VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; mode or category of use; restaurant and premises; Accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal allowed in part.

APPEAL NUMBER:	CHG101073047	
RE:	116N Upper Street,,London,N1 1QP (the "subject property")	
BETWEEN:	Sager House Almeida Limited	Appellant
	and	
	(Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	12 September 2024	
BEFORE:	Mr Amran Hussain, Presiding Senior Member Mr EJ Barnett, Senior Member	
CLERK:	Miss N Shepherd	
APPEARANCES:	Ms C Bond, on behalf of the appellant Mr G Singh on behalf of the appellant	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The panel determined the rateable value (RV) of the subject hereditament to be £131,000 based upon a main space rate of £344m^2 with effect from 20 January 2020.

Introduction

3. The appeal process began with a challenge made by the appellant's representative on 13 June 2023 in respect of the Valuation Officer's (VO) rating list entry of the subject property at £142,000 RV with effect from 20 January 2020. The appellant's representative proposed a revised assessment of £107,000 RV from that date.

4. The respondent issued a challenge case decision notice on 21 December 2023, which found that the proposal was not well founded, and the current rating list entry was reasonable based on the information and evidence available. The appellant's representative appealed that decision to this Tribunal on 19 April 2024 on the grounds that the valuation for the subject hereditament remained unreasonable.

5. Upon further review by the Valuation Officer the zone A rate was reduced from £1,250m^2 to £1,150m^2 and the RV for the subject property reduced to £131,000 from the 20 January 2020, however the appellant still considered this to be unreasonable.

6. The subject property was a restaurant and premises, measuring 375.10m^2. It was located in Islington Square which formed part of a shopping arcade redeveloped in 2021

7. Ms Bond appeared on behalf of the appellant as both advocate and expert witness. She stated that neither she nor CBRE were instructed under a conditional fee arrangement.

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

Preliminary Issue

9. Ms Bond submitted to the panel that Mr Singh was not the original case worker for the Valuation Officer in this appeal and sought permission to introduce into evidence matters discussed with the original officer, which had been sent to the Tribunal on the morning of the hearing. The panel was concerned that Ms Bond was looking to introduce new evidence that was not contained in the challenge submissions or Valuation Officer decision under appeal.

10. The panel considered Regulation 17a of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) which states:

> 17A Admission of new evidence on NDR appeal
> (1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—
> (a) that evidence—
> (i) is provided by a party to the appeal;
> (ii) relates to the ground on which the proposal was made; and
> (iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or
> (b) all the parties to the appeal agree in writing to the party providing the new evidence

11. Mr Singh submitted that he did not agree to the new evidence being included. Due to it only being sent to him the morning of the hearing he had not had ample opportunity to consider and review the evidence sent.

12. Ms Bond apologised for sending the evidence through late. It related to a previous decision of the Valuation Tribunal, and she had not been aware that it had not been included within the appeal documents. She confirmed that she had been aware of the decision prior to the proposal being submitted as the decision had been from 2018 and she had represented the appellant in that case.

13. The panel had regard to Regulation 17A and the circumstances relating to the late service of the evidence. It found that as the new evidence had not been agreed in writing by both parties and that Ms Bond had been aware of it prior to the proposal being made that it was therefore inadmissible.

Relevant Law

14. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis 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 the 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.

15. 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).

16. 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 appeals, the material day is 20 January 2020.

Discussion

17. The panel had regard to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The panel was aware that this was a leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. The remaining propositions required consideration of the rents of

similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

18. Ms Bond referred to the rent at the subject property and that weight should be attached to this as it was the earliest rent agreed within the Islington Square complex. The panel noted that the appellant was the freehold owner of the subject property and had let it out on a 20-year lease which had commenced on 14 June 2019, with rent reviews every five years and a break clause at the fifth year. It had been let out at £130,000 per annum with a 12-month rent free period, which analysed to a net effective rent of £104,000. The panel considered that the date of commencement of the lease was too far removed from the AVD to reliably reflect the rental value that could have been achieved by the subject property at that point and as such attached no weight to this evidence.

19. Ms Bond contended that the subject property had incorrectly been valued as a shop as opposed to a restaurant, and therefore the zoning method of valuation should not apply. She submitted that the subject property had been let out and fitted out based upon it being used as a restaurant. The works carried out in converting to a restaurant equated to £45,000, therefore it would need substantial alterations in order to be used as any other premises than a restaurant. She submitted she considered that the subject property had been assessed using the incorrect method of valuation.

20. The panel noted that in the descriptor within the rating list the subject property was described as a restaurant and premises, despite being valued using the method of zoning. During questions Mr Singh submitted that although the premises was described as a restaurant and premises in the rating list, the description did not always determine the method of valuation and that he considered that the subject property had been correctly valued.

21. Mr Singh submitted that there were no rents close to the AVD of comparable properties directly within Islington Square and referred to Basement and Ground Floor of 105-106 Upper Street as being the best comparator. This was located only a few minutes' walk from the subject property and was also a restaurant and premises, valued using zoning. It was smaller than the subject property at 172.80m^2 and had a new lease which commenced from 23 May 2014 with the adjusted rent analysing to £115,905 pa, and a Zone A rate of £1250 per m^2. He acknowledged that this property had more visibility and footfall than those located within Islington Square, but that this had been reflected in the reduction at the subject property to a Zone A rate of £1150m^2.

22. Ms Bond referred to 6 A/B Esther Anne Place and 6 D/E Esther Anne Place, both of which were restaurants located within the Islington Square development and both of which were valued on an overall basis with a main space rate of £390m^2. However, she submitted that this base rate was excessive as evidenced by the number of vacant units within the development, meaning that prospective tenants were having to be enticed using deals agreed upon turnover or being rate inclusive. She contended that the number of vacant units clearly demonstrated that the current RV was excessive and that a base rate of £290m^2 would be more reasonable.

23. The panel firstly addressed the method of valuation at the subject property. The panel had regard too *Williams (VO) v Scottish & Newcastle* [2001] in which the Court of Appeal decided that a licensed premises/pub located in a retail unit in a shopping centre was in a different mode or category to the shops. This was mainly due to the fact that the physical changes required to convert the pub back to the shop went beyond minor alterations and therefore could not be assumed to be in the mind of the hypothetical tenant.

24. Taking this judgment into consideration and in applying the rebus sic stanibus rule, the panel found that the alterations that would need to be undertaken in converting the subject property into anything other than a restaurant went beyond minor, as demonstrated by the cost of the works and the fact that a kitchen area would need to be removed. The subject property had the physical characteristics of a restaurant and premises on the material day and the respondent's representative did not refer to any alternative former use at the hereditament. It was also described in the rating list as such. The panel therefore found that the subject property should not be valued as a shop and a premises using the zoning method, and that instead an overall rate should apply.

25. The panel then had consideration as to the overall main space rate to be applied at the subject property. The panel found that based upon an overall valuation of the current RV of £131,000 that the main space rate applicable would be £344m^2. The panel considered that this figure was lower than the main space rate of £390m^2 at both 6 A/B Esther Anne Place and 6 D/E Esther Anne Place, which Ms Bond had submitted was excessive. The panel therefore found this figure to be reasonable and did not consider sufficient evidence had been provided by Ms Bond to support a reduction in base rate to £290m^2.

26. The revised assessment for the compiled list entry with effect from 20 January 2020 as determined by the panel was as follows:

COMPONENT PARTS OF THE PROPERTY					
Ref	**Floor**	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
1.1	Ground	Restaurant and Kitchen	196.8	344.00	67,709.52
1.2	First	Yoga Area	136.92	344.00	47,100.48
1.3	First	Changing Rooms	28.05	344.00	9,649.20
1.4	First	Public Toilets	13.30	344.00	4,575,20
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION					
		Air Conditioning System	333.70	7.00	2,336
Valuation sub-total					£131,370.40

Say RV £131,000

Disposal

27. In view of the foregoing, the appeal was allowed in part.

28. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £131,000 RV based upon a main space rate of £344m^2 with effect from 20 January 2020. The respondent must comply with this order within two weeks of its making.

Date issued to parties: 11 October 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.
