

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; play barn and premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence supported a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed.

RE: Little Subs, Units 2&3 R/O 331 Rawlinson Street, Barrow in Furness, Cumbria LA14 1BS

APPEAL NUMBER: CHG100900328

BETWEEN: Little Subs Barrow Ltd Appellant

And

Ms A Hitchings Respondent
(Valuation Officer)

PANEL: Mr K Sheth, (Presiding Senior Member)
Ms C Caiquo, (Senior Member)

CLERK: Ms R Muller

REMOTE HEARING ON: Thursday 15 February 2024

APPEARANCES: Ms R Emms from Hampton-Lovett, representing the Appellant
Mr S Corless, representing the Respondent

Summary of decision

1. Appeal allowed. The panel considered that the existing entry in the 2017 Rating List for Little Subs Units 2&3 R/O 331 Rawlinson Street, Barrow in Furness, Cumbria LA14 1BS (the subject property) of Rateable Value (RV) £43,250 was excessive and determined that the RV proposed by the appellant's representative of £30,250 was reasonable.

Introduction

2. This is a 2017 rating list appeal. The subject property had been entered in the 2017 rating list as 'play barn and premises' at a RV of £43,250 with effect from 1 April 2017. Therefore, the material day was 1 April 2017. A Check had been completed on 28 September 2022 and a Challenge submitted on 24 January 2023. The Challenge stage was completed on 8 June 2023 with no change to the RV of the appeal hereditament. An appeal was received by the Tribunal on 5 October 2023 against the Challenge decision.
3. Ms Emms appeared on behalf of the Appellant as advocate and Mr Corless appeared on behalf of the Respondent as both expert witness and advocate.
4. The subject property was constructed between 1955 and 1964 and was refurbished in 2014. It was an inner terrace single storey unit, 979.06 m² in size and was constructed of block/brick walls under a metal pitched roof. It benefited from full central heating. It is located to the rear of Tesco Express on Rawlinson Street in Barrow in Furness.
5. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary issue

6. Mr Corless had an issue with his connection during the hearing and was unable to fully participate using Microsoft Teams. His connection would freeze, or he would lose connection totally. Therefore, the panel allowed him to join by mobile audio only in order to fully participate in the hearing.
7. It was noted that each time Mr Corless lost connection, the clerk moved the panel into another virtual hearing room and the hearing was adjourned until Mr Corless was able to reconnect. Both parties were satisfied that they had been able to fully present their cases.
8. It was also noted that the Senior Member also lost connection at one point but had been able to rejoin without any further issues.

Issues

9. The issue between the parties concerned the RV of the appeal property and specifically, the base rate per m² that should apply. The original challenge had sought a revised valuation of £24,000 RV based on an assessment of £25 per m² for the subject property. The Valuation Officer (VO) had originally defended the current RV of £43,250 based on the base rate of £45 per m².

10. However, on 7 February 2024, Mr Corless undertook an inspection of the subject property in order to comply with the requirements of an expert witness. During the inspection, it was noted that the subject property had various areas utilised as part of the play barn operations. This included a kitchen and disabled / male and female toilets. These adaptations were taken into account as well as the size of the subject property, which was revised from 963.46 m² to 979.06 m². Mr Corless proposed a revised assessment of £42,750 RV, based on the current base rate of £45 per m².
11. Ms Emms agreed with the areas with regards to the subject property provided by Mr Corless, and as such, submitted an amended base rate of £32 per m² which resulted in a revised assessment of £30,250 RV.

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, further evidence exchanges, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

Decision and reasons

13. The term 'Rateable Value' is defined in paragraph 2(1), 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".
14. 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).

15. 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 2017.
16. Both parties had referred to *Lotus and Delta v Culverwell*. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.
17. Ms Emms had relied heavily on the subject property's rent to justify a reduction in its RV. A lease had commenced on 1 February 2015 at full repair and insuring (FRI) purposes for a period of 12 years with five-yearly rent reviews. The rent payable had been set at £30,000. The panel noted that this lease had been between another occupier and the landlord, however, it was still close to the AVD of 1 April 2015 so attached significant weight to it. It was full FRI so did not require any adjustment to be made. Ms Emms had analysed this rent to equate to £31.42 per m², which supported the proposed revised base rate of £32 per m².
18. In support of her proposed revised RV, Ms Emms included comparable properties which were located circa 45 to 50 miles away from the subject property and also comparable properties that were owner occupied, so no rents payable. The panel held that these properties did not assist it when making its decision.
19. The panel turned its attention to the evidence provided by Mr Corless. He had provided rental evidence of the subject property as rent passing paid by the Appellant when it took occupation in 2018. The panel noted that the lease commenced from 1 July 2018 at a passing rent of £36,000. The panel held that it was too far removed from the AVD of 1 April 2015 to be of assistance.
20. Mr Corless had also provided details of two comparable properties which were located adjacent to the subject property. Laserquest Unit 1 R/O 331, Rawlinson Street, Barrow in Furness, Cumbria LA14 1BS, with an RV of £16,500 and Escape Room Unit 1 r/o 331, Rawlinson Street, Barrow in Furness, Cumbria LA14 1BS with an RV of £10,500. Both these properties had been entered into the 2017 Rating List as 'Attraction and premises'. They both had new leases, which had commenced from 1 January 2016 and 1 June 2016, for a period of 10 years with rents passing at £7,200 and £14,000 respectively.
21. Ms Corless stated that both these properties were much smaller in size than the subject property at 199.30 m² and 315.22 m² with adopted base rates of £53 per m². The rents of the adjacent units of Laserquest and Escape Room were considered, but their leases had been agreed too far from the AVD to be of any assistance. The panel also noted that rental analysis of these two properties had not been provided.

22. The panel referred to *Lotus and Delta v Culverwell*, where the rent on the subject property was considered to be the correct starting point. The analysis of the rent of the subject property which had commenced in February 2015 with a passing rent of £30,000, which had equated to £31.42 per m². Therefore, the panel placed the most weight on the subject's rent passing as it was only two months prior to the AVD of 1 April 2015.
23. Having considered both parties' evidence and the rental analysis for the subject property, the panel concluded that the unadjusted rate of £45 per m² adopted by the Respondent was excessive and that the rental evidence for the subject property supported a reduction to £32 per m², which was in line with the analysis of the passing rent at £31.42 per m² as at 1 February 2015.
24. Therefore, the appeal was allowed, and the panel determined a revised RV of £30,250 with effect from 1 April 2017.

Order

25. 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 alter the entry in the rating list for Little Subs Units 2 & 3 R/O 331 Rawlinson Street, Barrow in Furness, Cumbria LA14 1BS to rateable value £30,250 with effect from 1 April 2017.
26. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.
27. 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).

Date: 1 March 2024

Appeal number: CHG100900328

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.