VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeals; restaurant and premises; base rate in dispute; analysis of rent on comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee (1923) 2KB 679 CA; appeal allowed.

APPEAL NUMBER:	CHG100875382	
RE:	(INC 1A Acton Mews) R/A 334 AT 1, Dunston Street, London E8 4EB (the "subject property")	
BETWEEN:	Tonkotsu Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	8 July 2024	
BEFORE:	Mr Amran Hussain, Presiding Senior Member Ms TM Blades, Senior Member	
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)	
APPEARANCES:	Mr M Parvin (on behalf of the appellant) Ms S Cole (on behalf of the respondent)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The Tribunal Panel confirmed the revised rateable value (RV) of £24,000 for the subject property with effect from 1 April 2018.

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered in the 2017 rating list as ‘restaurant and premises’ at an RV of £41,000 with effect from 1 April 2018. The challenge proposal was submitted on 3 November 2022. The challenge sought a revised assessment of £24,000 RV with effect from 1 April 2018. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice to this effect on 14 December 2023.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appellant maintained that the RV of £41,000 was unreasonable and appealed the decision which was received by the Tribunal on 14 February 2024.

5. Mr Parvin appeared on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Parvin confirmed that he was instructed under a contingency fee and 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 his client’s case.

6. 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).

7. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

8. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

9. The subject property is a restaurant located on a railway arch in Hackney in close proximity to Haggerston Overground Station.

10. The issue between the parties is whether the subject property should be valued at a main rate of £220/m^2 as submitted by the VO or a main rate of £100/m^2 with a 30% uplift to reflect the restaurant use as the appellant’s agent submitted. The parties had agreed prior to the hearing the need to include an entry for the air conditioning and CCTV in the RV.

Relevant Law

11. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

2(1) 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. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

13. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2018.

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.

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

(2) 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)).

(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 valuation officer. In subsequent proceedings on that list therefore they can be 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 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.

(6) 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.

Discussion

15. 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. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2015.

16. Mr Parvin drew the panel's attention to the appellant's lease of the subject property which commenced on 9 May 2016 for nine years with the rent being £42,000 per annum. This analysed to £234.13/m^2 which is below the present tone of £245/m^2 despite being over a year from the AVD which he submitted demonstrated how unreasonable to current tone is. The lease on the subject property was unreliable in providing an example of the open market and should be given little weight as it contains a tenants' beak clause allowing the tenant to terminate the lease with three months notice at any time after the first term with no break clause fee. This he argued led to an inflated rental figure due to the uncertainty of the term of occupancy for the landlord.

17. Mr Parvin submitted that the subject property was in the incorrect scheme 420886 when it should be in scheme 445125. The subject property had been valued in the restaurant scheme which is not appropriate for it as the railway arches are fundamentally different to a standard restaurant retail unit. He submitted that the unadjusted rate should be reduced to £100/m^2 plus a 30% uplift in line with the other railway arches in that scheme in the vicinity of the subject property. He drew the panel's attention to other comparable restaurants in the same parade as the subject property being:

    a. 338 Railway Arch, Acton Mews London E8 4EA which is currently valued at the railway arch tone with a 30% uplift. It is identical to the subject property with the same internal specification and is only 35m away. The lease commenced in November 2014 with a rent of £34,000 but the landlord is responsible for the external repairs and insurance and Mr Parvin explained that he had added an adjustment for each -5% and -3% respectively. The lease had a three month rent free period which adjusts the rent to £29,712.81 per annum. The current tone for this property is £125/m^2 plus a 30% uplift for the restaurant quality which equated to £162.50/m^2.

    b. 337 Railway Arch, Acton Mews London is currently valued as a high end restaurant and in the same railway arch as the subject property. It was altered by the VO on 12 September 2022 to be valued as a railway arch with an uplift for the restaurant quality.

c. 322-324 Railway Arch, Acton Mews London is used as part restaurant with a 30% uplift. It was brought into the 2017 rating list and has not been challenged or amended by the VO and so is deemed to be settled as the 2017 list is now closed.

18. He submitted that these comparable properties were good comparators for the subject properties as they had the same mode and category of use and were in the direct vicinity of the subject property and they supported £100/m^2 with a 30% uplift for the subject property.

19. In connection with the comparable properties put into evidence by the VO Mr Parvin argued that they were fundamentally different to the subject property as:

a. 397-400 Railway Arch is a pub where they brew, sell and consume alcohol on the premises with pub food as a secondary purpose which is not the same as the subject property. It is outside Hoxton station and so is not in the vicinity of the subject property.

b. Railway Arches 463-466 Adj 89a Rivington Street is a club in Shoreditch and so is not at all comparable with the subject property.

c. 9 Prince Edward Road, London is a new purpose built restaurant and is far superior to the subject property and so the subject property should have a lower tone than the tone of £150/m^2 which is applied to this property.

20. Ms Cole submitted that the comparable properties put into evidence are all undervalued and should in accordance with the Court of Appeal case of *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee (1923) 2KB 679 CA* be corrected. She referred the Tribunal to the judgment in *Ladies Hosiery* which was authoritative. In his judgment Scrutton L.J. at p.p. 686-688 stressed the “vital principle” of rating law that “*each hereditament should be independently assessed*” and that correctness should not be sacrificed to ensure uniformity but if possible to “*obtain uniformity by correcting inaccuracies rather than making an inaccurate assessment in order to secure uniform error*”.

21. Ms Cole drew the panels attention to the following rental evidence:

a. Subject property letting in May 2013 for three years with a rent of £30,000 per annum. It had a rent free period of one and a half months for fit out and along with the external repairs the adjustment would analyse to £158.01/m^2 with 10% addition for tenant’s improvements taking it to £173.8/m^2.
b. Subject property lease renewal May 2016 had a term of nine years, a rent £42,000 and following adjustments for external repairs analyses to £243.70/m^2.
c. Subject property rent review November 2019 rent £55,740 adjusted for external repairs analyses to £277.72/m^2. Considering 10% for tenant’s improvements is £304.70/m^2.
d. 338 Railway Arch new letting 24 November 2014 rent analyses to £191/m^2 or £210/m^2 considering 10% addition for tenant’s improvements.

e. 322-324 Railway Arch new letting 1 April 2021 rent analyses to £272/m^2 with 10% tenant's improvements £299/m^2.
f. 337 Railway Arch new letting 1 April 2021 rent analyses to £281/m^2 with 10% tenant's improvements £309/m^2.

22. The panel found:
    a. The rent on the subject property was artificially high due to the break clause. It also included the landlord being responsible for external repairs. This meant the rent needed adjustments to be used as evidence in calculating the assessment and the panel therefore found it was not helpful in determining the tone to be applied.
    b. The appellant's comparable properties were close in proximity to the subject property and were the same mode or category of occupation and were therefore good comparable properties.
    c. The VO comparable properties were some distance away from the subject property and had a different mode or category of occupation and so the panel put little weight on this rental evidence. The rental evidence on 322-324 and 337 Railway Arch were also too far from the AVD to be relevant.
    d. The VO had commented that the RV on the appellant's comparable properties were incorrectly calculated and needed reviewing. The panel was aware that the VO must not impugn his list and so put little weight on this evidence. The 2017 rating list has now closed and so there could be no changes made to these RV's in any event.

23. The panel found the correct RV for the subject property is £24,000 as outlined below:

Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Restaurant	156.92	130.00	20,400
Ground	Public toilets	11.72	50	586
Ground	Staff toilets	N/A	0	0
Ground	External Storage	17.38	17.40	302
Ground	Outdoor sitting area	105.04	12.48	1,311
Additonal Features of the property included in the valuation				
	Air conditioning system	156.92	7.00	1,098
	Hard surfaced fenced land	15.43	18.00	278
	Plant and Machinery			112
Total Value				**£24,087**

RV				**£24,000**

Disposal

24. Having considered both parties' comments on the comparable properties provided, the panel concluded that the base rate of £220/m^2 was not fair and reasonable. The proposed base rate of £100/m^2 plus a 30% uplift was fair and reasonable taking into account the basket of evidence. In view of the above findings and conclusions, the Tribunal Panel allowed the appeal.

Order

25. As a consequence of the above decision, the Valuation Officer is ordered to amend the 2017 Rating List entry to restaurant and premises at £24,000 RV, with effect from 1 April 2018 within two weeks of the date of this Order.

Refund of fees

26. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision.

Date issued to parties: 7 August (reissued 23 August 2024)

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. Paragraph 23 is amended to substitute the RV calculation with agreed corrected RV calculation and to replace every mention of "£23,000" as the new RV with "£24,000".

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.
