THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Restaurant and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed.

Re: McDonalds, Alvis Retail Park, Holyhead Road, Coventry CV5 8BW

APPEAL NUMBER: CHG100781614

BETWEEN:	Jake Restaurants Ltd	Appellant
	and	
	Ms A Morley (Valuation Officer)	Respondent

BEFORE: Mr A N Backway (Senior Member) and Miss K Marsden

CLERK: Miss K Hendry

REMOTE HEARING: Monday 4 December 2023

APPEARANCES:

Mr Simons of Altus Group (on behalf of the Appellant)
Ms Gee (Respondent's representative)

Summary of decision

1. Appeal is allowed. The panel determined the rateable value (RV) of £175,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: McDonalds, Alvis Retail Park, Holyhead Road, Coventry CV5 8BW which was entered in the 2017 Rating List as restaurant and premises at rateable value (RV) £190,000 effective from 1 April 2017.

3. The appellant's challenge to the Valuation Officer (VO) was made on 15 October 2021. The appeal to this Tribunal was made on 22 June 2023 following the VO's Decision Notice of 16

March 2023, in respect of the appeal property (hereditament). This is a compiled list appeal, so the material day is 1 April 2017.

4. The appeal property was a drive through restaurant located on a retail park in Coventry. It comprised of a total of 492.7m^2 and had been valued at £430/m^2.

5. Mr Simons appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

6. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

8. The correct rateable value for the appeal property, with effect from 1 April 2017.

Evidence and submissions

9. The bundle provided contained the parties' respective cases and supporting documents.

10. Mr Simons sought a reduction in rateable value to £175,000 based on the basic rate being reduced from £430/m^2 to £395/m^2 with a 10% end allowance for quantum. In support of a reduced basic rate, he referred to comparable properties which were also situated on retail parks within Coventry and had a lower basic rate.

11. In response Ms Gee defended the current RV as she considered it not to be unreasonable.

Decision and reasons

12. 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 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

13. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd* as referred to by both parties. This case had established six propositions, which gave 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 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.'

14. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property.

15. Mr Simons stated that the property had a 20-year Franchised lease with effect from 18 September 2017 at a rent of £206,304 per annum. Ms Gee stated she held details from a form of return which held that there was an open market transaction equating to £206,300 with effect from 17 August 2012 which analysed to £441.97/m^2 supporting the current adopted rate.

16. Having regard to the rental evidence provided, the panel held that it was too far removed from the AVD to attach any weight to it. The panel therefore had regard to the ten comparable properties provided by Mr Simons.

17. Ms Gee had relied solely on the rent and had not provided any comparable properties. However, when questioned she agreed that of all the comparable properties provided, three were most comparable to the appeal property. These were McDonalds, Ventura Park Road, Bonehill, Tamworth B78 3HB which had been valued at £425/m^2. McDonalds, Gallagher Retail Park, Stoney Stanton Road, Coventry CV6 5QE which had been valued at £340/m^2. Lastly, Burger King, Unit B, Central Six Retail Park, Warwick Road, Coventry CV3 6TA which had been valued at £395/m^2.

18. In further support to show that the appeal property was over assessed, Mr Simons had analysed the relationship between the levels of value in the 2010 rating list and the 2017 rating list. There had been an uplift of 19.5% applied to the appeal property in comparison with an average uplift of 9.39%. The panel placed little weight on this argument as the 2017

rating list was a new list based on different economical facts and should be considered independently.

19. Having regard to the three properties, the panel placed greater weight on Burger King as it was the closest in the same locality and therefore agreed that the basic price should be reduced to £395/m^2 which was more in line with the other comparable properties.

20. The panel therefore allowed the appeal and confirmed £175,000 as the correct RV with effect from 1 April 2017.

Order:

21. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £175,000 RV for the appeal property, with effect from 1 April 2017.

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

23. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 22 December 2023

Appeal number: CHG100781614

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.