THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list; Hotel & premises; Valuation approach; Rental evidence; Fair maintainable trade; Appeals allowed.

RE: Kent Hall Hotel, 414 Seven Sisters Road, Finsbury Park, London N4 2LX (appeal 1)
146 Clapton Common, Clapton, London E5 9AG (appeal 2)

APPEAL NUMBERS: CHG100017228 (appeal 1) & CHG100017691 (appeal 2)

BETWEEN:	Emel Metin – Kent Hall Hotel (appeal 1) Kadimah Carmel Hotel Ltd (appeal 2)	Appellants
	and	
	Mr D Jackson (Valuation Officer)	Respondent
PANEL:	Mr S P Wood (Chairman) Mrs F Higgin	
CLERK:	Mr J Hewitson	
REMOTE HEARING ON:	Wednesday 14 April 2021	
APPEARANCES:	Mr A Bacon (JMA Chartered Surveyors)(Representing the Appellants) Mr A Byfield (Representing the Valuation Officer)	

Summary of decision

1. The appeals were allowed, and the assessments were determined at £70,000 rateable value (appeal 1) and £35,750 (appeal 2) with effect from 1 April 2017.

Introduction

2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure)

Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

4. As the arguments and evidence for the two appeals were very similar, with the agreement of the parties it was decided to consolidate the hearing of the appeals. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as its having been overlooked.

5. The appeals had previously been considered and determined by the tribunal. Following applications for a review of the decision to dismiss the two appeals, it was decided by a Vice-President that it was in the interests of justice to set aside the decision issued on the 16th March 2020 and it was directed that the two appeals be reheard in accordance with the Tribunal Business Arrangements. This is the rehearing so directed.

6. Subsequently following a preliminary hearing before the President, it had been determined that the Valuation Officer (VO) had complied with Regulation 17 (4) of the Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009 (as amended) by providing Mr Bacon with either a copy of the information contained within Forms of Return, or allowing him to view the information on screen.

7. Various documents had been exchanged between the parties in the days immediately before the hearing and, following minor alterations, it was agreed that they could be considered by the panel and there would be no further preliminary issues to be decided prior to hearing the substantive case.

8. Mr Bacon 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), Mr Bacon's declaration included a statement that he was instructed under a conditional fee arrangement.

9. Mr Bacon 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.

10. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of 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).

11. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

12. These were 2017 rating list appeals. The original RV challenged in respect of Kent Hall Hotel (appeal 1) was £174,000, with effect from 1 April 2017. Following the appellant's challenge, the VO accepted that the current assessment was unreasonable and, a revised assessment of £128,000 was decided. However, it had been previously established that the assessment had actually been altered to £127,000 RV.

13. The RV challenged in respect of Kadimah Carmel Hotel Ltd (appeal 2) was £75,000, with effect from 1 April 2017. Following the appellant's challenge, the VO accepted that the current assessment was unreasonable, and a revised assessment of £54,000 RV was stated in the challenge decision. However, it had previously been established that the assessment in the rating list was £53,000 RV, with effect from 1 April 2017.

14. Both are compiled list appeals and the material day was 1 April 2017. The appeals were made on 9 December 2019 and 17 December 2019 respectively, following the VO's Decision Notices dated 2 August 2019.

15. Kent Hall Hotel is a purpose-built hotel and premises, constructed in 1992. It is located on Seven Sisters Road on the western side of Finsbury Park, close to Manor House underground station. The building is constructed of brick elevations under a slate roof. There are three floors, plus a basement and the property is operated as a budget hotel with all bedrooms having en-suite facilities.

16. The Kadimah Carmel Hotel is a bed and breakfast hotel located in the heart of Stamford Hill. This property has 17 rooms and is located close to Stamford Hill railway station, which provides a direct rail link to Liverpool Street station.

Issue

17. The issue in dispute related to the method of valuation to be adopted for the appeal properties. The VO maintained that the properties should be valued on a rental basis which resulted in a rate of £3,300 per Double Bed Unit (DBU) and rateable values of £127,000 (appeal 1) and £53,000 (appeal 2). Mr Bacon argued that the properties should be valued adopting a 'shortened profits method' (based on the receipts and expenditure) and contended that the correct RVs to be applied to the subject properties were £70,000 (appeal 1) and £35,750 (appeal 2), both with effect from 1 April 2017.

Evidence and submissions

18. The panel had been provided with a bundle comprising the documents that had been exchanged between the parties as part of the challenge process. This included the challenge document and supporting evidence and the VO's challenge case decision notice. The panel were also provided with copies of correspondence between the parties and a copy of a document headed 'Inner London Borough Wide Hotels / Guest Houses / B&B Basis', which was stated to be '…an agreement between the VOA and agents below for the 2017 Rating Lists for hotels in Central London on VOA SCAT 137G.' In particular it related to (non-chain) hotels 3 star and under with the appropriate suffix letter G being used by the VO where responsibility lies with the Generalists. In addition, the appellant's representative provided an updated expert report having regard to a revised 'Hotel evidence' document submitted by the VO. The panel was also referred to a recent decision of the VTE in respect of Arinza Hotel, 50 Mansfield Road, Ilford which had been issued following a hearing on 10 March 2021.

19. Included within the bundle was an extract from the VOA Rating Manual Section 3 Part 3 which, at Section 510 deals with hotels. Mr Bacon submitted that his valuation had been carried out in accordance with the guidance provided by the manual, and it was his contention that the VO had not correctly interpreted the document and consequently was incorrectly rejecting his valuation approach.

20. Mr Bacon referred the panel to extracts from the manual and argued that because there was an absence of reliable rental comparison evidence in the locality for such hotels it was appropriate to have regard to the turnover. This, he argued, was supported by the approach that had been adopted on the 2010 rating list, where the assessment had been determined on the basis of receipts and expenditure, and was further supported by the recent decision of the VTE relating to the Arinza Hotel. He contended that the VO had not challenged his submission that the turnover figures he had submitted did not represent the fair maintainable trade, and the percentages he had adopted had not been challenged. Accordingly, he believed that the panel should confirm his proposed valuation, should it agree that his valuation approach was correct.

21. The turnover figures provided by Mr Bacon covered the four financial years 2012 to 2015 and, in respect of Kent Hall, ranged from £552,000 to £581,000 and for Kadimah Carmel ranged from £263,000 to £295,000. Having regard to the trends indicated by the figures, he submitted that a fair maintainable trade of £560,000 for Kent Hall and £275,000 for Kadimah Carmel was reasonable.

22. In his valuations, Mr Bacon had applied his adopted rates of 12.5 per cent for Kent Hall and 13 per cent for Kadimah Carmel, contending that these were the appropriate percentages taken from the manual to reflect the fact that the subject properties were non-chain budget hotels with associated lower costs. On this basis he proposed RVs of £70,000 for the Kent Hall Hotel and £35,750 for the Kadimah Carmel Hotel. His proposed revised assessments equated to a DBU rate of £1,850 for Kent Hall Hotel and £2,150 for Kadimah Carmel Hotel, which he considered was entirely consistent with agreed values ranging from £4,600 per DBU in Mayfair to £1,150 per DBU in Ilford for this type of hotel.

23. To support his argument that the rentals comparison method adopted by the VO was not appropriate he referred the panel to the evidence schedule that had been submitted. He contended that the lack of rental evidence was clearly demonstrated by the fact that there was only one hotel identified within the LB of Hackney and the effective date for that rent was December 2010 – more than four years before the antecedent valuation date. In that case the leases were between connected offshore companies and the rent was stepped up by 15% per annum.

24. As well as highlighting the dates of the leases, which he submitted were remote from the AVD (with three being from 2010, two from 2013 and one from 2014), Mr Bacon ran through each of the comparable hotels in turn. He highlighted matters which meant that adjustments had to be made to establish a DBU rate, by reflecting features such as living accommodation, the presence of restaurants or bars and the fact that one of the leases related to an office building that had permission for conversion into a hotel. Furthermore, in respect of the two properties with rental evidence that had now had the assessments agreed, he considered that 244 Poplar High Street, with a rent with no unusual terms, effective from February 2014, showed a DBU rate of £2,280 provided evidence for 'Docklands' and 147-149 Sussex Gardens was effective from a

date more than 12 months after the AVD. Neither was of great assistance in considering the correct value of the subject property.

25. Furthermore, he referred to the recent decision in respect of Arinza Hotel which found that his approach based on a percentage of FMT was correct, and to a settlement on 11 Wicklow Street (Kings Cross) which has been reduced to £1,800 per DBU. Having regard to the scheme, and giving due regard to the levels of DBU that had been agreed in the various locations from Central London to Outer London, he contended that the rates for the appeal properties resulting from his approach were reasonable and in accord with what would be expected in the respective locations.

26. On behalf of the VO, Mr Byfield submitted that his valuation was in accord with the provisions laid out in the rating manual and he contended that Mr Bacon was misinterpreting the substance of the guidance provided therein. He submitted that small independent non-chain hotels like the subject properties were regularly valued on a rental basis, having regard to the DBU rate. He considered that using the 'receipts and expenditure' method was unsafe and contended that the agreed scheme referenced by the appellants' representative applied primarily to 4-star, 5-star and major chain-operated hotels and was not appropriate for the subject properties.

27. Referring to the manual paragraph 8.2.1 states that 'Rental evidence will normally form the basis of valuation for the smaller hotels valued by the RVU. However, due to the paucity of reliable evidence for chain-operated hotels it will usually be necessary to have regard to the Receipts and Expenditure method in order to derive a basis of valuation for these properties.'

28. Mr Byfield stated that the subject properties were independent 2/3-star hotels and not part of major chains. He contended that in Inner London there was sufficient rental evidence available to allow such hotels to be valued on that basis. Thus, comparable rental evidence would normally form the basis of valuation for such properties. To support his contention, he referred the panel to comparable properties that had been agreed on a DBU basis and not by reference to turnover namely 244 Poplar High Street and 147-149 Sussex Gardens.

29. In addition to support his statement and demonstrate that there was a reasonable evidence base from which to derive a meaningful scheme, Mr Byfield referred to six pieces of rental evidence in respect of 3-star and lower-rated hotels. He referred to each rent in turn and explained the thought processes that had been gone through during the analysis and stating the weight that had been applied to each. Based on this analysis an adopted rate of £3,300 per DBU for properties located in outer London had been deemed fair and reasonable. He thus contended that his rental evidence demonstrated that the RVs currently in the rating list for the subject properties were not unreasonable. The evidence supported his figure of £3,300 per DBU for both the subject properties.

30. With regard to the 2010 list VT decision on the Kent Hall Hotel, referred to by Mr Bacon, Mr Byfield stated that the 2010 and 2017 rating lists were distinct and there was no requirement to follow the same approach as had been adopted for the 2010 list if it was not considered to be appropriate. Mr Byfield said that in the VT appeal on the 2010 rating list there had been a lack of rental evidence provided, whereas in these

appeals the rental evidence he had presented on comparable properties supported the DBU rate adopted on the subject properties.

Decision and reasons

31. In considering the appeals the parties were conscious of the fact that they were seeking to establish the rent at which the hereditaments might reasonably be expected to let from year to year in accord with the statutory basis. Thus, the panel were aware of the significance of rental evidence and the matters to be reflected when considering such evidence.

32. The parties had adopted different methodology in valuing the appeal properties with the VO advocating the rental/comparative method, arguing that this was correct for a hotel of this size and nature in accordance with the provisions of section 510 the rating manual. The appellant’s representative had adopted a shortened profits method adopting the turnover submitted by the appellants. He argued that such an approach was widely used in valuing such hotels for rating purposes and, given what he submitted was the lack of reliable rental evidence, was the most reliable method to adopt to establish a fair and reasonable rateable value.

33. The panel initially had regard to the available rental evidence acknowledging that this would be the preferred method of valuation in accordance with section 510. However, in doing so, it was mindful, that this was not the only approach that must be adopted in all circumstances and found that the scheme also allowed a different approach dependent on the evidence available.

34. The rental evidence put forward by the VO was considered in detail. Initially, rental evidence in respect of six hotels had been submitted. Of these, only one was located in the London Borough of Hackney, the location of the subject properties. The weight to be attached to the rent in respect of that property was questioned by both parties with the VO stating that ‘There are a number of anomalies in relation to this rent and for this reason I have placed less weight on this evidence’. The stepped rent was effective from 1 December 2010 and, the panel found little assistance from this evidence.

35. Of the other rents the panel noted that 101-103 Shepherds Bush Road, London W12 was geographically remote from the subject properties and was effective from September 2010, which the panel considered too far removed from the AVD to attract significant weight. It was also noted that 2010 was shortly before the 2012 London Olympics, which the appellant’s representative had highlighted as being a significant feature in the London hotel market. 2 Queens Avenue was a January 2010 rent and again the panel found this to be too far from the AVD to be of major significance.

36. Dawson House Hotel, 72 Canfield Gardens was also found to be of little assistance. The rent was a review in June 2013 and although it was stated that a room occupied by the operator had been stripped out, the panel noted that the adjusted rent showed that only £2,800 had been deducted. The panel noted that the hotel is small, with 14 rooms and is located in West Hampstead and, given this location, which was found to be appreciably different to the subject properties, the panel considered the amount deducted to be questionable. For these reasons the panel again found this rent to be of little assistance.

37. The VO stated that he ‘had placed more weight’ on the evidence relating to 27A Romford Road, London E15 which was a new lease from 1 June 2014. However, the panel noted that the lease was, in fact, for an office building that had permission to be converted into a hotel. Although the VO stated that he had ignored a six month rent free period due to the conversion the panel found that the analysis of this rent was subject to a number of factors which limited the amount of weight to be attached. From the planning details provided, it appeared to the panel that the property has changed since the planning application was made and thus further adjustments would be necessary and the weight to be attached to the rent as evidence diminished.

38. The panel was informed that 427 Caledonian Road was a 21-room hotel was a new letting from 1 October 2013 at a rent of £60,000 pa. The appellant’s representative stated that the pub and hotel appear to be owned by the same operator. The adjusted DBU rate for this hotel was £3,452.

39. In addition, the VO provided details of two agreements that had been reached in respect of hotels at 244 Poplar High Street and 147-149 Sussex Gardens. The assessments were agreed at £4,200 per DBU and £4,000 respectively although the rents on Poplar High Street dated from February 2014 and analysed at £2,280 per DBU and that on Sussex Gardens was from April 2016, analysing at £4,203. The panel noted the rental analysis at £2,280 per DBU but also recognised that the hotel was in the Docklands. Sussex Gardens was, the panel noted, located in Westminster, which was found to be a different location to the subject properties and little assistance was derived from these comparable properties.

40. Overall, the panel recognised that generally hotels are not let and thus a valuation based on this method will inevitably be reliant on a relatively small volume of properties, However in the present appeals, the panel found the evidence provided by the VO to be of very limited assistance, primarily providing historic evidence which, in some cases, was questionable in terms of the nature and extent of the premises involved. The panel thus found that the appellant’s representative was adopting a reasonable approach in considering the receipts and expenditure method of valuation.

41. The turnover figures provided by the appellant had not been challenged by the VO and having regard to the four years figures provided, the panel found that the levels of FMT adopted by Mr Bacon in his valuations were reasonable. Whilst the VO had stated that the percentage rates adopted by Mr Bacon to establish the rental bids were incorrect, he had provided no evidence as to why an alternative figure should be adopted if this valuation approach was adopted.

42. Having considered the percentage rates adopted by the appellant’s representative, the panel found that the proposed rateable values were reasonable and the DBU rates were generally in accord with the rates adopted in other localities, showing a progression from the higher value areas in Central London to the lower value Outer London locations.

43. The panel found that the values proposed by the appellant’s representative were fair and reasonable and determined the assessment in respect of Kent Hall Hotel at £70,000 rateable value and in respect of 146 Clapton Common at £35,750 rateable value.

Order

44. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show the following

Kent Hall Hotel, 414 Seven Sisters Road, London N4 2LX
Rateable Value £70,000 wef 1 April 2017

146 Clapton Common, London E5 9AG
Rateable Value £35,750 wef 1 April 2017

45. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process).

Date: 5 May 2021

Appeal numbers: CHG100017228 & CHG100017691