VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Local Government Finance Act 1988; Non-Domestic Rating; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

APPEAL NUMBER:	CHG101117056	
RE:	Kitchen Unit,69 Steward Street,Birmingham,B18 7AF. (the "subject property")	
BETWEEN:	A M	Appellant
	and	
	Lucy Formela-Osborne (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	26/04/2024	
BEFORE:	Ms C Edwards, Presiding Senior Member Mr DC Gardner, Senior Member	
CLERK:	Ms J Routledge IRRV(Tech)	
APPEARANCES:	Kyle Tidey of Resolve Law Group representing the Appellant. Tobias Simango representing the Respondent.	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel concluded that in the absence of evidence that the Rateable Value (RV) was excessive for the area the assessment was not unreasonable.

Introduction

3. This appeal has been brought in respect of the following: An appeal was lodged by Resolve Law Group on behalf of the occupier on 13 December 2023 against the Valuation Officer's (VO) Challenge Decision Notice of 23 October 2023.

4. The subject property is shown in the list as Ground floor Café at 69 Steward Street in Ladywood Birmingham and measured 47m^2 net internal area (NIA) which is the useable area within the building measured to the internal face of the perimeter walls. The property entered the list on 5 June 2017 at a rateable value of £18,750. It was situated within a building that specifically supports new business enterprises by offering business support and short term licences.

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

Background

6. 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.

7. 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.

Preliminary issue

8. On the morning of the hearing Mr Tidey had emailed a submission, proof of rents from other premises within the building and photographs of the street in which the subject property was situated. It also included a news article regarding the locality.

9. As a preliminary issue, the panel considered whether this evidence should be allowed to be admitted. When questioned by the panel, Mr Simango objected to the inclusion of the news article and proof of rents for other properties in the building, but not the evidence on the subject property, including the photographs.

10. Mr Tidey explained that the submission contained the arguments he would be putting to the panel and he had not had permission to provide the rental proofs until the day before. The photographs were intended to assist the panel to understand the locality, they were available online, and he believed they could be admitted as they were in the public domain.

11. Having had a short adjournment to consider the matter, the Tribunal Panel decided to exclude the details of the news article, and rental proof on the other properties in the building as Mr Simango had no time to consider this evidence and it was not in the interests of justice to the VO. The photographs and rental evidence on the subject property could be admitted as there was no objection and, accordingly, the Tribunal Panel was satisfied there would be no prejudice.

Relevant Law

12. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

2(1) 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.

13. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 prescribes the requirements to establish the material day. In this case the valuation date is 1 April 2015 and the material date is 17 June 2017 the date the subject property entered the list.

Discussion

14. The evidence submitted for consideration of this appeal consisted of the VO's challenge decision, the agent's rebuttal to the VO's initial response, photographs and location maps of the subject property, photographs and location maps and the agent's written appeal statement. The clerk provided a copy of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141 to the panel and parties in advance of the hearing.

15. The challenge was made against the list entry of the appeal property. The issue in dispute was the price/m^2 to adopt. The current base price of £400/m^2 w as considered excessive and the proposal was a reduction in the RV to £12,600. The appellant also disputed the description stating it was not a café, it was used as a commercial kitchen providing contract catering.

16. The Tribunal Panel noted that the licence to occupy was granted on 1 July 2017 as a new letting. The licence fee was agreed at £7,200 for the first two years increasing to £8,400 in the third year with a six month rent free period at the start of the term. The VO had analysed this to £133.66m^2 based on 47m^2. With regard to the description of the subject, it would have no effect on the valuation.

17. In his challenge the appellant had identified a number of properties in Steward Street, Warstone Lane and one in Frederick Street arguing that these were of similar rateable value

and the price per square metre for these properties was much lower and which proved that the subject property was over assessed.

18. The VO provided details of these properties, one was a car wash and LPG station, two were workshops and the remainder were shops and premises all valued on a zone A basis. The subject property was valued on an overall basis.

19. The Tribunal Panel was aware that to ensure consistency properties had to be valued on a like for like basis. The subject property was not a car wash and was not valued on a zone A basis and therefore these comparable properties could not be given any significant weight.

20. The appellant also argued that using the "small rates multiplier" and a rent of £12,600 this would result in business rates of £5,871.60. Unfortunately for the appellant this argument carried no weight as it was not in accordance with the rating principles.

21. The panel was aware of the established principles in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The six propositions in this judgment were:

> "(i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
>
> (ii) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s19(6) of the General Rate Act 1967, the more weight should be attached to it.
>
> (iii) Where rents of similar properties are available, they too are properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
>
> (iv) Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can be properly referred to as giving some indication of that opinion.
>
> (v) In the light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attributed to the different types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.
>
> (vi) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would clearly be more difficult to reject the evidence of the actual rent."

22. In this case the rental agreement was a licence to occupy and not a full lease, it was agreed two years post AVD with the landlord retaining overall control of the subject property. Therefore it was attributed limited weight by the Tribunal Panel.

23. The respondent referred to three properties for comparable rental evidence. These were in Warstone Mews in the jewellery quarter approximately a mile from the subject property. These were all valued on an overall basis with rents agreed in September and October 2015 close to the AVD, these were new lettings between unconnected parties with adjustments for

landlords' responsibility for external repairs. These were between 37.16m^2 and 73.79m^2. The tone of value for the unadjusted space rate was £400 per m^2.

24. Mr Tidey argued these properties were in a much better area of Birmingham, although only a short distance from the subject property. The subject property was in an industrial area on a street occupied by workshops and industrial units. He provided photographs to illustrate the run down nature of the area. He argued the hypothetical tenant would be willing to pay a higher rent in the jewellery quarter as there was greater passing trade. The greater weight should be given to the rent on the subject property taking into account the poorer location and less desirable premises in the subject property's location.

25. The Tribunal Panel appreciated that the two areas were very different, however without evidence of rents on similar properties in similar more industrial areas of Birmingham valued on an overall basis to support the appellant's contention that there would be a disparity in the rental bids between the Warstone Mews and Steward Street the Tribunal Panel could make no assessment of the effect the difference between each area would have on the rental bids.

26. In appeals of this nature it is for the appellant to prove on balance of probabilities that the RV is wrong. Taking all of the evidence into consideration, the panel determined that the present price of £400 per m^2 for the subject property was not unreasonable. In reaching this decision the panel placed less weight on the subject rent as it was a licence to occupy, and the comparable properties provided by the appellant were not sufficiently similar to attract any weight. In contrast the VO had provided rental evidence of comparable properties of similar size within one mile that were agreed close to the AVD on the same basis of valuation which the Tribunal Panel found carried more weight.

Disposal

27. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the RV on the subject property was not excessive and dismissed the appeal.

Date issued to parties: 15 May 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.
