VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; shop and premises; café in station; accuracy of rateable value in compiled list; comparable evidence considered; Decision: Appeal allowed.

RE: Bon Voyage Café at Blackfriars Station, Hopton Street, London, SE1 9JH

APPEAL NUMBER: CHG100077884

BETWEEN:	Mobile Coffee Carts.com Ltd (represented by Altus Group)	Appellant
and	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mrs L Bryning (Senior Member)
Mr D Heelas

REMOTE HEARING: 9 March 2021

CLERK: Mrs A Sloan

ATTENDEES: Mr M Morrison (Advocate and Expert Witness for the Appellant)
Mr C Cates (Advocate for the Respondent)

Summary of decision

1. Appeal allowed. The Rateable Value (RV) is reduced to £42,250 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. 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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. Mr Morrison had, in his expert witness report, declared that his firm will receive a conditional fee or some other success related arrangement if the rateable value is reduced as a result of the panel’s decision. However, he had also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and he would comply with this, regardless of whether or not the evidence supports his client’s case.

5. 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 is allowable due to the Tribunal’s rules on admissibility of evidence (reg 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel hearing the evidence therefore considered the “expert” evidence and assessed what weight it should give to it in the context of the matters in issue before it.
6. 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.

Preliminary issue

7. Mr Cates raised a preliminary issue as he objected to Mr Morrison’s submission of new evidence the afternoon before the hearing. The evidence consisted of photographs of the appeal property and comparable properties, which are permitted by the Tribunal’s practice statement, providing the parties agree. Mr Cates highlighted that the document had been sent to the Tribunal and the Respondent after 6pm on the afternoon prior to the hearing, when Mr Cates had finished work for the day. He also raised a query on whether any new evidence had been included in Mr Morrison’s expert witness report, submitted with the appeal. Mr Morrison stated that the photographs were just supplementary to information already in the expert witness report.

8. In considering a breach of the Tribunal’s directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an inaccurate entry in the rating list and the need to enforce compliance with the rules, directions and orders of the Tribunal.

9. The panel firstly considered the late service of the photographs by Mr Morrison. The Tribunal's standard directions state – '*There is no need for parties to submit photos and plans to the Tribunal at the two week period, but there should be agreement before the hearing between the parties that any photos and plans submitted to assist the panel on the day are a true representation of the situation at the material day.'*
The panel decided that the late service, after close of business the day before the hearing, left the Respondent with no opportunity to examine and agree the submission and Mr Morrison had provided no good reason for the late service. The panel therefore decided to exclude the additional photographs from the hearing.

10. On the subject of the expert witness report, Mr Cates was asked by the clerk if he had objected to the document leading up to the hearing as set out in the standard directions or if he had any record of a colleague doing so. Mr Cates confirmed he had no record of there being an objection lodged regarding the expert witness report prior to the hearing. The panel concluded that the Respondent had been aware of the appeal documents submitted by the Appellant's representative since the appeal was lodged in December 2020 and listed for hearing on 27 January 2021. The panel was of the opinion that this left adequate time for the Respondent to raise any objections and the absence of an objection suggested the appeal submission was accepted. The panel therefore admitted the expert witness report as evidence.

Background

11. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £74,000 from 1 April 2017, based on an unadjusted rate of £1,750/m^2. This was a compiled list appeal, so the material day was also 1 April 2017. The appeal was made on 10 December 2020 against the Valuation Officer's (VO) Decision Notice of 28 August 2020. The VO's decision was to treat the Appellant's proposal as not well founded and the entry of £74,000 RV was deemed correct.

12. The proposed RV sought by the Appellant was £42,250, based on £1,000/m^2.

Issues

13. The physical survey details of the subject property were agreed between the parties. The sole issue for the panel to decide was the correct base rate to be applied to the valuation.

14. Mr Morrison sought a reduction to £1,000/m^2 on the basis of comparison with other properties in the locality and properties similar in nature to the subject property. Mr Cates defended the existing valuation citing the passing rent on the subject property, which he stated would analyse to a higher base rate than used in the current valuation.

Decision and reasons

15. The sole issue to be determined in this appeal was the price per m^2 to be applied to the valuation. The Respondent had based the valuation on £1,750/m^2 and argued that the actual rent agreed on the subject property exceeded the RV, so the current entry was reasonable. Mr Morrison had used comparable properties to demonstrate the tone of the list in and around Blackfriars station and for similar properties located at other stations. He felt that the current RV was excessive in comparison and argued for a base rate of £1,000/m^2 in line with a similar coffee shop at London Bridge station.

16. Mr Cates was of the opinion that the shops in Hopton Street, close to the South entrance to Blackfriars station, were not helpful comparisons as they are not located within the station and no rents had been supplied. Mr Morrison argued that the base rate on these shops were significantly lower than the subject property (all under £300/m^2) and some had been recently reduced.

17. He also referred the panel to units at the North entrance, which he contended was more established and busier than the South entrance. Units at the North entrance were valued at £520/m^2. Mr Cates argued that this North entrance to the station was a different area to the South and highlighted that no rents had been provided.

18. Mr Cates was also of the opinion that the examples in other stations provided by Mr Morrison were not helpful as they are different locations to the subject property. Mr Morrison stated that he had concentrated on retail units similar in nature to the subject i.e. coffee shops and had looked at a wider area to identify similarly located units in stations for comparison.

19. The panel noted Mr Cates' comments that the current valuation for the subject property was based on the rent agreed by the occupier prior to the Appellant company. Mr Morrison stated that the previous occupier had become insolvent and therefore this indicated the rent agreed was too high. The panel found that details of this rent had not been provided by either party in evidence so placed little weight on this argument. However, it noted that the passing rent on the subject property was £125,000 per annum, agreed in 2018. Mr Cates stated that the Appellant company is an established trader and the rent agreed would have been negotiated by a taxpayer familiar with the London market and willing to pay a premium for a prime location at the station entrance. He argued that using the actual rent agreed would result in a higher RV than currently in the rating list.

20. The panel noted Mr Morrison's argument that the South entrance was opened in 2012 and was not as busy as the older North entrance. The parties confirmed there are other retail units at the South entrance to the station but no details for comparison were provided by the parties. Mr Morrison explained he preferred to compare to other food and drink establishments, and he understood the other units at the South entrance were not of this nature.

21. The panel agreed with Mr Cates that the shops in Hopton Street were of limited value as comparable properties, being different in nature to the kiosk style subject unit located within the station. It also noted the tone for units at the North entrance to Blackfriars station but was of the opinion that the base rate there seemed out of line with the actual rent agreed on the subject property. The panel considered that the 2018 rent on the subject property was too far from the AVD of 1 April 2015 to be of much use, but it could not be completely disregarded and the prime location for this coffee shop which was clearly desirable.

22. After considering all of the evidence presented, the panel found that the best comparable property was the unit at London Bridge Station, 1 Joiner Street, SE1 9SP. This unit is similar in size and nature to the subject property and also in a prime location within a busy station. This unit was valued at £1,000/m^2 and the panel felt that this would be a fair value for the subject property.

23. In conclusion, the panel considered the rental evidence was some three years after the AVD and was out of line both with the tone of the list of other rateable values at Blackfriars and the RV determined by the VO. The panel was of the opinion that the current assessment was excessive and the appeal was allowed.

Order

24. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for Bon Voyage Café at Blackfriars Station, Hopton Street, London, SE1 9JH in the 2017 Rating List to £42,250 effective from 1 April 2017.

    The Valuation Officer must comply with this Order within two weeks of its making.

    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: 24 March 2021

Appeal number: CHG100077884