THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; restaurant and premises; accuracy of rateable value; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.*

RE: 133, 134 & 134A Tottenham Court Road, London W1T 5BA

APPEAL NUMBER: CHG100811382

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| BETWEEN | Capital Arches Group Limited | Appellant |
| | and | |
| | Mr A Ricketts<br>Valuation Officer | Respondent |
| PANEL: | Mrs A Fielder (Presiding Senior Member)<br>Mrs S Nix (Senior Member) | |
| CLERK: | Miss N Shepherd (IRRV Hons) | |
| REMOTE HEARING: | Wednesday 7 February 2024 | |
| APPEARANCES: | Mr D Semple from Altus Group, representing the appellant<br>Mr C Cates, representing the Valuation Officer | |

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**Summary of decision**

1. Appeal dismissed. The panel confirmed the Valuation Officer's rateable value (RV) at 133, 134 & 134A Tottenham Court Road, London W1T 5BA as £196,000 with effect from 1 April 2017.

**Introduction**

2. This was a 2017 rating list appeal. The challenge proposal was submitted by Altus Group on behalf of Capital Arches Group Limited and was received by the Valuation Officer on 24 May 2022. The proposal had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate.

The appellant's representative sought a reduction in RV to £163,000 with effect from 1 April 2017 on the basis that the kitchen space should be valued at 50% of the main rate.

3. The Valuation Officer issued a challenge case decision notice on 12 June 2023 which found the proposal not to be well founded and disagreed with the proposed alteration of the list. Following this, in accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal to this Tribunal was then made on the grounds that the valuation of the hereditament is not reasonable. The appeal was registered by the Tribunal on 9 August 2023.

4. The subject hereditament was described in the 2017 Rating List as Restaurant and premises. It is situated on a corner retail unit on the junction of Tottenham Court Road and Warren Street and provides restaurant accommodation over ground and basement floors.

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

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

**Preliminary Issue**

7. The day prior to the hearing Mr Cates contacted the Tribunal and Mr Semple regarding evidence pertaining to properties cited as comparable which were included within Mr Semple's submission and which had not been included within the appellant's challenge document. He stated that as this had not been included within the challenge case and also as no application for this information to be included as late evidence had been submitted that this evidence should not be considered and be withdrawn.

8. The panel had regard to the Valuation Tribunals Consolidated Practice Statement Rating Lists 2017 and later Practice Statement appeal information and evidence Directions, which states:

   *No later than four weeks after being notified of the appeal, the respondent Valuation Officer must serve notice on the Tribunal and the appellant if they believe the appeal was not submitted with the correct evidence or information, particularly if the respondent intends to rely on it at the hearing. This is in accordance with Regulation 9 of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 as amended. The notice must:*

*a) state the date on which the information or evidence was provided under Reg. 9 together with supporting evidence of service and provide a copy of the missing material; or*
*b) state which information or evidence has been submitted with the appeal which was not provided under Reg. 9 and why they object to it being included c) in all cases advise the appellant that they can object in accordance with para. 3.*

9. The panel noted that the appeal had been made on 9 August 2023 and no objection to the comparable properties had been made four weeks following that point. During, questions Mr Cates submitted that he the original caseworker had changed departments and he had only recently been assigned the case and as a result had only become aware of the additional evidence upon reviewing the case.

10. The panel considered that as the evidence had been included within the evidence submission that it was not new evidence. It had regard to the fact that the VO had been notified of the appeal on 9 August 2023 and no objection was made within four weeks of that date. Having consideration to this the panel could find no reason why the comparable properties referred to by the appellant's representative should not be included within the evidence and to therefore continue with proceedings.

## Issues

11. The issue in dispute was whether the kitchen area should be valued at 50% of the main rate.

## Evidence and submissions

12. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

## Decision and reasons

13. 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 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

14. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down *in Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

• Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

• The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

• 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.

• 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 be properly be referred to as giving an indication of that opinion.

• In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

• In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent

15. It was Mr Semple's contention that the area used as a kitchen, which measured $59.98m^2$ and which was situated on the ground floor at the subject dwelling, should be valued at 50% of the main space rate. He submitted that within the valuation this area was currently described as restaurant space, which he considered to be incorrect as it was the kitchen area. Accounting for this he proposed that consideration should be given to relativity and this area valued at 50% of the main space rate, which was common practice for valuation purposes.

16. He referred to three other properties which were fast food premises within the locality and which he considered comparable. These all had the kitchen areas assessed at 50% of the main space rate and Mr Semple contended that these supported the subject dwelling being assessed in the same way. The panel had consideration to this evidence but noted that within the evidence bundle no details of these comparable dwellings other than the address had been

provided, nor were there any photographs submitted. As such, the panel was unable to determine the extent to which these properties were comparable to the subject dwelling and as such attached no weight to this evidence.

17. Mr Cates contended that if the kitchen area been situated behind a structural wall, the proposed 50% for that space may have been more appropriate. However, in this case it was not, and the space therefore had the potential to be utilised as main restaurant space. He submitted that the appellant had fit out the unit to meet its needs in locating and operating the kitchen area on the ground floor but that a different occupier may have opted to locate the space used for a kitchen on the basement floor. A landlord would not differentiate between the two when setting rental levels and would seek the highest and best use in order to maximise return on their investment.

18. The panel was aware that in determining this appeal it had to view the appeal property vacant and to let in accordance with the rating hypothesis. It appeared that Mr Semple had approached this case from the perspective of the occupiers and the ways the different areas of the property had been utilised by them. Whilst he considered that the kitchen area could not be utilised as part of the restaurant area, the panel understood that this space may be used differently by another occupier.

19. The panel found the lack of structural wall separating the two areas to further support this, and that this was clearly evidenced by the photographs showing only a counter separating the kitchen area. In the absence of any evidence to demonstrate that the kitchen area was less valuable than the remainder of the other space the panel was not persuaded that a difference in treatment of the area was warranted.

20. Mr Cates also referred the panel to the case of *Lotus and Delta* in which it was held that the first consideration when setting an RV was the rent passing on the actual property. In this this case the subject dwelling was held on a fifteen-year full repair and insurance lease which had commenced in April 2005, with five yearly rent reviews. At the 2015 rent review an amount of £195,000 was agreed. Mr Cates submitted that as it was standard practice for restaurants to be taken as a shell unit a 10% uplift for fit out was added for valuation purposes. Adding this 10% uplift resulted in a figure of £214,500 per annum, which was higher than the current RV at the subject dwelling, further supporting it not being unreasonable. Whilst Mr Semple contended that less weight should be given to this evidence due to it being a rent review the panel considered it to be good evidence given the proximity to the AVD.

21. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, and the panel found that in this case the appellant had failed to do so. Having considered both parties’ evidence and submissions the panel concluded it was not satisfied that the appellant had demonstrated that the kitchen area should be assessed at 50% of the main space rate. As such it found the existing assessment was fair and reasonable and the RV should remain at £196,000 from 1 April 2017.

22. The appeal is therefore dismissed.

**Date:** 6 March 2024

**Appeal Numbers**: CHG100811382

**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.