VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; retail unit on the underground level of Kings Cross Station; the panel placed greater weight on rental evidence from the immediate locality; Appeal allowed.

APPEAL NUMBER: CHG100936915

RE: Ice Cube 1 Northern Ticket Hall, Kings Cross Underground Station, London, N1 9AL
(the "appeal property")

BETWEEN: Gramos Ltd — Appellant

and

Mr A Ricketts (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: Friday 11 October 2023

BEFORE: Mr B Proudfoot, Presiding Senior Member
Mr WJ Read, Senior Member

CLERK: Mrs Rachel James IRRV (Hons)

APPEARANCES: Mr T Warren of Colliers International (on behalf of the appellant as both advocate and expert witness)
Mr B Kangethe (respondent's representative as both advocate and expert witness)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The Tribunal panel determined that the current assessment of £79,500 Rateable Value (RV) was unreasonable and that an assessment of £29,500 RV, with effect from 15 November 2021, more accurately reflected the appeal property and its location at underground level.

Introduction

3. This appeal had been brought in respect of the following: Ice Cube 1 Northern Ticket Hall, Kings Cross Underground Station, London, N1 9AL, which was entered in the 2017 Rating List as retail unit at £79,500 RV, with effect from 15 November 2021.

4. The appellant's challenge to the Valuation Officer (VO) was made on 3 March 2023. The appeal to this Tribunal was made on 3 May 2024, following the VO's decision notice of 3 January 2024, in respect of the appeal property (hereditament). The VO's decision notice reduced the assessment from £96,000 RV to £79,500 RV, with effect from 15 November 2021. The material day in this appeal is 15 November 2021.

5. Mr Warren was appearing on behalf of the appellant as 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).

6. Mr Warren confirmed that neither Colliers International nor himself were instructed by the appellant on a success related fee basis. He also declared that he understood and accepted that his duty was 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.

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

<u>*Background*</u>

8. The appeal property is a small coffee shop/retail unit situated at underground level in the Northern Ticket Hall of Kings Cross Underground station. It is a kiosk type of retail unit measuring 29.64 m^2. It has a full glass frontage and is located adjacent to the entry point for the Victoria, Piccadilly and Northern lines.

9. Following the challenge, the VO reduced the base rate applied to the appeal property's assessment from £3,000/m^2 to £2,500/m^2, this equated to a discount of 37.5% from the retail units located on the ground floor of the station. At challenge stage, the VO also removed the addition for air conditioning.

10. The VO was defending the existing base rate of £2,500/m^2. In support of this base rate, the VO referred to the assessments of retail units of a comparable size located within the Western Concourse of Kings Cross Station and St Pancras International Station. In contrast, Mr Warren sought a reduction in the base rate to £1,000/m^2, which was in line with the rents passing on other retail units in the immediate locality on Northern Ticket Hall of Kings Cross Underground.

<u>*Preliminary issue*</u>

11. Both parties confirmed that the material date in this appeal was 15 November 2021 and that the size of the appeal property had been agreed at 29.64 m^2. Following the appeal property's area being agreed at 29.64 m^2, the VO now contended that the correct assessment was £74,000 RV.

12. After the appeal had been lodged, Mr Warren sought to provide additional evidence in relation to two comparable properties, namely Units 12 and 19, Western Concourse, Kings Cross BR Station. The VO had provided a supplementary document. Neither party objected to the inclusion of the other's additional evidence. As such, the panel proceeded to hear the appeal having regard to all the evidence presented.

Relevant Law

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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 15 November 2021 for this appeal.

Discussion

14. The panel noted that the only remaining issue in dispute was the correct base rate to be applied to the appeal property's assessment. In deciding this issue, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976], as quoted in the VO Decision. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. 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 and consideration as to how that rent compared to the statutory definition of rateable value. The panel noted that there was a rent passing on the appeal property of £60,000 pa, with effect from 15 November 2021, which the VO had analysed to £1,660.56/m^2 (following the agreed area at 29.64 m^2 this was revised to £1,789.97/m^2). This rent was a new lease with effect from 15 November 2021. The rent was subject to six months rent free then six months at half rent. The lease also provided for annual RPI Index linked increases and a turnover rent calculated as a percentage of gross turnover.

15. However, after having regard to the second proposition set out in *Lotus & Delta*, the panel attached less weight to the appeal property's rent as it had been set too far removed from the AVD. Furthermore, several adjustments were required to bring it back into line with the statutory definition.

16. Accordingly, the panel went on to examine the third and fourth propositions outlined in *Lotus and Delta* and had regard to the rents and assessments placed on comparable properties.

17. Both parties had provided schedules detailing their comparable rents. Mr Warren contended that the appeal property should be valued in line with rental evidence from the immediate locality, and in particular, had provided rents passing on Units 1, 2 and 3 Northern Ticket Hall, Kings Cross Underground Station. The VO had provided rental evidence from St Pancras International Station and the Western concourse of Kings Cross Station.

18. The parties disputed the comparability of each other's rental evidence. On the one hand the VO had referred to shop and premises of a comparable size that were all located on the ground floor of the Western Concourse at Kings Cross Station and St Pancras International Station. The VO contended that the reduction that had already been applied in the base rate from £3,000/m^2 to £2,500/m^2 more than fairly reflected the appeal property's position on the

underground. He pointed out that the appeal property was situated in a busy location close to the entry to the Victoria, Piccadilly and Northern lines. On the other hand, Mr Warren's comparable properties were from the immediate vicinity located in the Northern Ticket Hall at Kings Cross Underground Station.

19. After having full regard to both parties' comments, the panel was of the opinion that whilst both parties' comparable properties were located within London rail and underground stations, the actual localities had vast differences. The panel held the view that passenger habits at the two locations were totally distinct. It considered that passengers on the ground floor of busy stations such as St Pancras and Kings Cross that hosted both national, and international trains in the case of St Pancras, would generally arrive at the stations ahead of their scheduled departure times, and either wait on the concourse or spend time looking in the surrounding shops on the ground floor of the station. This was in contrast to passengers on the underground that would walk from entry to their chosen line generally without stopping. Travel was much faster paced on the underground as opposed to the ground floor of the stations were passengers congregated awaiting details of their trains.

20. Therefore, whilst the VO's comparable properties were more similar in size to the appeal property, due to the vast differences in the two localities, the panel attached less weight to them, being more persuaded by the comparable units situated within the immediate locality of the Northern Ticket Hall, Kings Cross Underground Station as provided by Mr Warren.

21. Mr Warren had provided the panel with the rents on the following three units:

i) Unit 1 Northern Ticket Hall (67.92 m^2) new lease effective from 12 November 2012 with rent analysing to £736.16/m^2.
ii) Unit 1 Northern Ticket Hall (67.92 m^2) 5 yearly upwards only rent review effective from 12 November 2017 with rent analysing to £1,031.42/m^2.
iii) Unit 2 Northern Ticket Hall (64.05 m^2) new 10 year lease effective from 1 November 2012 with rent analysing to £1,170.96/m^2. Open market rent review in November 2017 agreed at a nil increase.
iv) Unit 3 Northern Ticket Hall (88.32 m^2) new 10 year lease effective from 1 October 2010 with rent analysing to £1,019.02/m^2. Nil increase at October 2015 rent review.

22. The panel considered the above rents to be good evidence in terms of location, being in respect of units in the immediate locality. That said, it noted that the new leases in respect of all three units had been agreed a number of years prior to the AVD. However, the panel noted that there had been nil increases at the rent renewals for both Units 2 and 3 in 2017 and 2015 when the rents analysed to £1,170.96/m^2 and £1,019.02/m^2, respectively. The rent review on Unit 3 had taken place just six months after the AVD and whilst the panel appreciated caution should generally be had with a nil increase at rent review, it agreed with Mr Warren that this set a maximum ceiling of the rental value for that unit.

23. The rents on the three units were top up rents. However, the panel accepted Mr Warren's statement that he had held lengthy discussions with the landlord, Transport for London, and it had been confirmed that the top-up elements had not been triggered.

24. After having regard to the above basket of rents in respect of Units 1, 2 and 3, the panel considered that the existing rate of £2,500/m^2 was unreasonable. The panel determined that Mr Warren's proposed reduced base rate of £1,000/m^2 more fairly reflected the appeal

property's location at underground level and was supported by the basket of rents from the immediate locality.

25. The panel appreciated that at 29.64 m^2 the appeal property was at least half the size of the comparable units in the immediate locality. However, Mr Warren had explained that units on the ground floor of Kings Cross Station measuring 30 m^2 to 60 m^2 were generally valued at £3,000/m^2. For example, Units 10 and 16 Western Concourse were both valued at a base rate of £3,000/m^2 yet they measured 32 m^2 and 70 m^2, respectively. Therefore, the panel found nothing to suggest that the appeal property should not be valued in line with the rents passing on the slightly larger units situated within the immediate vicinity.

26. Mr Warren contended that whilst he had highlighted the omission to the VOA, they had failed to enter Units 1, 2 and 3 Northern Ticket Hall into the Rating List. The VO believed the units to be in the Rating List but under differing addresses; however, the panel was not provided with the base rate applied to the units if they had been assessed.

Disposal

27. In view of the above conclusions, the panel allowed the appeal. It determined that the correct base rate for the appeal property was £1,000/m^2, which resulted in an assessment of £29,500 RV, with effect from 15 November 2021. The valuation is shown below:

Floor	Description	Area m^2	£/m^2	Value £
Ground	Retail Area	29.64	£1,000	£29,640
Total Value				£29,640
Say £29,500 Rateable Value, with effect from 15 November 2021				

Order

28. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £29,500 RV, with effect from 15 November 2017, within two weeks of the date of this Order.

Refund of fees

29. 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. The refund will take around six weeks to process.

Date issued to parties: 7 November 2024

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.