect from 1 April

2017. The panel confirmed the rateable value (RV) of BST-4th FLRS, 14 Little Newport Street London WC2H 7EG (subject property 2) at £86,500 with effect from 1 April 2017.

Introduction

2. This appeal relates to two 2017 rating list appeals. Firstly in respect of subject property 1 which arises from a challenge made by the appellant's representative on 18 February 2021. The challenge was in respect of the entry in the rating list at £60,500 RV as 'shop and premises' effective from 1 April 2017. The appellant sought a revised assessment of £49,750 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 3 March 2022. The appellant made an appeal to this Tribunal which was received on 22 June 2022, on the grounds that the RV was not reasonable.

3. The second appeal is in respect of subject property 2 and arises from a challenge made by the appellant's representative on 23 November 2021. The challenge was in respect of the entry in the rating list at £86,500 RV as 'shop and premises' effective from 1 April 2017. The appellant sought a revised assessment of £71,000 RV. After considering the merits of the challenge, the VO determined that it was not well founded and a decision notice to this effect was issued on 10 January 2022. The appellant made an appeal to this Tribunal which was received on 4 May 2022, on the grounds that the RV was not reasonable.

4. Mr Carter appeared on behalf of the appellant as advocate and Mr Hill as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Hill stated that he was instructed under a conditional fee arrangement. 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 his client's case.

5. 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.

6. Subject premises 1 comprises a shop which is located on the basement and ground floor of 10 little Newport Street and subject property 2 is also a shop but located on the ground floor of 14 Little Newport Street. Both are within a parade of similar properties on Little Newport Street London in close proximity to Leicester Square.

7. This Tribunal decision document is not and does not purport to be a verbatim record of 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, should not be construed as it having been overlooked.

Issue

8. The issue between the parties is the RV of the subject properties specifically the zone A rate.

Evidence and Submissions

9. Mr Carter submitted a bundle of evidence which included photographs and details of the subject property and comparable properties, his revised RV calculations, copies of correspondence between the parties and his submissions.

10. He submitted that the appeal should be allowed and the RV on the subject properties should be reduced to £49,750 for subject property 1 and £71,000 for subject property 2.

11. Mr Cates, on behalf of the VO, referred the panel to the challenge application and decision.

12. In consideration of the comparable properties admitted in evidence, Mr Cates asked the tribunal to confirm the RV of £60,500 with effect from 1 April 2017 for subject property 1 and an RV of £86,500 with effect from 1 April 2017 for subject property 2.

Decision and Reasons

13. 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 was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let' and in the state set out in Schedule 6 of paragraph 2(7) to the Act, in relation to both the physical nature of the property and its mode or category of use.

14. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, 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 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 VO. 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.'

15. Mr Carter explained that all factual matters were agreed between the parties and he confirmed that it was his submission that subject property 1 should have an RV of £49,750 and that subject property 2 should have an RV of £71,000. The tone for this area of the west end of London close to Leicester Square should be £2,300/m^2 which was supported by the rental evidence for the locality.

16. Mr Hill drew the panel's attention to the rental evidence on the subject properties. In connection with subject property 1 the lease commenced in September 2015. The ground floor was a chicken take away and the upper floors were ancillary spaces. The upper floors could not be separately let and due to its A5 planning permission it meant that the rent was not a true retail rent. He argued that this rental evidence should therefore be treated with caution.

17. In connection with subject property 2 the lease on that property commenced in September 2018 which is over three years post AVD. It was a stepped rent for £60,000 per annum for years one and two, £65,000 per annum for years three and four and then £67,500 per annum for year five until the rent review date. Mr Hill argued that the effective rent is therefore £63,296 which analyses to £2,912.46/m^2. The other rental evidence on this property is a previous occupier's lease renewal from January 2014 where the rent was agreed at £32,660 per annum for a term of 15 years which analyses to £1,502.79/m^2. This rent is just over one year prior to the AVD and is substantially lower than the present Zone A rate adopted being £2,800/m^2.

18. The panel was aware that in the case of *Lotus and Delta* the rents on the subject properties were the starting point for assessing an RV. The panel also knew that it needed to create a basket of evidence of similar properties of a similar size in the locality of the subject properties before determining the RV.

19. Mr Hill then referred the panel to other comparable properties in the vicinity of the subject properties:

- BST & GRD FLR 9 Little Newport Street had a form of return (FOR) returned which was for the land only. There was however another FOR returned which details a rent of £47,000 with effect from 1 December 2014 on a ten year term with a 12 month rent free period and a rent review every five years. Based on an area ITZA of 18.66 this devalues to £1,961.75/m^2. This he submitted supported the rate of £2,300/m^2 for the subject properties.

- In connection with BST & GRD FLR 11 Little Newport Street he referred to a lease which analyses to £3,437.74/m^2 but this is for the whole building which includes offices on the first to third floor and is therefore not a good comparator.

- 7 Little Newport Street had, he submitted, a rent which was out of kilter with the other rents in the area and little weight should therefore be placed on it as there is no clear evidence on the terms of the lease. The property is also in a more favourable location than either of the two subject properties as it is on the junction of Little Newport Street, Newport Place and Lisle Street and would therefore attract a higher footfall and therefore a higher rent.

- The rent on BSMT & GRD FLR 12-13 Little Newport Street was far removed from the AVD and had an upward only rent review clause and so, in Mr Hill's opinion, should have little weight put on it.

20. Mr Hill also submitted that in his opinion Gerrard Street in the centre of China Town, Newport Court and Charing Cross Road were more prestigious locations and so would attract a higher rent. Little Newport Street and Lisle Street which is a continuation of Little Newport Street were not main thoroughfares and were narrow. Lisle Street he explained was a narrow street which had the feel of a 'back alley' due to the main leisure facilities on Leicester Square backing onto the street. The zone A rate of Little Newport Street should therefore in his opinion be lower than Gerrard Street, Newport Court and Charing Cross Road but higher than Lisle Street.

21. The panel noted that in London looking at rental evidence in neighbouring streets was not helpful as values vary widely in only a small area. It therefore put little weight on this evidence.

22. Mr Cates on behalf of the respondent explained that the rental evidence on the same street as the subject properties was compelling and accurate. It supported the existing tone of the subject properties and there was therefore no need to look at properties on other streets in the area. Using the rental evidence on the same street as the subject properties there was strong evidence that supported the existing zone A rate of £2,800/m^2.

23. Mr Baird put forward the following comparable properties:

Address	RV	ITMS	Effective date of rent	Rent	Analysed rent	UAR (m^2)
*BST-GND FLRS 10 Little Newport Street	£60,500	27.41	1/1/14	£32,660	£1,502.30	£2,800
*BST-4th FLRS 14 Little Newport Street	£86,500	31.06	1/9/15	£90,000	£2,897.62	£2,800
BST & GRD FLR 9 Little Newport Street	£52,000	18.66	1/9/15	£55,000	£2,947.48	£2,800
7 Little Newport Street	£69,500	24.88	24/6/15	£90,000	£3,617.36	£2,800
BST-GRD FLR 10 Little Newport Street	£60,500	21.74	1/1/14	£32,660	£1,374.60	£2,800

*subject properties

24. He submitted that the rental evidence on the comparable properties in the same street as the subject properties supported a zone A rate of £2,800 with rental evidence close to the AVD. They were lease renewals apart from on subject property 2 and 7 Little Newport Street which was not determined on the open market. The comparable properties show

consistency with a tone of £2,800/m^2 for zone A. In connection with number 7 Mr Baird drew the panel's attention to the fact that although Mr Hill had submitted that it was in an advantageous position and so could command a higher rent he had not produced any rental or footfall evidence to support his opinion. Mr Hill therefore submitted that it should be included in the basket of evidence.

25. The panel was aware that in the case of *Lotus and Delta* the basket of evidence used in the valuing of a property included that of the rent on comparable properties in the vicinity of the subject property in this case they were in the same street. The panel could therefore put weight on this evidence.

26. In cases such as these it is for the appellant to prove their case on the balance of probabilities and so the burden of proof lies with them. From the basket of evidence provided by the VO the panel was satisfied that the current assessment of the subject property 1 at an RV of £60,500 and for subject property 2 at an RV of £86,500 were reasonable and the appellant had not provided any evidence to persuade the panel that they were excessive. The appeals are therefore dismissed.

Date: 30 January 2023

Appeal number: CHG100622020 & CHG100749793

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.