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 dismissed.

Re: 343 Kensington High Street, London W8 6NW

APPEAL NUMBER: CHG100874274

BETWEEN:	Romulo Restaurant Group UK Limited	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mrs A O Adeola (Senior Member) and Miss E Antrobus

CLERK: Miss K Hendry

REMOTE HEARING: Monday 11 September 2023

APPEARANCES:

Ms R Emms of Hampton Lovett Consultant Surveyors Ltd (on behalf of the Appellant)
Mr S Nazir (Respondent's representative)

Summary of decision

1. Appeal is dismissed. The panel determined the rateable value (RV) of £52,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 343 Kensington High Street, London W8 6NW which was entered in the 2017 Rating List as restaurant and premises at rateable value (RV) £52,500 effective from 1 April 2017.

3. The appellant's challenge to the Valuation Officer (VO) was made on 1 November 2022. The appeal to this Tribunal was made on 11 April 2023 following the VO's Decision Notice of 22

February 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 mid-terraced building of brick construction arranged over five floors including a basement. The appeal property provides retail accommodation on the ground and basement floor with residential space to the floors above. It was located on Kensington High Street with excellent transport links within walking distance to Kensington / Kensington Olympia.

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

Preliminary Issue

6. The day before the hearing Mr Nazir confirmed that he had reviewed the rental schedule and determined that the total significant area had been miscalculated and should read $88.32m^2$ which resulted in a change to the analysed rent figure to £622.74, he intended to address this before the panel as a preliminary issue. This was disputed by Ms Emms as it was not clear on how Mr Nazir had arrived at this calculation.

7. The panel adjourned briefly to consider the request and determined that it was inappropriate for Mr Nazir to revise his evidence at such late notice and was of the opinion that this would prejudice Ms Emms. Therefore, the panel did not permit Mr Nazir to make any adjustments and proceeded to hear the appeal based on the valuation already provided in the bundle.

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.

Decision and reasons

10. 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 of 1 April 2017 for this appeal.

11. 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.'

12. 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.

13. Ms Emms sought a reduction in rateable value to £21,750 with effect from 1 April 2017 based on the basic rate being reduced from £600psm to £330psm.

14. She argued that the scheme reference applied to the appeal property (384268) has a tone which ranges from £600psm to £1,500psm was incorrect for the appeal property. This applied to restaurants situated in Kensington High Street in the Royal Borough of Kensington and Chelsea which were valued on an overall basis, but excluding restaurants which are predominantly non ground floor, and any valued on a zoned basis.

15. Ms Emms contended that the appeal property should be valued in line with scheme 389487 which was applicable to shops situated in Kensington High Street in The Royal Borough of Kensington and Chelsea, including restaurants valued on a zoned approach. The tone in that scheme ranged from £330psm to £2,700psm. In support of a revised basic rate to £330psm she provided comparable properties which were situated close to the appeal property and had a lower base rate than £330psm.

16. Ms Emms argued that the current scheme had not factored in the passing rent of the property which was strong evidence as to why the current rateable value was unjust and unfair. The current passing rent for the appeal property was £57,250 with a rent review conducted in July 2019 and was retrospectively increased from 4 July 2018. The current lease in place is not due for another review until 2025. She had analysed the rent to equate to a base rate of £399.23psm.

17. In response Mr Nazir stated that the basic rate of £600psm was not unreasonable and sought for the panel to dismiss the appeal. He argued that the appeal property had been appropriately valued on an overall basis as a restaurant similar to other restaurants in the locality. He contended that the rent on the appeal property was effective from 30 June 2020 and therefore little weight should be attached to it as it was too far from the AVD, as was the

previous lease which was effective in July 2013. He therefore referred to rental evidence for other restaurants on the same street.

18. 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, and therefore must have regard to the comparable properties provided by the parties.

19. The panel was not persuaded by Ms Emms argument that the appeal property should be valued on a zoned basis, when other restaurants in the locality had also been valued on an overall basis.

20. Having regard to the rental evidence of comparable properties, the panel held the strongest evidence was Bst and Gnd Floor 1 Kensington High Street which had a new lease effective from April 2015. The rent for this property had been analysed to £558.72. This property had been subject to a challenge in which the base rate had been reduced on agreement to £675psm, supporting £600psm for the appeal property.

21. Ms Emms had argued that the VO's comparable properties were more valuable as they were situated either closer to the station or on the opposite side of the road. However, the comparable properties were located less than 0.8 miles away and the panel held that the reduced rate of £600psm, in comparison to £675psm at 1 Kensington High Street had already taken into account the closer proximity to the station. The panel held that there was insufficient evidence to reduce the basic rate any further.

22. The panel therefore dismissed the appeal and confirmed £52,500 as the correct RV with effect from 1 April 2017.

Date 29 September 2023

Appeal number: CHG100874274

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.