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; Appeal dismissed.

RE: Bst & Grd Flr, 31 Marylebone High Street, London W1U 4PP

APPEAL NUMBER: CHG100713414

BETWEEN:	Various Eateries Limited	Appellant
	and	
	The Valuation Officer	Respondent

PANEL: Mr M Heslop-Mullens (Chairman)
Mrs F Duggan

CLERK: Mr A Johnson Tech IRRV

ON: 11 October 2023

APPEARANCES: Mr T Warren of Colliers LLP - representing the Appellant
Mr C Tawonezvi - representing the Respondent

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

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. This appeal was dismissed.

2. The panel found that a rateable value (RV) of £131,000 was reasonable, based upon an unadjusted rate (UAR) of £1,100 p/m^2.

Introduction

3. This decision notice is not, and does not purport to be, a verbatim record of the proceedings.

4. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The subject property entered the 2017 non-domestic rating list with effect from 1 April 2017. It was described (and occupied) as a ‘restaurant and premises’ measuring 208.7m^2, located on Marylebone High Street, London and was a short distance from Bond Street and Regent Street underground stations. The Appellant had sought an alteration of the 2017 non-domestic rating list from 1 April 2017 on the grounds that the RV of £131,000 was not reasonable. The Appellant was seeking a reduction to £110,000. The Appellant had challenged the Valuation Officer’s (VO) decision that the proposal was not well-founded.

5. The representatives of both parties stated that they were appearing in dual roles of advocates and expert witnesses. Mr Warren declared that he was representing the Appellant on a contingency fee basis and both Mr Warren and Mr Tawonezvi acknowledged that when presenting evidence as expert witnesses they understood and accepted that their duty was to the Tribunal regardless of whether or not the evidence supported their respective arguments.

6. Mindful of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT (LC), the panel accepted the expert witness evidence on the above 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 Tribunal’s 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).

7. It was therefore appropriate for the panel to consider the ‘expert’ evidence and assess what weight, if any, to give it in the context of the issue before it.

Issues

8. The issues in dispute was the correct RV for the subject property and an allowance of 5% to reflect the shape of the subject property. The shape allowance could, according to Mr Warren, be included within a UAR of £925 p/m^2 or, alternatively, a UAR £975 p/m^2 could be set with the 5% shape allowance applied separately. Either way, this would produce a RV of £110,000. Factual matters, such as the floor areas, were not in dispute.

Summary of evidence and submissions

9. The evidence before the panel comprised of the information and documents which had been disclosed and exchanged between the parties as part of the challenge process.

Decision and reasons

10. This was an appeal against an entry in the 2017 rating list and so 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. The material day in respect of the subject property is 1 April 2017.

11. 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.

12. The starting point for consideration would be the actual rent passing on the subject property. This was a new lease from 26 September 2003 at £130,000 per annum for a term of twenty years. The rent decreased to £100,000 per annum from 26 September 2013 following a rent review and returned to £130,000 per annum from 26 September 2018 following a further rent review. Mr Warren had analysed the 2013 rent to £801 p/m^2. A UAR of £1,100 had been adopted by the VO from 1 April 2017.

13. In broad terms, Mr Warren argued that the existing UAR of £1,100 p/m^2 was excessive in view of the passing rent for the subject property and that of nearby comparable properties. This argument was resisted by Mr Tawonezvi who argued that £1,100 p/m^2 was reasonable.

14. The panel considered the rental and comparison evidence which had been presented by the parties. After doing so, the panel found the best evidence to determine this appeal was the agreement in respect of a similarly sized restaurant almost opposite the subject property at Bst and Gnd Flr 89, Marylebone High Street. The panel understood Mr Warren's anecdotal submission that the UAR had been agreed by the representative of the occupier because he did not receive authorisation to progress the challenge to appeal. However, whatever the reason for the agreement, the fact remained that a base rate of £1,150 p/m^2 had been professionally agreed. This was found to support a finding that a UAR for the subject property of £1,100 p/m^2 was reasonable. In further support, the panel found that when moving south to North along Marylebone High Street the UAR's of restaurants supported this finding.

15. The panel considered Mr Warren's evidence and submissions regarding an allowance of 5% to reflect the shape of the subject property. When doing so, the panel had regard to a document within his evidence submission which showed that the rent of £130,000 had taken into account a 5% reduction to reflect its shape. During questioning, it was conceded that this allowance was likely to have been made during the 2013 rent review but had not been explicitly documented at that time. The panel also noted the submission from Mr Tawonezvi that the VO had taken into consideration the shape of the subject property before applying a UAR of £1,100. In view of this information the panel concluded that the rent of the subject property (which is broadly the basis of its RV) included a 5% allowance to reflect its shape and so any allowance by the panel would be double counting. Furthermore, the panel found that it had not been presented with sufficient evidence to support a 5% allowance even if it had not been taken into consideration as part of the rent setting and/or by the VO when establishing the subject property's UAR.

16. This appeal was therefore dismissed.

Date: 24 October 2023

Appeal Number: CHG100713414

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.