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; Appeal allowed.

Re: Grd Flr 88 High Road, Ilford, Essex IG1 1DL

APPEAL NUMBER: CHG100726165

BETWEEN:	GK Coffee Ltd T/A Starbucks	Appellant
	and	
	Ms Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Miss Lola Moses (Chair and Senior Member)
	Ms Cynthia Caiquo (Senior Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)
REMOTE HEARING 1:	12 December 2022
PARTIES PRESENT:	Mr Martin Brownstone of Marston Associates representing the appellant
	Mr Mahbub Hussain representing the Valuation Officer

Summary of decision

1. The appeal was allowed. The rateable value (RV) of the hereditament was reduced to £56,000 with effect from 30 April 2019 with a main space rate confirmed at £725/m^2.

Introduction

2. This 2017 compiled list appeal had been brought in respect of the property at Grd Flr 88 High Road, Ilford, Essex IG1 1DL occupied by GK Coffee Ltd. The rateable value was £65,500 with effect from 30 April 2019 on a base rate of £850/m^2 with an additional 5% for frontage. The appellants representative sought for the main space rate to be reduced to £550/m^2. He had also requested that, if the decision was in his favour, the same base rate could be applied to other periods with effect from 1 April 2017.

3. The property was a ground floor retail unit on the corner of High Road and Clements Road in central Ilford, built pre-1900. The base rate had been reduced by the valuation officer (VO) from £950/m^2 to £850/m^2 due to a settlement on 98 High Road, a property on the same side of the road as the appeal property.

4. This is not intended to be an exhaustive record of the proceedings. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

5. The base rate and RV of the hereditament.

Evidence and submissions

6. 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.

7. The appellants' representative stated that the valuation of the appeal property was excessive and that he now sought an RV of £56,000 at a base rate of £725/m^2.

8. This was based on a rent agreed on the appeal property on 28 October 2016 of £65,000 p.a. that analysed to a main space rate of £725/m^2. It was an open market letting for a term of 10 years subject to a 12 month rent free period. He submitted that 3 months is the normal rent free period for fit-out and so accounting for the additional 9 months' rent incentive would give an average rent of £55,250 p.a. This would give an RV of £56,000 at a base rate of £725/m^2.

9. He also submitted properties he considered comparable to the appeal property that, in his opinion, supported his challenge.

10. 96 High Road was let on a 10 year lease on a full repairs and insurance (FRI) basis from August 2014 for £40,000 p.a. subject to a 12 month rent free period. If three months of the rent free period were disregarded, the rent was £34,000. He had analysed this to a base rate of £550/m^2 and the VO had analysed it to £675/m^2. He argued that this was good evidential support. He also stated that the VO had wrongly been dismissive of it by putting too much weight on a 2019 break clause.

11. 90 High Road was a new open market letting of a five year lease from 1 October 2016 at a rent of £51,000 p.a. There was a 6 month rent free period of which 3 months should be ignored as standard fit-out. The rent was therefore £48,500 p.a. and this analysed to a base rate of £794/m^2.

12. He therefore contended that the three rental agreements for 88, 90 and 96 High Road, all open market lettings, should be considered when valuing the assessment of the appeal property and they all show a base rate of less than £850/m^2. This was in line with the relevant case law and was the best evidence to use.

13. The VO representative had submitted three settlements in support of the £65,000 RV but the appellant's representative considered these were not better evidence than open market transactions.

14. The respondent's representative stated that the appellant was restricted to the scope of his appeal being a reduction of the base rate from £850/m^2 to £725/m^2 with effect from 30 April 2019.

15. He had submitted evidence of three RV settlements those of 98, 123 and 125 High Road and contended that they supported the existing base rate for the appeal property.

16. 98 High Road was let on 2 September 2013 for £70,000 p.a. on a lease renewal. This analysed to a base rate of £1,146.79/m^2.

17. 123 and 125 High Road, opposite the appeal property, had had their base rate reduced from £950/m^2 to £900/m^2 on agreement.

18. For these reasons he contended that a base rate of £850/m^2 was not excessive for the appeal property.

19. In his opinion, the rental evidence for the appeal property in October 2016 was too far removed from the Antecedent Valuation Date (AVD) to be of value in its RV assessment.

Decision and reasons

20. 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 –"
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> 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".

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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

22. Anything prior to the 30 April 2019 was beyond the jurisdiction of the tribunal.

23. 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.

24. The panel were required to consider the RV assessment of the appeal property from 30 April 2019, there was no jurisdiction to consider the assessment prior to that date.

25. The panel noted that the VO had stated that the greatest weight should be given to the settlement evidence. However, the panel was bound by the Lotus and Delta case and considered that the rental evidence presented by the appellant’s representative was more useful in assessing the RV of the appeal property.

26. The rent on the appeal property was an open market letting in October 2016. Whilst it was 18 months after the AVD of 1 April 2015 and therefore not ideal, the fact that it was clearly an open market letting still carried weight and the panel found it to be significant.

27. The rent on 96 High Road was also an open market letting from August 2014 just six months prior to the AVD and the panel found that this also carried weight in the assessment of the appeal property.

28. The rent on 90 High Road was also a new open market letting from 1 October 2016, again not ideal as it was 18 months after the AVD, but the panel found that this was useful in the assessment of the appeal property.

29. There were, therefore, three rental agreements either side of the AVD that were open market agreements for properties in very close proximity to the appeal property. The panel found that the base rates on these three properties, when analysed, were less than the current base rate of the appeal property and therefore supported a reduction.

30. The panel noted that the VO had included the analysed rent for the appeal property of £725/m^2 in its schedule of comparable rental evidence. Also, that, when questioned during the hearing the VO representative agreed with the appellant's analysis.

31. The panel found that the RV assessment provided by the appellant's representative was a reasonable proposal and supported by market evidence as required by the Lotus and Delta case.

32. For these reasons the panel found that the RV should be reduced to £56,000 on a base rate of £725/m^2 with effect from 30 April 2019.

Order

33. Under the provisions of regulations 38(4) and 38(10) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the rateable value of Grd Flr 88 High Road, Ilford, Essex IG1 1DL to £56,000 with effect from 30 April 2019.

34. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

35. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 4 January 2023

Appeal number: CHG100726165

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.