THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 July 2017; restaurant and premises; rental evidence; comparable assessments; appeal allowed in part.

RE: Costa Coffee Drive Thru, 23 Retail World, Rotherham S60 1TG

APPEAL NUMBER: CHG100790795

BETWEEN:	Costa Limited	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mr FJ Stuart (Presiding Senior Member)
Mr A Hussain (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 25 January 2024

APPEARANCES: Mr S Hornby of Gerald Eve (Appellant's representative)
Mr C Preston (for the Valuation Officer)

Summary of decision

1. The appeal was allowed in part; the assessment was reduced to rateable value (RV) £61,500 with effect from 5 July 2017.

Introduction

2. This appeal has been brought in respect of Costa Coffee Drive Thru, 23 Retail World, Rotherham S60 1TG (the 'appeal property'), which was entered in the 2017 rating list as restaurant and premises at RV £74,500, effective from 5 July 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Gerald Eve made an appeal on behalf of the appellant to the Valuation Tribunal for England (VTE). The appeal was made because the

Valuation Officer decided not to alter the 2017 rating list following the appellant's challenge. The appellant had sought a reduction to RV £57,000 with effect from 5 July 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal property has an area of 178.36m^2 and comprises a modern detached single storey drive thru unit. The accommodation extends to 178.36m^2 and is 176.38m^2 in terms of main space (ITMS). The building was constructed in 2017 and is of steel portal frame and blockwork construction. The accommodation is situated beneath a sloped roof. External elevations incorporate retail glazing and are part rendered and part timber clad. The accommodation is situated off Stadium Way, Rotherham, and has direct access to the A633 which links to A630.

6. The appellant's representative, when appearing as expert witness, stated that he was not on a conditional fee arrangement.

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

Issues

8. The disputed issue related to the main space price to be adopted. The Valuation Officer argued for a price of £425/m^2 resulting in an RV of £74,500 whilst the appellant's representative contended that £325/m^2 resulting in an RV of £57,000 was fair and reasonable.

Evidence and submissions

9. The bundle of evidence comprised the documents exchanged between the parties as part of the challenge process which included amongst other things: the appellant's challenge submission and full supporting information; the exchanges of evidence between the parties; site and location plans; the Valuation Officer's challenge case decision notice, assessment evidence; photographs and details of the appeal property and those cited as comparable by each party; and a copy of the proposed valuation.

Decision and reasons

10. The panel had to determine the rateable value for the appeal property which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD) of 1 April 2015. This common date was used to ensure that every property was treated in a consistent way.

11. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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 –

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

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"

12. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell* (VO) [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and comparable assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties could also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

13. Mr Hornby submitted that the appeal property was held on a leasehold basis for a term of 15 years commencing 26 May 2017 at £67,462.50 per annum for the first five years, with a fixed uplift to £71,960 per annum in year five of the term. The lease was agreed on full repairing and insuring (FRI) terms and with 12 months rent-free. Mr Hornby had analysed the rent to £342.20/m^2, and Mr Preston had analysed it to be £391.03/m^2 if analysed over 10 years, or £404.63/m^2 if analysed over 15 years. Mr Preston argued that Mr Hornby had been wrong to treat the whole 12 months as an incentive with no 3 month adjustment to reflect rateable fit. He also stated that Mr Hornby had not made a 10% addition for fit and that this was in direct conflict with guidance set out by the Royal Institution of Chartered Surveyors (RICS) and the VOA's guidance manual.

14. The panel noted Mr Preston's concerns and Mr Hornby's argument that each analysis should depend on the circumstances of each particular assessment as it had only taken 6 weeks to fit out the appeal property. However, it was aware that the rent had been agreed some two years after the AVD and consequently it found that whilst the passing rent formed a good starting point for determining the RV of the appeal property other evidence should also be taken into consideration.

15. Mr Hornby referred to rental evidence for three properties which he believed to be comparable; the panel noted the rent for Nando's at Unit 21 Stadium Way, had been referred to by both parties as this rent was agreed closest to the AVD on 14 September 2015. This was a larger property at 333.16m^2 with a rent of £115,866, which Mr Hornby had analysed to £347.78/m^2. Mr Preston had amortised this rent over 5 years, 10 years, and 15 years, as £409.20/m^2, £431.58/m^2 and £438.80/m^2 respectively. The panel did not find this property to be directly comparable to the appeal property as it was a restaurant rather than a drive thru coffee outlet, and so it did not attach any significant weight to this evidence.

16. Mr Hornby argued that the appeal property is disadvantaged because it cannot be seen from the main road; it is set back behind two restaurants and you need to be within the retail park to see that Costa is there. He referred to a similar Costa drive through which was situated within a retail park at Lakeside, Doncaster. The panel noted that this property was subject to

a settlement in February 2023. It was very similar in size to the appeal property with an area of 176.97m^2 and had been agreed at £350.00/m^2. The panel found this to be good evidence and it attached some weight to it, however, it was aware that while Mr Preston had not objected to its inclusion at the hearing, he had not been forewarned that Mr Hornby was going to refer to it.

17. Mr Hornby had also provided details of six restaurants on other retail parks in the West and South Yorkshire area which he stated were within reasonable distance of the appeal property and which had a base rate of between £300 and £360/m^2. Mr Hornby believed that their values had been disputed at the challenge stage and later reduced. The panel noted that four of these restaurants were also drive thru, however, as they weren't coffee outlets it attached only moderate weight to this evidence.

18. Mr Preston referred Unit 13, Great Eastern Way Retail Park, Beale Way, Parkgate, Rotherham, South Yorkshire, S62 6EJ. This was a Starbucks drive thru coffee shop situated 600m from the appeal property with an area of 167.15m^2; it was situated on Great Eastern Retail Park and had a base rate of £425/m^2. The panel found this to be good evidence, and it attached some weight to it however, Unit 13 did not appear to have the same disadvantages as the appeal property in terms of being seen from the main road.

19. Mr Preston went on to refer to Costa Coffee 252, Meadowhall Way, Sheffield, S9 1EA, this unit is situated on Meadowhall Shopping Centre. The hereditament is currently assessed at RV £105,000, based on £520.00/m^2. The panel considered that this property was situated in a far superior location close to junction 34 of the M1 motorway and on the edge of one of the country's largest shopping centres. The panel attached little weight to this evidence.

20. Costa Coffee, Poplar Way, Catcliffe, Rotherham, South Yorkshire, S60 5TR and Starbucks Carbrook Hall, Attercliffe Common, Sheffield, S9 2FJ were also referred to by Mr Preston as comparable properties. Costa Coffee, Poplar Way was a roadside drive thru of 205m^2 it is assessed at RV £86,000, based on £420.00/m^2. Starbucks Carbrook Hall was a drive thru coffee shop of 149.58m^2 which is assessed at RV £77,500, based on £520.00/m^2. The panel attached moderate weight to this evidence as it noted that these properties were situated in good locations in prominent positions at the roadside rather than within a retail park.

21. On balance the panel found the appellant's representative's evidence and arguments to be the more persuasive and it determined, considering the basket of evidence before it, that the appeal should be allowed in part. The panel found a base rate of £350/m^2 to be fair and reasonable. This results in an RV of £61,500.

22. This is calculated as follows.

FLOOR	DESCRIPTION	AREA (m²)	PRICE (£/m²)	TOTAL VALUE (£)
Ground	Restaurant	175.72	350	61,502
	Storage	2.64	87.5	231
			Total Value	£61,733
			Say RV	£61,500

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).

Order

24. 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 £61,500 RV for the appeal property, with effect from 5 July 2017.

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

26. 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: 19 February 2024

Appeal numbers: CHG100790795

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.