

THE VALUATION TRIBUNAL FOR ENGLAND



Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Restaurant and premises; main space price; appeal dismissed.

RE: Unit 27B, New Street Station, Birmingham B2 4QE

APPEAL NUMBER: CHG100900475

BETWEEN:	Five Guys JV limited	Appellant
	and	
	Ms L Formela-Osborne (Valuation Officer)	Respondent

PANEL: Dr S Penni (Presiding Senior Member)
Mr N De Freitas (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 27 March 2024

APPEARANCES: Mr J Davies from Gerald Eve (Appellant's representative);
Mr D Humes (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The panel concluded that the main space price of £1,000/m² and the resultant rateable value thereafter referred to as RV of £197,000, was correct.

Introduction

2. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 24 January 2023. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was well founded and agreed to reduce the RV from £216,000 down

to £197,000. A decision notice to that effect was served on the appellant on 1 June 2023. His representatives then appealed the VO's decision to the Tribunal on 29 September 2023 on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. The appeal property was a restaurant and premises, located within New Street Station, Birmingham with an agreed area of 196m².
4. Mr Davies appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a fixed fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Davies' declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.
5. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).
6. The panel hearing the evidence considered the “expert” evidence and assessed what weight, if any, it should give to it in the context of the matters in issue before it.
7. Mr Hume was representing the VO in the dual role of advocate and expert witness.
8. Prior to the hearing, the VO raised a preliminary issue in that Mr Davies included the Tribunal decision of *Select Service Partner v Ricketts*, (Appeal numbers CHG100339899, CHG100140083, CHG100140079 and CHG100151377) when he submitted his appeal to this Tribunal. The VO objected to the inclusion as it had not previously been disclosed at the challenge stage. Mr Davies also subsequently asked to include tonal evidence for 87 High Street, Erdington, Birmingham, B23 6SA (appeal number CHG100870063) to be allowed. These matters were referred to a Senior Member of this Tribunal who allowed this new evidence to be included and issued a decision to this effect on 19 February 2024.
9. This hearing was held remotely via Microsoft Teams.
10. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

11. The issue in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Davies had sought a reduced entry of £157,000 RV based on an unadjusted value of £765/m². Mr Humes defended the VO's existing assessment of £197,000 based on an unadjusted value of £1,000/m².

Evidence and submissions

12. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence for the appeal property and the parties' comparable properties, photographs of appeal property, their skeleton arguments and the new evidence that was allowed.

Decision and reasons

13. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.
14. The starting point for consideration was the actual rent passing on the appeal property. The lease was entered into on 20 September 2015. It was a stepped rent starting at £150,000 for the first year increasing to £159,100 for the third year. This analysed to £787/m².
15. However, there was also a supplementary top up rent if the trade exceeded the limit specified within the lease. Mr Davies argued that as the rent was a minimum guaranteed rent (MGR), the supplementary top-up element should not be included when considering the RV. This was supported by the Tribunal decision of *Select Service Partner v Ricketts*.
16. Mr Davies accepted that there was limited rental evidence in the locality as there were only a few units that were located in that part of the station. Unit 28A had only been occupied for a short time and therefore no challenge would have been submitted by the occupier. He also considered that Unit 25 was not comparable to the appeal property as it had dual access from the concourse as well as from beyond the ticket barriers which made it more valuable.
17. He considered that the only other comparable unit within the locality was 27A, which the rent analysed to £360/m² which further supported his argument that the RV for the appeal property was too high.
18. Mr Davies further argued that a tone had not been established as not enough time had elapsed from the start of the 2017 rating list, due to the changes to the appeals system and he was relying purely on the rent of the appeal property and Unit 27A to support his argument.

19. The VO contended that a tone had been established in the locality. Other units such as Units 28A and 25, the rent for these units had been analysed at £1,370/m² and £1,127/m² with the VO adopting a value of £1,100/m² to determine the RVs. The VO had also provided a list of other properties within New Street Station which demonstrated to the panel that a number of challenges had been submitted and well founded by the VO. The panel also noted that a couple of assessments had not been challenged.
20. There were arguments about the value of Unit 27A as Mr Davies who also acted for the occupier of that unit disagreed with the RV but, he had failed to submit a challenge on time. Mr Hume argued that the lack of challenge suggested that the appellant was satisfied with the current RV. It was 30m² smaller than the appeal property and had a RV of £182,000 based on a value of £1,000/m².
21. Other units that were located within the concourse which had also been valued at £1,100/m², such as Units 29A, 29B and 36B. Whilst there were arguments that they were shops rather than restaurants, nonetheless, vacant and to let, the panel considered that these units supported the VO's argument that there was a settled tone in the locality at £1,100/m².
22. The panel was aware of the judgment of *Futures (London) Ltd v Stratford (VO)* [2006] RA 75. In particular paragraph 25, the Lands Tribunal member referred to the stages leading to the establishment of a 'tone of the list':
- “At first when a new rating list is put on deposit assessments will carry relatively little weight: they are opinions of value by the valuation officer as yet unchallenged and agreed or determined by a Valuation Tribunal or this Tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled rents will be subsumed into assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position at any time regarding tone of the list is a question of fact.”
23. The VO had provided a list of a number of assessments at New Street station which showed that there had been a number of settlements as a result of challenges.
24. Given the above, the panel was satisfied that due to the number of settlements, a tone had been established for units in New Street Station. It also found the assessment for Unit 21/22 most persuasive. It was located close to the appeal property, but only had access from beyond the ticket barrier. It had an area of 96m² which was half the size of the appeal property. A challenge had been submitted and the VO agreed to reduce the RV down to £90,00 based on a value of £925/m². The panel considered that due to its location after the ticket barrier, the unit was disadvantaged compared to the appeal property and therefore the panel considered that this settled

assessment did not justify a reduction to that the appellant was seeking (£765/m²).

25. Based on this assessment and Unit 25 which could be accessed from both sides of the ticket barriers and it was close to where the appeal property was located. This unit was also smaller than the appeal property and had a RV of £147,000 based on a value of £1,000/m².

26. Given the above, as the panel had determined that a tone had been established in New Street Station, and other units in the locality had been determined, the panel concluded that the appeal property should also be valued at £1,000/m² and determined that the resultant rateable value of £197,000 was not excessive. The panel dismissed the appeal.

Date: 17 April 2024

Appeal number: CHG100900475

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.