THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2010 rating list; restaurant and premises; material change in circumstances; change in the local trade; insufficient evidence to support a reduction; appeal dismissed.

RE: Woodheys Restaurant, Glossop Road, Marple Bridge, Stockport, Cheshire, SK6 5RX

APPEAL NUMBER: 423525503275/134N10

BETWEEN:	Artizen Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE: Miss L Moses

CLERK: Mrs L Horne

APPEAL DECIDED WITHOUT A HEARING

Summary of decision

1. Appeal dismissed. The rateable value (RV) of £56,500 is confirmed with effect from 1 April 2010.

Introduction

2. This appeal has been brought in respect of the following: Woodheys Restaurant, Glossop Road, Marple Bridge, Stockport, Cheshire SK6 5RX (the 'appeal property'), which was entered in the 2010 rating list as 'restaurant and premises' at £56,500 RV, with effect from 1 April 2010.

3. The appeal arose following a proposal received by the Valuation Officer on 31 March 2015, made on the grounds of "material change in the local trade" by the appellant's representative, Mr D O'Donnell from XLR Group Ltd. A reduction to £26,837 RV was proposed with effect from 1 April 2010.

4. Ordinarily, the tribunal would have considered and determined this appeal, following a public hearing. However, in view of the Covid 19 pandemic and to avoid justice being further delayed, the parties were contacted by the tribunal office by email, to ascertain if they were prepared to give their consent to this

appeal being decided without a hearing. In the event, both parties were happy to give their consent and therefore arrangements were made for the appeal to be decided without a hearing, in accordance with Regulation 29 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. Regulation 29 is as follows;

> (1) Subject to the following paragraphs, the VTE must hold a hearing before making a decision which disposes of proceedings unless--
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> (a) each party has consented to, or has not objected to, the matter being decided without a hearing; and
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> (b) the VTE considers that it is able to decide the matter without a hearing.
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> (2) The VTE may in any event dispose of proceedings without a hearing under regulation 10 (striking out proceedings).

5. Having reviewed the evidence, arguments and submissions, the tribunal is satisfied that it can consider the appeal without a hearing, without any further input from the parties, on the basis of their respective written representations.

6. In accordance with the tribunal's business arrangements, I have been authorised to consider and determine this appeal alone.

7. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked.

Issues in dispute

8. The issue in dispute related to whether or not a material change had resulted in a detrimental effect on the appeal property's rental value.

Evidence and submissions

9. In a letter which accompanied the proposal, Mr O'Donnell provided an overview of the trading difficulties faced by the appellant, together with details of several comparable properties. Also included in the evidence bundle, was a letter from Mr O'Donnell (originally dated 12 August 2015 and updated 20 August 2019) addressed to a previous Valuation Office caseworker; this had been sent along with a spreadsheet containing a profit and loss statement (but this was not part of the evidence bundle).

10. Mr O'Donnell explained that the change in the local trade was as a result of:
    - The closure of four local pubs: the Rock Tavern, Hunters Arms, and Lane Ends Pub closed in January 2011; the Travellers Call closed in January 2015. As "feeder" pubs, this had hurt the business, as the appeal property is in a remote location.
    - Local village pubs and cafes had opened or upgraded, serving restaurant style food: Libby's Restaurant opened in January 2012, South Seven in June 2013.
    - Loss of local B&Bs, which had impacted on the appeal property as a wedding venue.

11. In further support of a reduction, Mr O'Donnell cited the reduction in rent from £48,000 to £24,000 and a further reduction to £18,000 from October 2015, and added that the appeal property was in need of repair and renovation.

12. It was confirmed that attempts had been made to sell the business a number of times over the years, but no offers had been received. The total losses faced by the appellant were said to be approaching £500,000. Mr O'Donnell submitted that without either a drastic reduction in fixed costs or a large increase in turnover/gross profit, the business would not survive.

13. The Valuation Officer's case had been prepared by Ms C Kirwan-Blakeman and comprised: appeal history, a copy of the proposal and supporting information, a valuation of the appeal property at £56,500 RV, and her response to the appellant's case.

14. Ms Kirwan-Blakeman submitted that a number of points raised by Mr O'Donnell were economic issues which could not be considered for a material change of circumstances appeal. With reference to the accounts provided, she considered that there were irregular patterns for revenue and profit, and it was therefore difficult to see a trend. In her opinion, there was insufficient evidence to support a reduction based upon a material change.

Decision and reasons:

15. The appeal before me arises from a proposal made on the grounds of a material change of circumstances. Consequently, I am unable to take into account the state of repair of the appeal property, or the valuation of comparable properties. I am also unable to attach any significant weight to the subject rent, (which Mr O'Donnell outlined is in a continual downfall), as the Valuation Officer confirmed that it has been decided between connected parties and is therefore not at open market value.

16. In this appeal, I must have regard to the physical state of the appeal property and its locality as it had existed on the material date, which was 31 March 2015 (the date of the proposal). Accordingly, the crux of the case was "would the physical circumstances in the locality on the material date have caused the hypothetical landlord to accept a reduction in the rental bid by the hypothetical tenant?"

17. I note from the proposal that the appellant's representative requested a reduction to £26,837 RV with effect from 1 April 2010. He did not provide a revised valuation, and I could not find any reference to this specific value, other than that in his submission, he stated that a reduction of 50% would be necessary in order for the business to continue.

18. It is also necessary to highlight that an effective date of 1 April 2010 is not appropriate for this proposal which has been made on the grounds of a material change. In accordance with regulation 14 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268), the effective date of a list alteration is the date of the event or the date of the proposal if not reasonably ascertainable.

19. Mr O'Donnell had referred to a number of changes in the locality, which he considered had a detrimental financial impact on the appeal property. Ms Kirwin-Blakeman submitted that the material change was unclear, given his reference to

comparable properties and repair issues. Notwithstanding that statement, the Valuation Officer’s response to the appellant’s case focused on the closure of the local feeder pubs in January 2011, presumably as a result of the accounts provided by the appellant.

20. In arriving at the decision that the material change did not support a reduction in the RV of the appeal property, I have attached significant weight to the Valuation Officer’s assessment of the appellant’s accounts. For the periods immediately after January 2011, (when three of the four local feeder pubs had closed), it was stated by the Valuation Officer that there was very little fall in revenue month by month.

21. As at the material date of 31 March 2015, there had been a number of changes in the local trade which Mr O’Donnell asserted had a major impact on the appellant’s business. For the purposes of rating valuation, however, it is not the business itself that is being valued, but rather the rental value of the property, vacant and to let. In response to the question posed earlier, “would the physical circumstances in the locality on the material date have caused the hypothetical landlord to accept a reduction in the rental bid by the hypothetical tenant?”, I would have to answer in the negative.

22. In the absence of any compelling evidence to support a reduction in the rental value of the appeal property as a result of a material change, I find no alternative but to dismiss the appeal.

Date: 16 September 2020

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