THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic Rating appeal; 2017 rating list; Restaurant and premises; Rating hypothesis; Adjusted rent; Appeal dismissed.

RE: Tiggis Restaurant, Longsight Road, Blackburn BB1 9EX

APPEAL NUMBER: CHG100078577

BETWEEN: Rosato Limited (represented by John Houston Consulting) — Appellant

And

Richie Roberts (Valuation Officer) — Respondent

PANEL: Mr C J Lester (Senior Member)
Mrs C Dodsley

CLERK: Ms S Hodgson

ON: 3 December 2020

APPEARANCES: Mr Houston of John Houston Consulting for the appellant
Ms Reddihough of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £54,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £54,000 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017.

The challenge stage was completed on 30 March 2020. The challenge sought a reduction in RV to £34,500.

3. The appeal hereditament was a restaurant located in a rural location outside of Blackburn. It was a detached two-storey building with a basement. The upper floor was living accommodation that comprised five bedrooms. The restaurant had been extended and refurbished.

4. 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.

5. 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.

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.

Issue

7. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

8. Mr Houston appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal’s judgement in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Houston declared at the hearing that he was instructed on a fixed fee basis.

9. Mr Houston submitted to the panel that, in his opinion, the best evidence was the rent on the subject property and the Valuation Tribunal for England (VTE) decision on San Marco restaurant in Preston, appeal number CHG000000142. He advised there were three areas of dispute in relation to the rent on the subject property which were the living accommodation above the restaurant, the value of the extension to the property, and the value of the goodwill fixtures and fittings to be applied. Mr Houston described a fall in the rental value of commercial buildings in Lancashire between 2008 and 2013 and believed this had not been considered in the current RV of the subject property. He sought a reduction in RV to £34,500 by way of a reduction in the main space rate from £140 per square metre (psm) to £90psm.

10. Ms Reddihough for the respondent explained that there were, in her opinion, substantial issues with the subject rent and that it required too many adjustments for it to be relied on solely. She provided an explanation of the figures used for the living accommodation, the extension and refurbishment and the fixtures and fittings. Ms Reddihough provided details of comparable restaurants in the locality. She did not believe that the VTE decision was relevant, as evidence had been excluded and the property in the appeal was over 16 miles away from the subject property. Ms Reddihough sought a dismissal of the appeal and for the current RV of £54,000 to be confirmed.

Decision and reasons

11. 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.*

12. In respect of an appeal against an entry in the 20017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No.2841).

13. 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.

14. The panel first considered the VTE decision for San Marco restaurant in Preston. Previous VTE decisions are not binding on the panel but can be persuasive. The panel noted that the Vice President excluded the respondent's rental evidence due to an administration error on the respondent's part, and therefore only one property was used as a comparison.

15. The panel attached little weight to the previous VTE decision due to the above reason and found there were comparable restaurants in the locality of the subject restaurant for it to consider as part of its decision.

16. The panel then considered the rent on the subject property. The agreed rent was £45,000 per annum (pa) on a 20-year lease effective from 17 April 2012. There was a rent renewal in February 2017 with no increase made to the rent. The panel had heard from the parties that there were at least three discrepancies with the subject rent, the first was the amount to be deducted for the upstairs living accommodation.

17. The rent on the subject property included residential living accommodation above the restaurant comprised of a five-bedroomed flat. Ms Reddihough had valued the accommodation at £4,800pa which was calculated by applying a value of £80 per month to each bedroom. This figure was provided by the rent officer at the Valuation Office Agency. Mr Houston had valued the living accommodation at £13,000pa by applying a value of £50 per week to each bedroom. The figure of £50 per week was adopted from the 2019 local housing allowance rates.

18. It was the panel's view that the figure deducted from the rent for the living accommodation did appear low, however there was no evidence provided by Mr Houston to support his claim for a higher figure to be used. Mr Houston attached weight to the 2019 local housing allowance figures, however these were not provided and were 4 years removed from the AVD.

19. The second issue identified with the subject rent was the value of the extension to the property. Ms Reddihough had adopted £200,000 in her rental analysis and Mr Houston had used £80,000 in his. A form of return dated August 2012 was completed by the occupier and stated tenant's voluntary improvements at £250,000 - £300,000. A later FOR in 2017 completed by Mr Houston reduced these costs to £80,000.

20. The panel had regard for the list of works that was provided by Mr Houston, however agreed with Ms Reddihough that there was no explanation why many lines were not included in the figure. In the absence of further evidence to confirm the full cost of the extensions to the subject property, the panel was of the mind that the current calculation appeared reasonable.

21. The third discrepancy with the subject rent was the amount used for the value of goodwill, fixtures and fittings. Mr Houston had advised that the lease was agreed for a trading business and included all the fixtures and fittings. He explained these were valued at £500,000. Ms Reddihough disagreed with this figure as there was no reason provided for where it came from and no inventory or details of what had been included.

22. The panel found authoritative guidance from the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* [1976] RA 141, regarding the weighting of evidence, in that, the passing rent, where available on the appeal property should be used as the starting point in its consideration of the rateable value for the appeal property. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it.

23. In this case, the rent for the appeal property did not match the hypothesis and would require multiple adjustments to do so. The panel found the subject rent did not provide reliable assistance in determining the rateable value of the restaurant and therefore the panel turned to the evidence of the comparable restaurants in accordance with *Lotus and Delta* in order to determine the appeal.

24. Olive's Bistro & Wine Bar was a restaurant with a good quality conversion that was located in a similar out of town location. The panel did note that it was 15 miles from the subject property. The rent of £25,000 was effective from 13 February 2015, less than two months from the AVD. This rent had been analysed to £139.01psm and the adopted main space value was £140psm. However, being some distance away like the San Marco restaurant less weight could be attached to this comparable property.

25. 38-42 Guildhall Street was a Tiggis restaurant in Preston City Centre. The rent of £55,000 was effective from 15 March 2015 and after a deduction for fixtures and fittings, was analysed at £123psm with an adopted main space rate of £140psm. The panel note this was in a city centre location removed from the subject property. However, the rent had been set close to the AVD and provided some assistance.

26. You & Yu's was located 1 mile from the subject property. The rent was £72,000 effective from 10 May 2018. The rent had not been analysed but the adopted main space value was £140psm.

27. The Villa was located 9 miles from the subject property. There was a rent renewal on 1 October 2015 for £37,999.92 that was analysed at £185.41psm. The adopted main space value for this restaurant was £170psm.

28. 154 Preston New Road was located in a similar rural location to the subject property on an A road, 6 miles away. The panel heard that the landlord and tenant were connected, however the agreed rent of £40,000 was analysed higher than the other restaurants at £182.78 and had an adopted main space rate of £140psm. The panel attached appropriate weight to this comparable restaurant due to the connected parties.

29. Mezzo Restaurants Ltd had a rent agreed from 1 March 2015 of 30,000 that analysed at £54.63. It was located on an A road, 5 miles from the subject property. It had a main space value of £140psm. The panel noted this was an outlier in the basket of rents and placed limited weight on it.

30. Shajan Indian Restaurant was located next door to the subject property. It was an owner-occupied building and therefore had no analysed rent. The adopted main space value was £140psm and this had not been challenged.

31. Having regard to the basket of rents available and the main space price adopted for all the comparable properties the panel considered that the main space price of £140psm for the subject restaurant did not appear unreasonable.

32. The rent for the subject property could not be relied on and Mr Houston had failed to provide sufficient alternative evidence to show that the RV was incorrect.

33. Consequently, based on the evidence before it, the panel dismissed the appeal.

Date: 22 December 2020

Appeal number: CHG100078577