VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; Local Government Finance Act 1988; Restaurants and premises; Price per m^2 in dispute; Lotus and Delta v Culverwell (VO) [1976] RA 141; Rental evidence; Comparable assessments; Appeal dismissed. Revised decision.

APPEAL NUMBER: CHG101166051

RE: The Dome, Spanish City, Whitley Bay, Newcastle NE26 1AR

BETWEEN:	Spanish City (NE) Limited	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

SITTING ON: 10 February 2025 (Remote Hearing number 1)

BEFORE: Mr Frazer Stuart, Vice President

CLERK: Mr Duncan Adamson IRRV (Hons)

APPEARANCES: Mr Jeff Bell of Bell and Bell Rating Surveyors for the appellant
Mr Samuel Lowe for the respondent

Summary of decision

1. Appeal dismissed. I confirmed the Rateable Value (RV) of the appeal property as £133,000 with effect from 21 July 2018.

Introduction

2. This 2017 rating list appeal had been brought in respect of the following: the appellant was the non-domestic ratepayer of the appeal property The Dome, Spanish City, Whitley Bay, Newcastle NE26 1AR.

3. The property had been entered in the 2017 rating list as Restaurant and premises based on a rate of £125/m^2 giving an RV of £152,000 with effect from 21 July 2018.

4. A challenge proposal was submitted by the appellant’s representative on 17 December 2023 to reduce the RV to £18,000 with effect from 30 September 2018.

5. The valuation officer (VO) issued a challenge decision notice on 19 March 2024 which stated that, based upon the evidence and information available, the rating list entry was unreasonable but disagreed with the entry proposed.

6. The VO found that the rate of £125/m^2 was reasonable but decided that a 30% quantum allowance was appropriate as well as a 10% end allowance for shape giving an RV of £133,000 with effect from 21 July 2018.

7. The appeal property was a large Grade II listed building 2,224.96m^2 in area containing a variety of retail and restaurant uses. It had recently been largely renovated and was located in Whitley Bay, a popular tourist area.

8. The hearing started later than scheduled at 12:30pm and during an initial discussion the appellant's representative advised that on 23 January 2025 he had emailed the tribunal and the VO with photographs of the appeal property and a layout plan. The clerk was unable to locate the email and therefore the VO's representative forwarded it to the clerk who forwarded it to the Vice President (VP). The hearing was adjourned for a short time from 12:45pm to 1:15pm to consider the contents.

9. During the hearing the appellant's representative made reference to a lease agreement on the appeal property and an inventory of the fixtures and fittings provided by the local council. He had not submitted these to the tribunal or the VO despite repeated requests from the VO. The VP adjourned the hearing at 14:10pm to discuss how to progress the matter. The VP decided that the appellant's representative must forward a copy of the Lease agreement, the inventory, any calculation relating to his 7% risk evaluation and copies of any relevant pages from Parry's Valuation Tables he had referred to and any other relevant material he had not previously furnished.

10. On returning to the main hearing the clerk to the tribunal advised the appellant's representative of the VP's decision. Whilst Mr Bell said he could get copies it would take some time as the lease and the inventory were not electronic copies. The VO's representative helpfully advised that, as the appellant's representative had not provided a copy of the lease, the VO had had to obtain one from the Land Registry. He had done this as the Form of Return he had in his possession did not contain all of the lease. The VO's representative forwarded a copy of the lease to the clerk to the tribunal who forwarded it to the VP. This had been extensively referred to by the appellant's representative in the evidence submissions and was therefore accepted by the VP.

11. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two members of the Tribunal, however, paragraph 10 of those arrangements also provide that the President, Vice-Presidents and nominated Senior Members may sit alone. As Vice-President I am satisfied that I am authorised to hear and determine this appeal alone.

12. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. The appellant's representative emailed the tribunal on 19 March 2025 advising that there were some factual inaccuracies in the issued decision. The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 states:

Clerical mistakes and accidental slips or omissions

39. The VTE may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction, order or any document produced by it, by—
(a)sending notification of the amended decision, direction or order, or a copy of the amended document, to all parties; and
(b)making any necessary amendment to any information published in relation to the decision, direction, order or document.

13. This decision has therefore been revised accordingly.

Issue

14. The issue in dispute was the RV for the appeal property.

Evidence and submissions

15. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the appellant's challenge submission, initial response to the challenge and the VO's challenge case decision notice.

16. The appellant's representative stated that the appeal property should be assessed in terms of its location, size, layout, diversity of uses, its Grade II status and the associated high costs in terms of repairs, insurance, maintenance, operating costs and operating capabilities.

17. He explained that it was originally built in the 1900's and was acquired by the local billing authority (BA) in 2001. It had fallen into a state of disrepair and had been unoccupied for a few years. Repairs, including structural work, were undertaken and a lease taken in 2018 on the whole of the property less two units within it which were a shop and a small bar. These were separately assessed and leased and were not part of this appeal.

18. The appeal property consisted of :

Ground Floor
Fish and chip takeaway unit
Fish and chip restaurant
Waffle and pancake house
Tea Rooms

First Floor
Fish and Chip restaurant
Champagne bar
Two Function suites
Fine dining restaurant

19. The property was unique and there were no properties comparable to it. He had made reference to the valuation scheme 355553 and the properties valued within it but stated that none of them were comparable to the appeal property. The appeal property was over 2,224m^2 whereas the scheme properties were, on average, 210m^2. There was no tone of valuation for properties in the locality for the purposes of valuation.

20. In his opinion and, as required by the rating valuation hypothesis, the best evidence for the valuation was the 2018 lease agreement. He explained that he understood that the lease was some time after the AVD of 1 April 2015 but he still considered it to be the best evidence particularly if the rent was not toned back to 2015 but was adopted as existing. He contended that the VO had used the same basis of assessments for the 2017 and 2023 rating lists which demonstrated that they considered there had not been any material changes in value between these dates.

21. The lease was a ten year agreement commencing 30 September 2018 and was a stepped rent on full repair and insuring terms. He explained that the BA had been trying to let the appeal property for approximately ten years and the stepped rent and other lease arrangements were incentives.

    £0 per annum (p.a.) until 29 September 2020
    £36,000 p.a. to September 2021
    £46,000 p.a. to September 2022
    £56,000 p.a. to September 2023
    £70,000 p.a. to the end of the lease 29 September 2028.

22. The BA had contributed £299,939.39 worth of fixtures and fittings to set up the property.

23. He had devalued the rent to £27,000 p.a. and also submitted a separate valuation of the property based on income and expenditure.

24. After deducting his own valuation of the two sublets, the fixtures and fittings and a percentage risk value for the possibility of non-payment, all on an annual basis, he contended that the net rent for the appeal property was £20,000 and that this therefore should be the RV. He had previously advised that, due to the Covid pandemic, the stepped rent arrangements had been re-set and began on January 2022 as year 1.

25. He contended that such a lease agreement reflected the risk of taking on such a pioneering project which had no certainty of success particularly when compared to other properties in the surrounding area.

26. The VO's representative had stated that the main space rate of £125/m^2 had been derived from assessing comparable rental evidence and then reduced by end allowances for layout and size (quantum). The appeal property was larger than other restaurants in the locality and had an inefficient shape in comparison. The property was inspected by Mr N Wood of the Valuation Office on 10 July 2023 following the check submitted by the appellants representative. The VO's representative had requested an inspection of the appeal property by email dated 31 January 2025 for Friday 7 February at 1pm, however, this was declined by the appellant. This was because Friday was the busiest day of the week with 1pm being one of the busiest periods of the day and therefore to inspect at that time would have been impracticable and unreasonable.

27. He stated that the appellants representative was largely reliant on the 2018 lease but did not forward a copy of it despite several requests being made. For this reason the VO's representative had given the rental evidence little weight. In his opinion, the lease was three and a half years after the AVD, included a stepped

rent and adjustments for fixtures, fittings and potential rental income to the extent that the VO considered it had no significant weighting. His opinion did not change when he had purchased a copy of the lease and the fixtures and fittings inventory.

28. He referred to the leading case law of *Lotus and Delta v Culverwell (VO)* [1976] RA 141 which set out the manner by which a property should be valued.

29. He accepted that there were no other properties similar to the appeal property in the locality and had therefore looked at nearby properties and made adjustments to the tone of valuation in order to value it.

30. He had submitted a list of properties in the same mode and category as the appeal property nearly all of which were on Whitley Bay. He submitted them to show an indication of value of restaurants in the area acknowledging that none of them were actually directly comparable to the appeal property.

31. During the Check, Challenge, Appeal process he had reassessed the end allowances on the property and decided that a 30% allowance for size / quantum was appropriate as well as a 10% end allowance for shape giving an RV of £133,000 with effect from 21 July 2018.

Decision and reasons

32. I referred to the Local Government Finance Act 1988 in respect of the definition of rateable value in paragraph 2(1), Schedule 6 to the Act (as amended). The rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 the “antecedent valuation date” (AVD). The material day for this appeal was 21 July 2018.

33. I was aware that the leading judgment in non-domestic rating assessments was *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 which set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent followed by the consideration of the rents of similar properties and comparable assessments.

34. I noted the extensive calculation submitted by the appellant in his calculation of the rent and its devaluation, however, I found that the lease agreement of 30 September 2018 should carry little weight as it was three and a half years after the AVD and was therefore too far removed from it.

35. Further, that there had been a great deal of manipulation of the figures in the devaluation including estimates of risk, of the letting of the two properties in the Dome and the disaggregation of the fixtures and fittings incentives provided by the BA. I also noted that the stepped rent arrangements had later been reset to January 2022 due to the effects of the Covid pandemic and found that this further compounded the over-manipulation of the figures and therefore their usefulness.

36. I also noted the comparable properties submitted by the VO’s representative and the reference to the properties within the same valuation scheme as the appeal property, however, I found that these were not very helpful in the appeal property’s assessment as none of those submitted were remotely similar to the

appeal property. However, I found that there was a tone of valuation for restaurants in the locality but how this might translate to a singular unique property over ten times the size of nearly all the other restaurants in the locality was difficult to interpret.

37. In cases such as these the onus is on the appellant and its representative to present evidence to show that the RV on the appeal property was not reasonable. I found that the VO’s representative had taken the tone of valuation for restaurants in the locality, applied it to the area of the appeal property and made reasonable adjustments in terms of its size and layout to provide a reasonable valuation and for these reasons I dismissed the appeal.

Date issued to parties: 14 April 2025

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.