VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; restaurant and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; tone of value of main space; comparable assessments; appeal dismissed.

APPEAL NUMBER: CHG101104910

RE: 264 Brompton Road, London SW3 2AS (“the subject hereditament”)

BETWEEN: Restaurant 264 Ltd — Appellant

and

Andrew Ricketts (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 26 June 2024

BEFORE: Mrs F Cortese (Senior Member)
Mr S Hooberman (Member)

CLERK: Mr S Fletcher

APPEARANCES: Mr J McCarthy of Altus Group (Appellant’s representative)
Mr G Emery (Respondent’s representative)

DECISION and STATEMENT OF REASONS

Decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of the subject hereditament to be £422,500 with effect from 1 April 2017.

Introduction

2. The appeal process began with a challenge made by the appellant’s representative on 3 August 2023 in respect of the Valuation Officer’s (VO) compiled list entry of the subject

hereditament at £422,500 RV with effect from 1 April 2017. The appellant's representative proposed a revised assessment of £227,000 RV from that date based on a reduced tone of value of main space.

3. The respondent issued a challenge case decision notice on 11 October 2023, which stated that, based on the evidence available, the existing rating list entry of £422,500 RV with effect from 1 April 2017 was reasonable. The respondent did not consider that evidence had been provided to reduce the tone of value of the main space rate from £1,150 per m^2 to £615 per m^2 as proposed by the appellant's representative. The appellant's representative appealed that decision to this Tribunal on 6 February 2024 on the grounds that the valuation for the subject hereditament was unreasonable.

4. The subject hereditament was a restaurant and premises located towards the northern end of Brompton Road in South Kensington. It was accessed via a long corridor from the main street level. The appellant, which was its current occupier, was the leaseholder of the property.

5. Mr McCarthy appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), the representative confirmed that he was instructed under a conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

6. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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

Issue

8. The issue for the panel to determine was the correct rateable value to be attributed to the subject hereditament in the 2017 rating list. The issue in dispute concerned the tone of value for the main space. All relativities were agreed between the parties.

Evidence and submissions

9. Arguments and factual evidence from both the appellant's representative and the respondent was provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission, the respondent's challenge decision notice and reference to, and photographs of, properties deemed comparable to the subject hereditament by the parties. The Lands Tribunal's judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 was also referred to.

10. The appellant's representative sought a revised RV of £227,000 following a reduction to the main space rate to £615 per m^2. He stated that the subject hereditament was let on a lease with effect from 24 March 2017 at £250,000 per annum (p.a), which he had analysed to £676.90 per m^2, and adjusted by a further 10% given it was effective after the AVD in what he argued was a growing market, resulting in a revised tone of main space of £615 per m^2.

11. The respondent contended that the list entry of the subject hereditament was reasonable based on a main space rate of £1,150 per m^2. Rental evidence of comparable assessments in the locality were submitted in support of the valuation.

Discussion

12. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

13. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

14. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 1 April 2017.

15. It is a well-established rating principle that the starting point in the determination of a property's RV should be the rent passing on the subject hereditament itself as held in *Lotus and Delta.* The appellant's representative stated that the appellant had agreed a new lease with effect from 24 March 2017 at a rent of £250,000 p.a which he had analysed and adjusted to determine a main space rate of £615 per m^2. The respondent's representative argued that it was unreliable as no terms of the lease or forms of return had been provided. The appellant's representative stated that he did request further details from his client, however he did have a rental invoice and confirmation from the client's solicitor pertaining to the terms of the lease. He also stated that his client was finalising a renewal of the lease with a stepped rent effective from 2022, which he had analysed to £536 per m^2. The appellant's representative stated that he did ask whether the lease renewal had been signed but it had not been confirmed. The panel attached little weight to the rental evidence at the subject provided by the appellant's representative. Firstly, the 2017 lease had been referred to, however, the full details of the lease had not been provided. Confirmation that the 2022 lease renewal had been signed had also not been received. Nonetheless, the panel found that both rents were remote from the AVD to be of any assistance.

16. The respondent provided rental evidence of two assessments within the locality it deemed comparable to the subject to support its value of tone for main space of £1,150 per m^2. 233 Brompton Road and 234 Brompton Road were restaurants and premises with new lettings at £225,000 p.a with effect from 24 December 2014 and £160,000 p.a with effect from 1 July 2014 respectively. The respondent had analysed the rents to £1,306 per m^2 and £1,370 per m^2, which it was argued supported their tone of value for main space of £1,200 per m^2.

17. The appellant's representative argued that the assessments were not comparable to the subject, as they were significantly smaller, had glazed frontages which spanned the full width of the restaurant and were more prominent from an aesthetic perspective as they were accessed directly from the street. He stated that the subject hereditament was a large former factory which was accessed via a long corridor circa thirty metres from the street. He argued it was unusual in terms of physicality and access, which distinguished it from the respondent's comparable assessments. Furthermore, they were located on the approach to Harrods and other upmarket retail stores, which was reflected in their tones of value for main space. The respondent's representative accepted that the comparable assessments were different in terms of physical appearance to the subject hereditament, however he considered that the subject would attract tenants due to its uniqueness, which would in turn enhance its rental value. The respondent had given a 30% end allowance for access to reflect that the property was set back from the main road, and the shape and size of the property.

18. The panel upheld the determination of the respondent. The appellant had provided rental evidence at the subject, which the panel found was remote from the AVD to be of assistance. Furthermore, the full lease for rent effective from 24 March 2017 had not been provided, and no evidence for the rent agreed in 2022 had been provided to show it was confirmed. The appellant's representative failed to provide any comparable assessments of his own. Whilst the panel appreciated there was a lack of directly comparable evidence to the subject hereditament given its unique style and features, it was still satisfied that 233 and 234 Brompton Road provided by the respondent demonstrated a general tone of main space for restaurants and premises within the locality, which was supported by their respective rental evidence which was in close proximity to the AVD. The panel found that the respondent was reasonable in giving an allowance of 30% at the subject for access, shape, and size which it considered to be significant.

Disposal

19. Having regard to the evidence, the panel determined that the tone of value for the main space at the subject hereditament was fair and reasonable at £1,150 per m^2. The subject's RV at £422,500 with effect from 1 April 2017 was confirmed.

20. In view of the foregoing, the appeal was therefore dismissed.

Date: 15 July 2024

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.
