

THE VALUATION TRIBUNAL FOR ENGLAND



2017 rating list appeal; restaurant and premises; tone of the valuation list; main space price; appeal dismissed.

APPEAL NUMBER: CHG100791298

BETWEEN:	Restaurant Craft Ltd	Appellant
and	Andrew Ricketts (Valuation Officer)	Respondent
RE:	30 Upper Grosvenor Street, London W1K 7PG ("the subject property")	
PANEL:	Mrs N C Yang (Presiding Senior Member) Mr C P Stott (Senior Member)	
CLERK:	Mrs A Sloan	
SITTING ON:	17 May 2023 (remote hearing no.2)	
APPEARANCES:	Mr S Carter of Altus Group (for the appellant) Mr C Cates (Valuation Officer's representative)	

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of £327,500 from 24 September 2019.

Introduction

2. The appellant had made a challenge against the accuracy of the assessment in the 2017 Rating List, by way of a proposal served on the Valuation Officer on 31 March 2022. After considering the proposal and evidence submitted during the challenge period, the Valuation Officer (VO) decided that the proposal was not well founded and refused to alter the existing assessment of £327,500 RV. A decision notice to that effect was served on the appellant on 7 July 2022 and this decision was appealed to the tribunal on 7 November 2022, on the grounds that the current valuation for the hereditament was not reasonable.

3. The subject property was formerly office accommodation that had been converted into a restaurant. It is located on the ground floor with rooms and apartments for the Grosvenor Hotel above. It is situated in the Mayfair area of London. In order to assist the tribunal, the parties had agreed all basic facts and the analysis of the competing rental evidence. The size of the subject property was agreed at 508.66m², or 384.91m² in terms of main space (ITMS).
4. Mr Cates was appearing as advocate for the VO, presenting a case prepared by a colleague. Mr Carter appeared before the panel in a dual capacity as both Advocate and Expert Witness for the appellant. Although the case had been prepared by a colleague, Mr Carter had personally visited the subject property and agreed with the written submission in the evidence bundle. He confirmed that his firm was instructed on a success related fee but accepted that first his duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case.
5. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), the panel accepted this expert witness evidence on the above basis as the appeal was not 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 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 in England). The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.
6. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence.

Issue

7. The issue in dispute before the panel was the correct tone of value for the main space to be applied to the subject property. Mr Carter sought a reduced entry of £290,000 RV based on a main space price of £750/m². Mr Cates defended the Valuation Officer's existing assessment of £327,500 based on a main space price of £850/m².

Evidence and submissions

8. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, photographs of the subject property and other similar assessments in its locality.

Decision and reasons

9. The material date on which to consider the property was 24 September 2019, the date of the latest entry in the 2017 rating list. The value must be considered as at the antecedent valuation date (AVD) of 1 April 2015.
10. The panel first analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

11. The starting point for consideration was the actual rent passing on the subject restaurant. The rent resulted from a new letting at £538,000pa from 1 April 2019. This analysed to £1,397/m² (ITMS), significantly higher than the main space price used for the valuation under appeal at £850/m². As this rent was agreed four years after the AVD, the panel found that it was of limited assistance in determining the value in April 2015 and considered the evidence presented by the parties on comparable properties in the area.
12. Mr Carter contended that the subject property was located in a quiet area of Mayfair that was primarily office and residential in nature, which was less valuable a location for trade than others presented for comparison. With reference to photographs taken outside the subject property, Mr Carter argued that there was little passing trade in Upper Grosvenor Street, and this should be reflected in the main space price applied to the valuation.
13. Mr Cates presented a number of properties with rental evidence. A rent review on Basement and Ground Floor, 121 Mount Street at £227,000 from 1 September 2019 analysed to £1,035/m², suggesting that Upper Grosvenor Street was a higher value location, when compared to the rent agreed on the subject property the same year. An earlier rent review for 121 Mount Street in September 2014 analysed to £810/m², supporting the main space price of £850/m² used for this property's valuation. The panel placed little weight on the 2019 rents for the subject property and 121 Mount Street as they were agreed too far from the AVD but accepted the point that comparison between the two rents suggested Upper Grosvenor Street was not an undesirable area.
14. Sub-basement and Ground Floor, 26-28 South Audley Street was referred to by both parties. Mr Carter contended that the rent on this property was not comparable to that for a restaurant as it is a well-known private members club, named "Harry's Bar". He considered that this premises has a different mode or category of occupation and would command a premium rent for the well-established location. The panel did not agree with this sentiment. It found that, whilst exclusive and private, this property was still a restaurant when considered vacant and to let and therefore comparable to the subject property. The rent agreed on review for 26-28 South Audley Street on 29 September 2015 analysed to £1,060.06/m² and the valuation was based on a main space price of £850/m². Although Mr Carter contended this was a better location than Upper Grosvenor Street, the rent agreed just over five months after the AVD suggested the main space price applied to this property and the subject property was not excessive.
15. The closest rent to the AVD was that agreed on review for Basement and Ground Floor 65 South Audley Street. This rent was effective from 25 March 2015 and analysed to £836.48/m². The panel found that this supported the existing tone.
16. The panel noted that all three properties referred to by the VO were similar in size and location to the subject property and the main space price applied to all three was £850/m². This suggested the same tone was not excessive for the subject property.
17. The appellant's evidence included reference to five other properties, located in Park Street, Grosvenor Street, Brook Street and Avery Row. These properties were valued on a main space price ranging from £600/m² to £700/m². 9 Grosvenor Street was originally valued at £850/m² but reduced to £615/m² in response to a proposal. It was argued that this property was located close to the junction with New Bond Street, with strong footfall, yet was valued on a lower main space price than the subject property.

18. With reference to the map included in the VO's evidence, the panel concluded that the properties cited in Park Street, Grosvenor Street, Brook Street and Avery Row were located further away from the subject property than those relied upon by the VO. All but one of the appellant's comparable properties were considerably smaller than the subject property and the panel found that the tonal evidence carried less weight than rents agreed close to the AVD.
19. The panel placed most weight on the two assessments in South Audley Street, with rents agreed in March and September 2015. These properties were smaller than the subject property, but not significantly so, and the rents provided the most useful evidence of value at the AVD.
20. There was some speculation at the hearing by the parties regarding the financial backing of the appellant company and the extent of the works to convert the subject property from office accommodation to a restaurant. The panel placed no weight on this issue as it had not been explored in the submissions exchanged at challenge stage and there was no evidence supplied in support. The subject property must be valued as if vacant and to let as a restaurant.
21. After considering the evidence presented, the panel concluded that 26-28 South Audley Street (Harry's Bar) was a restaurant, when considered vacant and to let, and was therefore comparable to the subject property. Along with 65 South Audley Street, these rents provided the strongest evidence and supported the tone applied of £850/m².
22. The burden lay with the appellant in this appeal to persuade the panel that the RV was wrong. It found that there was insufficient evidence to demonstrate the location of the subject property was so disadvantageous that it would cause a reduction in the rental bid. The panel was satisfied that rents agreed around the AVD on broadly similar properties in the same area of Mayfair supported the existing tone of £850/m². It therefore dismissed the appeal and confirmed the RV at £327,500 from 24 September 2019.

Date: 13 June 2023

Appeal number: CHG100791298

Right of further 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.