THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; method of valuation; mode or category of use; comparable properties; appeal dismissed.

Re: Tea House Theatre, 139 Vauxhall Walk, London SE11 5HL

APPEAL NUMBER: CHG100073491

BETWEEN:	Tea House Theatre Ltd	Appellant
	and	
	Mr A Ricketts	Respondent
	(Valuation Officer)	

PANEL: Mr P Hickson (Senior Member) and Mrs A Taylor

CLERK: Mrs S Morgan

REMOTE HEARING: Monday 8 March 2021

PARTIES PRESENT: Mr A Bacon – Appellant's representative

Mr C Tawonezvie – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed.

Introduction

2. This is a 2017 rating list appeal. Tea House Theatre, 139 Vauxhall Walk, London (the 'appeal property') had been entered in the 2017 rating list as 'shop and premises' at a RV of £49,750 with effect from 1 April 2017.

3. The challenge proposal was submitted by JMA Chartered Surveyors on behalf of Tea House Theatre Ltd and was received by the Valuation Officer on 5 February 2019. It had been made on the grounds that "the property was a former public house and so, naturally, it would be valued on turnover as all that has happened is they have switched from drink to tea shop". Mr Bacon sought a revised RV of £25,500 with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice in which it stated that based upon the evidence and information available, the rating list entry of £49,750 RV should be reduced to £34,250 RV with effect from 1 April 2017, to reflect an overall valuation approach and a reduced level of value.

5. 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.

6. 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.

7. 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 confirmed that he was instructed on a contingency fee basis. He 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 cases.

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

9. 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 before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

10. The issue in dispute was the method of valuation. The appellant's representative had valued the property on a turnover approach whilst the respondent contended that as a shop it should be valued on an overall basis.

Evidence and submissions

11. The appeal property, previously known as the Queen Anne public house, closed in 2010. The property is currently operated privately as a tea house providing tea, cakes and hot food on its A3 planning use with the occasional theatre event. There was no alcohol license at the material date. The property comprises of a basement and ground floor area in a three-storey building in Vauxhall Walk. The remainder of the property is domestic. It is located on the edge of the Victorian pleasure gardens, in a predominantly residential area.

12. Mr Bacon provided a copy of the profit and loss accounts for the year ending 31 January 2015. He believed that the most appropriate method of valuation for this unique property would be to value it, as a restaurant, on turnover. Based on £300,000 as the FMT and using band B (8.5%), he sought a revised valuation of £25,500 RV.

13. With no rents and no direct comparable properties, Mr Bacon contended that turnover was the only direct method of valuation or at least a guide to the appropriate level of valuation. It was difficult to find any comparable properties. The nearest was The Lido Café in Brockwell Park, approximately 3 miles away by road. This was a park tea-room which was assessed at £135/m^2 on an overall basis. With this in mind, Mr Bacon believed that if a similar method was used, then the level of value should be more in line with this figure.

14. Mr Bacon also referred to Ashtar Lounge at 80-81 Albert Embankment. This property was valued at £170/m^2 on an overall basis. If he applied this figure to the agreed areas for the subject property, then it would produce a figure close to his proposed RV based on turnover.

15. Mr Tawonezvie explained that when the property was used as a public house it would have been assessed on a turnover approach. However, as there had been a change of use to a shop/café, the method of valuation was changed to an overall approach based on a figure of £220/m^2, which gave a revised rounded valuation of £34,250 RV. This was a 10% increase on the 2010 list assessment, which he believed was reasonable.

16. In support of his case, Mr Tawonezvie referred to comparable properties valued on an overall basis close to the subject property.

    Sainsbury's Local, 7-11 South Lambeth was situated next to Vauxhall Railway Station, approximately 0.3 miles from the subject property. In 2012 the tone was £600/m^2 and in 2017 it was £750/m^2, an increase of 25%.

    Starbucks, 2 South Lambeth Palace was also situated next to Vauxhall Railway Station, approximately 0.3 miles away from the subject property. In 2010 the tone was £400/m^2 and in 2017 it was £550/m^2, an increase of 37.50%.

    Bonnington Café, 11 Vauxhall Grove was approximately 0.4 miles away from the subject property. This property was valued on the zoning method. The 2010 tone was £125/m^2 and in 2017 it is £190/m^2, an increase of 52%.

17. With regard to Ashtar Lounge, in 2010 this was valued at £110/m^2 and in 2017 at £170/m^2, which represented a 54.54% increase.

18. Mr Tawonezvie contended that valuing a property on turnover was usually reserved to larger restaurants or for those located in out of town locations like Nando's at Arch 52, including 2 South Lambeth Road. He accepted that his comparable properties were situated in arguably better locations than the subject property and therefore his revised valuation of £34,250 RV reflected this factor.

19. In response to the respondent's comparable properties, Mr Bacon contended that they were not helpful as their locations were different or the properties had been valued on the zoning method.

Decision and reasons

20. In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where 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.

21. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

22. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

23. The issue in this case was that the appellant's representative contended that the turnover method was the most appropriate way of valuing the subject property, whilst the respondent valuation officer contended for the overall method of valuation based on £220/m^2.

24. The panel examined the evidence submitted by both parties. It found that following alterations and a change of use, the subject property was no longer a public house but was now being operated as a shop/café. With this in mind, the valuation of the property had to have regard to the mode or category of use. As a shop, the subject property could be valued on an overall basis or a zoning approach and therefore the turnover method, as contended by the appellant's representative, was no longer appropriate.

25. The appellant's representative had not provided any alternative valuations but had argued that the comparable properties put forward by the respondent were situated in a different type of location to the subject property. The respondent's comparable properties may have been next to Vauxhall Railway Station however, they were within 0.3 miles of the appeal property and they had been assessed on an overall basis. Although noting the differing locations, the panel saw no reason not to apply the overall approach to the subject property.

26. Having determined that the overall method of valuation was appropriate for the appeal property, the panel then looked at the level of value to be adopted. As the subject property was freehold and no other rents had been put forward by the parties, the panel again turned to the comparable properties. The appellant's representative had suggested values of between £135/m^2 and £170/m^2, if an overall approach was applied. The respondent, as a guide, had put forward the percentage differences between the 2010 and 2017 rating list for each comparable property. The panel noted that the differences did suggest that 10% between lists for the appeal property was reasonable compared to the average 52% for the comparable properties. Based on the evidence that had been presented, the panel was satisfied that £220/m^2 adopted by the respondent on an overall approach, appeared reasonable.

27. The panel therefore determined that based on an overall area of 156.12m^2 at £220/m^2, a revised RV of £34,250, with effect from 1 April 2017, as conceded by the valuation officer, was reasonable.

28. In view of the foregoing, the panel dismissed the appeal.

Date: Wednesday 7 April 2021

Appeal number: CHG100073491