THE VALUATION TRIBUNAL FOR ENGLAND

2017 Non-domestic rating list appeal; Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Café and premises; Price per m^2 in dispute; allowances sought for lack of toilets and access; Appeal dismissed.

RE: Café Vienna, Fishergate Centre, Preston PR1 8HJ

APPEAL NUMBER: CHG100681704

BETWEEN:	Mocca on the Balcony	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

BEFORE: Mr I Lonsdale (Senior Member sitting alone)

CLERK: Mr A Johnson Tech IRRV

ON: 20 April 2022

APPEARANCES: Mr K Batty of Ken Batty Chartered Surveyors (for the Appellant)
Mr C Skerratt (for the Valuation Officer)

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

DECISION AND STATEMENT OF REASONS

Summary of decision

1. This appeal was dismissed. I determined that the rateable value of Café Vienna, Fishergate Centre, Preston PR1 8HJ was £47,000 with effect from 1 April 2017.

Introduction

2. This is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that I considered all of the evidence presented before me before coming to my decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. Paragraph 10 of Tribunal's business arrangements allows a Senior Member to consider an appeal alone where a member gives notice that he/she becomes unavailable within one working day of the commencement of the hearing.

> ***Hearings Where a Member is Unable to Sit***
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> *Where a panel member is allocated to a hearing and unable to sit for any reason or fails to appear, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where a member gives notice of unavailability within one working day of the commencement of the hearing, to avoid postponing the hearing. In all other cases the hearing must be postponed unless the President directs otherwise.*

4. As my fellow Panel member became unavailable on 19 April 2022 and the Tribunal was unable to identify a replacement at such short notice, I was satisfied that I was authorised to hear this appeal alone.

5. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009.

6. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the appeal hereditament on the compiled date of 1 April 2017 was not reasonable. The rateable value was £51,000 and subsequently reduced at the 'Challenge' stage to £47,000. The appellant was seeking a revised rateable value of £18,000.

7. The appellant was represented by Mr K Batty who declared that he was appearing as an advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018], Mr Batty declared that he was not receiving any conditional fee. I 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).

8. At the commencement of the hearing Mr Batty explained whilst he was unable to connect visually to the hearing, he was willing to procced using the audio link. No objections were raised by Mr Skerratt, and I was content to proceed accordingly.

9. Mr Skerratt appeared on behalf of the Valuation Officer, and he stated that he was also appearing as an advocate and expert witness. When asked, Mr Skerratt advised that he had not inspected the subject property and that he was a late replacement for a colleague who was due to present the Valuation Officer's case. Whilst I recognised Mr Skerratt was knowledgeable and experienced in respect of rating matters, I considered it appropriate to accept his submissions as advocate only given that he appeared to lack personal knowledge of the subject property or the comparable properties.

Issue

10. The issue in dispute was the rateable value which had been ascribed to the subject property from 1 April 2017. The parties disagreed the price per m^2 to be applied and whether there should be allowances for the lack of toilets and access/security issues.

Decision and reasons

11. I considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process. For the avoidance of any doubt and to avoid any possible confusion, I would point out that whilst the subject property was shown in the rating list as 'Café Vienna' it now traded as 'Mocca on the Balcony'.

12. I followed the VTE's model procedure and Mr Batty presented the appellant's case first.

13. The subject property was an open plan café located within the Fishergate Shopping Centre, Preston. The shopping centre was close to Preston train station and acted as a thoroughfare to Preston town centre. The rent had been agreed in 2009 and contained an upward only rent clause. The rent review in 2017 had however, retained the agreed rent of £55,000 per annum. This had been analysed to £374.48 per m^2 with £350.00 per m^2 being adopted by the Valuation Officer.

14. I understood that the areas of the subject property had been agreed between the parties prior to the hearing (122.87m^2 for the restaurant and 17.2m^2 for the kitchen) and it was this agreement which had prompted the rateable value reduction from £51,000 to £47,000 at the 'Challenge' stage. The matters which remained in dispute can be summarised as follows:

    i. Mr Batty was seeking a reduction of the adopted main space price for the restaurant from £350 per m^2 to £150 per m^2; and
    ii. Mr Batty was seeking two allowances, one for 5% to reflect the lack of toilets within the subject property and a second allowance to reflect the restricted access due to the closure of the shopping centre at 6pm (8pm leading up to Christmas) and the security issue caused by the free flow of people around the subject property.

15. In support of Mr Batty's contention that a reduced price per m^2 should be applied to the subject property he referred me to other café's in Preston and the wider locality which had a much lower rate per m^2 and therefore demonstrated that £350 for the subject property was not reasonable. These are summarised hereunder:

Address	£ per m^2
11b Winckley Square, Preston, PR1 2AA	£165
77-79 Lancaster Road, Preston, PR1 2QJ	£120
323-325 Garstang Road, Fulwood	£105
Units 12-13 The Bus Station, Tithebarn Street, Preston	£80
LGF 49-51 Guildhall Street, Preston	£120
37 Cannon Street, Preston	£100
300 Fylde Road, Ashton	£100
Gnd Flr 120 Corporation Street, Preston, PR1 3QU	£100
Unit B, 7 Fleet Street, Preston, PR1 2UT	£125
15-16 St Wilfred's Street, Preston	£125
123-124 Church Street, Preston, PR1 3BT	£140
23-26 Market Place, Preston, PR1 2AR	£170
125-126 Friargate	£140
241 Fylde Road, Ashton, PR2 2NH	£130
The Eatwell, Sheraton House, 29 Ormskirk Road, Preston, PR1 2QP	£100
2-6 Guildhall Arcade, Lancaster Road, Preston, PR1 1HR	£120
4-8 Watery Lane, Ashton, PR2 2NN	£100
19 Church Street, Preston, PR1 3BQ	£90
288 Aqueduct Street, Preston, PR1 7PU	£70
Angelo's, 7 & 29-35a Avenham Street, Preston, PR1 3BN	£120
Quattro, 32 Great George Street, Preston, PR1 1TJ	£90

16. In support of his contention that an allowance of 5% each should be made due to the subject property lacking toilet facilities for staff and customers who, Mr Batty explained that instead, they had to visit the lower ground floor, where the shopping centre's toilets were located. Mr Batty also referred me to cafes at 287 Station Road, Bamber Bridge and 20 Church Street, Ormskirk which, he submitted, had both been afforded a 5% allowance due to the lack of toilet facilities.

17. In support of his contention that an allowance of 5% each should be made due to access and security issues, Mr Batty stated that access to the subject property was restricted because the shopping centre was controlled by its management team who closed the centre at 6pm (8pm during the lead up to Christmas). This meant that his client was effectively prevented from extending his opening hours. Turning to the issue of security, it was Mr Batty's contention that the position of the café within the centre meant that anyone could access it without any restriction.

18. I noted that within Mr Batty's written submission he had raised the issue of what he referred to as a 'raised plinth' which created a disability issue within the subject property. However, this was not expanded upon by Mr Batty during his oral presentation and I was not presented with any evidence to show that any reduction was warranted in respect of this.

19. On behalf of the Valuation Officer, Mr Skerratt contended that the rateable value of £47,000 was reasonable given that it was less than the agreed rent which had not been upwardly adjusted to take into account the landlord's responsibility for cost of repairs and insurance. Mr Skerratt also presented the following comparable rents in support of his contention:

Address	Total area ITMS m^2	Date of rent	Analysed rent	Adopted £ per m^2	RV
Costa Coffee, Friargate Walk, St Georges Shopping Centre, Preston, PR1 2NQ	214.00	09 Oct 2016	£292.06	£385.00	£82,000
Starbucks, Unit 3B Fishergate Centre, Preston, PR1 8HJ	99.57	16 Mar 2016	£459.48	£450.00	£46,000

20. Mr Skerratt also made reference to clause 22.3 within the lease for the subject property which, he said, allowed the appellant to make application to the owner to vary his usual trading hours and that permission would not unreasonably be withheld. Mr Batty argued that this clause did not extend to opening outside of the shopping centre's normal opening hours, but Mr Skerratt countered that this was not the case.

21. 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. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the appeal hereditament is 1 April 2017. For the purposes of this appeal, I had to reflect that the anchor store within the shopping centre, Debenhams, was still occupied at the material day.

22. Having regard to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, I considered the rental evidence in respect of the appeal unit as my starting point. In doing so, I noted that whilst the rent had commenced in 2009, it had been reviewed in 2017. This review did not result in any change to the agreed passing rent of £55,000 per annum. I also noted that it exceeded the adopted rateable value and had not been upwardly adjusted to take account of the landlord's responsibility for repairs and insurance. I found this to be the most compelling evidence to show that no reduction in rateable value was warranted.

23. Furthermore, I found the comparable properties put forward by Mr Skerratt to be the most relevant and, in particular, Unit 3B Fishergate (Starbucks). Whilst this unit contained toilet provision and was better positioned at the entrance of the same shopping centre, thereby attracting custom from the shopping centre and pedestrians passing along Fishergate, its adopted rate was higher at £450.00 per m^2. The parties were unclear as to the toilet provision in respect of Costa Coffee at Friargate Walk within St Georges Shopping Centre

but, again, the adopted rate was higher at £385.00 per m^2. This led me to conclude that £350.00 per m^2 for the subject property was not unreasonable.

24. I placed less weight upon the comparable properties put forward by Mr Batty because, in my opinion, they were not directly comparable to the subject property and, in any event, its assessment was supported by the rental evidence.

25. I was not convinced that either of the allowances sought by Mr Batty should be allowed.

26. Whilst I had some sympathy with regard to his argument regarding the lack of toilet facilities within the subject property which would be a disadvantage given the location of the centre's own toilets on the lower ground floor, this would have been known when the lease was agreed between the parties and would therefore have been a factor taken into consideration at that time and when the 2017 review occurred.

27. As far as the issues of access and security were concerned, I noted Mr Skerratt's submission that a clause within the lease provided the appellant with the ability to apply for an extension or variation of his trading hours. Whilst Mr Batty disputed the exact meaning of this clause, I was mindful that doing so may not be an attractive proposition given the additional costs that it would entail (staff costs for example) and the lack of passing trade given that the shops within the centre would be closed. This aside, the opening and closing times of the shopping centre would have been known to the appellant when he negotiated his rent and would have been factored into his rental bid.

28. After fully considering all of the evidence before me, I concluded that the subject property had not been over-valued at £350.00 per m^2. I was therefore satisfied that the entry in the 2017 Rating List was reasonable, and I dismissed this appeal.

Date: 27 April 2022

Appeal Number: CHG100681704

Addendum
Following an application from Mr Batty, the Tribunal has amended paragraph 24 of this decision notice in accordance with its powers under Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009. The original paragraph 24 incorrectly stated that:

> *"I placed less weight upon the comparable properties put forward by Mr Batty because some were not 'like for like' café's as they had been valued on a retail zoning basis (the subject property was not) and, overall, they bore little relation the rental evidence that was provided for the appeal property and those other units within shopping centres."*

This amendment was duly authorised by the Senior Member in order to correct the error.

Date when amended decision was issued: 3 May 2022