VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; shop and premises; common areas; appeal dismissed.

RE: PT Ground Floor Front 146 High Street, Harborne, Birmingham B17 9NN

APPEAL NUMBER: CHG100057143

BETWEEN:	Andrew Robert England Kerr	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL:	Ms J Routledge (Senior Member) Ms J Barnes
CLERK:	Mrs H Beresford
REMOTE HEARING ON:	27 October 2020
APPEARANCES:	Mr A Kerr (Appellant) Mr M Radford of Mark Radford Rating (Appellant's representative) Mr D Bryne (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the appeal property was confirmed at rateable value (RV) £14,250 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 146 High Street, Harborne, Birmingham B17 9NN (the 'appeal property'). As a result of a challenge the appeal property

had been split into nine separate hereditaments with effect from 1 April 2017. All of the RVs for the assessments had been agreed before the hearing with the exception of the part of the property known as 'ground floor front' which had been valued by the valuation officer at RV £14,250 effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Kerr made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the valuation officer decided not to alter the 2017 rating list in respect of 'ground floor front' following the appellant's check and challenge.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, the valuation officer had made an alteration to the rating list in his challenge decision notice and had agreed to split the property into nine separate assessments, however, the appellant believed that the RV of the part of the property known as 'ground floor front' described as shop and premises was excessive at RV £14,250 and should be reduced to RV £10,450.

5. The appeal property is a 1970s building located at 146 High Street, Harborne, Birmingham, which had originally been assessed as one retail unit with an RV of £27,500 with effect from 1 April 2017. As a result of the 'challenge' the property has been split into nine rateable hereditaments which form a small 'business centre'. The hereditament in dispute is one of four properties on the ground floor and is described as 'shop and premises'; it is an estate agent. The other three hereditaments which share the ground floor are each described as 'office and premises'.

6. The appellant's representative Mr Radford, appearing as expert witness, stated that he was not on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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).

8. It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. 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.

10. 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.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked

Issues

12. The issues before the panel were: the method of valuation to be adopted i.e. whether the property should be valued by zoning or on an overall basis; whether an area of 7.5m^2 within the area referred to as ground floor front should be included within common/circulation areas; and whether the return frontage of the shop should be reflected in the valuation.

Evidence and submissions

13. The appellant's submission included: photographs of the subject property; copies of licence agreements; a witness statement from the appellant; statement of the issues in dispute; details of the registered companies which occupy the nine assessments; a statement of case; and a revised valuation in respect of the appeal property.

14. Mr Radford contended that, should the property be valued on a zoning basis, an unadjusted rate (UAR) of £475.00/m^2 should be adopted along with an end allowance for the unusual shape of the property. He contended that 7.5m^2 of the property in dispute was being used as a common reception area for the use of the four companies which had tenancies on the ground floor of the appeal property and should be excluded from the valuation and treated as a common area.

15. Mr Radford argued that 16.5m^2 should be valued at zone A and 15.2m^2 should be valued at zone B to give an RV of £10,450. Alternatively, if valued on an overall basis he adopted a UAR of £330/m^2 with an overall area of 31.8m^2 resulting in an RV of £10,450. Both valuations included a 10% end allowance for the unusual shape of the property. Finally, he argued that there should be no addition for the return frontage to the side of the shop as this was not common in Harborne High Street.

16. The Valuation Officer's representative Mr Bryne had stated his case in the challenge decision notice.

17. Mr Bryne argued that within the valuation of the nine separate hereditaments, areas for access, circulation and other common parts had been omitted. However, he contended that the parts of the shop included in zone A and zone B would not require access by other tenants and the 7.5m^2 within the shop referred to by the appellant as a common area should not therefore be omitted from the valuation.

18. He argued that on an empty and to let basis the whole of the shop area would be utilised, he stated that there is no divide or area which distinguishes this part of the shop as an essential access or common area. Mr Bryne believed that as a shop and premises the property should be valued by zoning. Like the appellant, he had adopted a UAR of £475/m^2 for zone A which had been adjusted to £498/m^2 to take account of the return frontage. An end allowance of 10% for the awkward shape of the property had also been applied.

Decision and reasons

19. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

20. The term ‘rateable value’ is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “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 –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> 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;
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> 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.”

21. The Lands Tribunal judgment in *Lotus and Delta v Culverwell* (VO) [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

22. The panel noted that in this appeal the parties were in agreement that the UAR to be adopted was £475/m^2.

23. The appellant had argued that a common reception area was required so that when customers arrive to visit one of the four tenants in occupation of a part of the ground floor of the property they have somewhere to wait. He contended that the only space available for such a reception/waiting area was an area within the estate agent shop. In view of this he stated that the area of the shop should be reduced to take into account the common area.

24. After careful consideration of the photographs, plans and other evidence and submissions provided, the panel found that the 7.5m^2 area was essentially in the middle of the estate agent shop. It could not be considered essential to other tenants for access to any of the designated common areas, for example the toilets, and was not clearly defined as a separate area from the shop. As well as this it appeared from the photographs that England Kerr Hand Solicitors had its own reception area.

25. The panel found that the appellant had not provided any significant evidence to convince it that there was any need for any of the other tenants on the ground floor to use the area within what appeared from the plans and photographs to be the middle of the shop. The panel also held that as a relatively small shop this hereditament should be valued using the zoning method. The panel was of the opinion that the overall method of valuation was more suited to large shops like supermarkets and department stores.

26. With respect to the return frontage, the panel found that the photographs showed the large windows to be of benefit, in particular to an estate agent, allowing the properties for let or for sale to be displayed and to encourage sales. It therefore held that the return frontage should be included in the valuation.

27. The panel found the evidence and submission provided by Mr Bryne to be the more persuasive. It accepted his argument that the shop had been identified as what it had been historically, and it had been valued on an empty and to let basis and could be ringfenced. The panel also found that it would be unusual to have a circulation area in a shop.

28. In conclusion, it was for the appellant to prove to the panel that a reduction was appropriate. In this case there was a lack of credible evidence to convince it that there was any need for any of the other tenants on the ground floor to use the area within the shop; consequently the panel did not consider this to be a common area.

29. In light of Mr Bryne's evidence, the panel held that the RV of £14,250 was fair and reasonable. The appeal was dismissed.

Date: 17 November 2020

Appeal number: CHG100057143