THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); 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; Cafe; Price per m^2 in dispute; Appeal dismissed.

RE: 4 The Shambles, Bradford-on-Avon Wiltshire BA15 1JS (subject property)

APPEAL NUMBER: CHG100705671

BETWEEN:	G deF	Appellant
	and	
	The Valuation Officer	Respondent

BEFORE: Ms S Yousef (Senior Member)
Prof I Solanke (Member)

CLERK: Mrs J Routledge Tech IRRV

ON: 27 July 2023

APPEARANCES: The Appellant
Mr I Gibbons (representing the Respondent)

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. The appeal was dismissed. The panel was satisfied that the rateable value (RV) of the subject property was reasonable. Consequently, the RV remained unchanged at £14,250 with effect from 1 April 2017.

Introduction

2. This decision notice is not intended to be a verbatim record of the proceedings and must not be construed in such a manner.

3. This appeal had been brought pursuant to Regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant had challenged the Valuation Officer's (VO) decision that the appellant's proposal was not well-founded.

4. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the RV for the subject property from 1 April 2017 was not reasonable. The appellant was seeking the following:

    - a 15% end allowance for lack of natural light.
    - the removal of the £350 for the air conditioning as it was not reasonable.
    - A reduction in the tone from £300 to £200

5. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8 - Model Procedure and requested the respondent to present his evidence first.

Issue

6. The issues in dispute were whether the valuation for the subject property was reasonable, should the air conditioning equipment be rateable, and whether award of an end allowance for lack of natural light was appropriate.

Summary of evidence and submissions

7. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge; challenge further exchange; VO's challenge case decision notice; and appellant's challenge submission, photographs of the exterior and interior of the subject property and surrounding properties.

8. The subject property was a café which was part of a terraced row of retail outlets in a narrow street, in Bradford-on-Avon. The buildings in this street were grade II listed. The RV was calculated based on the net internal area (NIA) as follows:

Zone A	40.29m^2 x £300 =	£12,087.00
Zone B	9.80m^2 x £150 =	£ 1,470.00
Kitchen	12.00m^2 x £30 =	£ 360.00
Storage	14.56m^2 x £15 =	£ 218.00

Air conditioning 50.00m^2 x £7 = £350.00

Total: £14,485.00 (rounded down to £14,250)

9. Mr Gibbons referred the panel to the schedule of rental evidence for The Shambles which he argued supported the tone of £300.00.

10. The Appellant argued that the comparison with other shops in The Shambles was not correct. He had asked for the Form of Return for other shops within Bradford-on-Avon that had not been provided. He referred to several properties he considered to be comparable, however he did not provide the size or lease information. These were:

    - 5 Lambs Yard rent £14500 per annum base rate £200
    - 5 Market Street rent £7800 per annum base rate £250
    - 6-7 Market Street rent £18000 per annum base rate £250
    - 33 Market Street rent £13200 per annum base rate £250
    - 37 Silver Street rent 15600 per annum base rate £275

    He contended these properties had lower base rates but were close by and demonstrated the base rate for The Shambles was excessive. It was a small town and the shops referred to were within close proximity, it made no sense that there were different base rates.

11. The appellant also disputed the VO decision to have no regard to a bench marking survey commissioned in 2017 which showed a reduced footfall in the town compared to Bath.

12. The appellant considered it unreasonable to consider the air conditioning unit in the subject property as rateable as it was the only form of heating. He believed there were other properties close by where the air conditioning had not been included in the RV.

13. Mr Gibbons advised that the rating of air conditioning equipment in the subject property was prescribed by the legislation and therefore not something that could be removed.

14. With regard to an end allowance for lack of natural light Mr Gibbons advised all the properties in The Shambles were affected in the same way and therefore this would be reflected in the tone. There was one property within the Shambles which had an allowance, the frontage was different and the whole property was Zone A.

Decision and reasons

15. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the RV 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 based upon three assumptions. These assumptions are:

(a) that the tenancy begins on the day by reference to which the determination is to be made;

(b) 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) 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.

The 2000 Regulations made under paragraph 2(8) of Schedule 6 categorises certain plant and machinery into four classes, all of which are to be assumed to be part of the hereditament. It is Class 2 that is of particular relevance to this case, but it is useful to note the provisions of Classes 1, 3 and 4 also. Class 2 provides as follows: -

"2. Plant and machinery specified in Table 2 below (together with the appliances and structures accessory to such plant or machinery and specified in paragraph 2 of the List of Accessories set out below) which is used or intended to be used in connection with services to the hereditament or part of it, other than any such plant or machinery which is in or on the hereditament and is used or intended to be used in connection with services mainly or exclusively as part of manufacturing operations or trade processes.

In this Class, "services" means heating, cooling, ventilating, lighting, draining or supplying of water and protection from trespass, criminal damage, theft, fire or other hazard."

The plant and machinery specified in Table 2 under Class 2 includes under the heading "Heating, Cooling and Ventilating" (i) water heaters, (v) refrigerating machines, (vii) fans and blowers, (viii) air intakes, channels, ducts, gratings, louvres and outlets, (ix) plant for filtering, warming, cooling, humidifying, deodorising and perfuming, and for the chemical and bacteriological treatment of air, and (x) pipes and coils when used for causing or assisting air movement. It also includes headings for service plant providing lighting, draining, supplying water and the protection from hazards.

16. This was an appeal against an entry in the 2017 rating list and so the rental levels were 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.

17. The panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. Whilst it was not found necessary to list them, this case set out six propositions to have regard to when weighing the evidence and expert evidence.

18. Having due regard to *Lotus and Delta* the panel considered the first proposition was the passing rent for the subject property as the starting point. It was noted that the appellant had a leasehold interest in the subject property from 1 July 2016 at £10,000 per annum (according to the Valuation Officer's records) which had been analysed to £194.19. This was just over one year after the AVD.

19. The panel had regard to the second proposition in *Lotus and Delta* to consider other available rental evidence to confirm or otherwise the level of value indicated by the rent of the appeal property. It was noted that the rents analysed to between £290.37 and £378.79. The panel gave the most weight to 9 The Shambles which was subject to a new lease on 23 October 2014, six months before the AVD, the rent analysed to £329.20. This property was of a similar size to the subject property.

20. The panel also had regard to 7 The Shambles which was subject to a new lease on 8 March 2013, two years prior to the AVD, the rent analysed to £357.88 and 3 The Shambles which was a new lease on 1 August 2015 four months post AVD where the rent analysed to £373.99. These rents supported a tone of £300.00 for the properties in The Shambles in the panel's opinion and indicated the passing rent on the subject property was out of line with the tone and therefore should be given less weight.

21. The panel found that the appellant's comparable properties did not provide any guidance as far as the RV of the subject property was concerned. This was because they were in different streets and there was no information regarding size or lease dates.

22. The panel then considered the rating of the air conditioning unit. The 2000 Regulations made under paragraph 2(8) of Schedule 6 categorises certain plant and machinery into four classes, all of which are to be assumed to be part of the hereditament and therefore rateable. Class 2 was the relevant class as it included heating cooling and ventilation.

23. In this case the panel found the air conditioning unit was not mainly or exclusively part of the manufacturing operation or trade process, as it was not used when not required and the business continued to trade and therefore the air conditioning unit was rateable.

24. The panel was aware that an end allowance should only be made for disabilities affecting the rental value of a hereditament as a whole and not accounted for elsewhere. It was noted from the Valuation Officer's submission, and the photographs provided that all of the properties within the

street would suffer the same disadvantage as this was a very narrow street, therefore the situation was taken into account when considering the rental values as a whole within the street. The appellant had submitted no evidence to prove that the lack of natural light was a disability that had not been taken into account elsewhere.

25. After full consideration of the evidence presented by the parties, the panel found that the appellant had not discharged his evidential burden of proof to demonstrate that the RV of the subject property was unreasonable. The panel therefore dismissed this appeal.

Date: 11 August 2023

Appeal Number: CHG100705671

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.