THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; appeals against two entries in the rating list at 1 April 2017; shops; rental evidence; appeals dismissed.

RE:

(1) Basement and Ground Floor, 32 Chapel Market (Including 12A Chapel Place), London N1 9EN
(2) Basement and Ground Floor, 52 Chapel Market, London N1 9EW

APPEAL NUMBERS: CHG100077502 and CHG100079898

BETWEEN:	(1) SBR Enterprises Ltd (2) Towerstone Ltd	Appellants
	and Mr A Ricketts (Valuation Officer)	Respondent

PANEL:	Mr M H Smith (Chairman) Mr M Nwosu
CLERK:	Mr D Mulgrew
HEARING:	Remote hearing No.2 on 18 February 2021
APPEARANCES:	Mr P Barney (Altus Group) (Appellants' representative) Mr K Abbaas (Respondent's representative)

Summary of decision

1. Appeals dismissed. No further changes were made to the rateable values of the properties.

Introduction

2. These appeals have been brought in respect of the following hereditaments:

- Basement and Ground Floor, 32 Chapel Market (Including 12A Chapel Place), London N1 9EN (“32 Chapel Market”).

- Basement and Ground Floor, 52 Chapel Market, London N1 9EW (“52 Chapel Market”).

3. Each of the properties was described in the 2017 rating list as “shop and premises”.

4. The appellants had made proposals to the Valuation Officer on the grounds that the entries shown in the rating list on 1 April 2017 were wrong and that they should be reduced.

5. In the case of 32 Chapel Market, the rateable value had been £37,500, but following the challenge proposal that sought a reduction to £31,250, the Valuation Officer had reduced the list entry to £35,500.

6. In the case of 52 Chapel Market, the rateable value had been £61,000. As a result of the proposal that sought a reduction to £50,500, the Valuation Officer had reduced the list entry to £57,500.

7. In accordance with regulations[1], appeals were made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal properties was not reasonable. Mr Barney believed the Valuation Officer’s reductions were insufficient and that the list entries should be reduced as had been proposed.

8. The President of the 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 relevant legislation[2]. The VTE may determine the form of any hearing.

9. Therefore, in pursuance of the relevant regulation[3] 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.

10. The appeals were heard together as the representatives for the parties were the same and the evidence was very similar.

[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

[2] 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).

[3] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

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 before 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.

Issue

12. The issue in dispute concerned the zone A price per square metre to be adopted for the rating list entries in respect of the appeal properties. They had originally been assessed at £900/m^2, but the Valuation Officer had amended this to £850/m^2 as a direct result of the challenge proposal. The appellants' representative considered this to be insufficient and sought a reduction to £750/m^2.

Evidence and submissions

13. The appeals to this Tribunal included correspondence between all parties and the evidence which they had exchanged. It included two challenge proposals, the Valuation Officer's initial responses to the challenges and decisions, along with an expert witness report from Mr Barney.

14. The parties also referred to rental evidence, comparable assessments, the statutory definition of rateable value and case law. Plans and several photographs were provided.

15. Both parties' representatives appeared in a dual role of advocate and expert witness.

16. The appellants' representative, in appearing as expert witness, declared that he was instructed on a contingency fee basis. However, he also 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 his client's case.

17. The panel 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).

18. 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.

Decision and reasons

19. 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 –
>
> (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;
>
> (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".

20. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

21. Chapel Market was considered by both parties to be a secondary shopping street. The occupiers there were mainly local shops but there were some national chains including McDonalds, Iceland, and Superdrug. One of the appeal properties, 32 Chapel Market, traded as Costa Coffee. The appeal properties were close to the Angel tube station and to the east, Liverpool Road, where the main shops were situated.

22. Following discussions concerning the available rental evidence, the parties agreed that most weight should be given to the three rents for properties at Chapel Market that had been agreed within approximately one year of the AVD. The parties had agreed that those rents devalued to the following:

- 32 Chapel Market – £746/m^2.
- 38 Chapel Market – £848/m^2.
- 61 Chapel Market – £964/m^2.

23. At the hearing, Mr Abbaas suggested that the rent for 32 Chapel Market could be analysed differently. He would have adjusted the discounted first year of the rent to take into account a customary rent free period to allow for the fit

out of the shop; this would result in a higher price per square metre. The panel noted his observation and the rent in the first year had been discounted by approximately 50%, so the analysis that had been agreed by the parties was somewhat lower than it might otherwise have been.

24. Understandably, Mr Barney attached the most weight to the rental evidence for 32 Chapel Market. Not just because it was the lowest rent, when viewed on a price per square metre basis, but because it was in respect of one of the appeal properties and the lease had commenced on 30 July 2015, very close to the AVD. He referred to *Lotus and Delta Ltd* v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA141 to support his approach.

25. The panel appreciated the importance of the rental evidence for 32 Chapel Market but also considered that weight should be given to the rents for 38 and 61 Chapel Market. While the rent was considered the starting point, *Lotus and Delta* also placed importance on other rents; they were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. It had to be remembered that rating was not the everyday world and the rental value arrived at had to represent the figure at which the hypothetical landlord and tenant would agree to, as a result of bargaining for that property in light of the available evidence at that time.

26. Mr Barney had argued that the rents for 38 and 61 Chapel Market were less reliable.

27. Firstly, Mr Barney stated that the rent for 38 Chapel Market was an open-ended rolling tenancy from 1 April 2016. In his experience, leases were generally for five years in this area, so tenants would pay a premium for the flexibility of an open-ended arrangement. This property was also significantly smaller than the appeal properties. The panel noted the differences.

28. Secondly, the information in respect of the rent for 61 Chapel Market, a 10-year letting from 12 March 2014, had not been acquired from a form of return. Instead, the information came from a solicitor who had completed a Stamp Duty and Land Tax return. Mr Barney stated that it was unknown what incentives had been offered and who was responsible for repairs. Further, he stated it was a restaurant, arguing that the A3 planning use class carried a premium in this location.

29. Mr Abbaas argued that there had been no evidence presented to support the A3 use commanding higher rental values in this location. He also disagreed that there was A3 use at the AVD and argued that no structural alterations had been made to that property; any changes were minor. In his view, vacant and to let it remained a shop. He said that in many cases the planning use classes were wider than the occupation.

30. The panel recognised that there was no form of return for 61 Chapel Market, but ultimately the evidence was admissible in these proceedings and had been provided by a legal professional. In any case, the panel noted that the Valuation Officer's adopted price for the appeal properties (£850/m^2) was

significantly less than the rental analysis for 61 Chapel Market (£964/m^2). The panel also heard from Mr Abbaas that there was a premium of £90,000 for 61 Chapel Market and this had not been accounted for by his colleague from the Valuation Office Agency who had initially analysed it at £964/m^2. If an adjustment was made to reflect the premium, the price per square metre would have been significantly higher.

31. The panel reached the conclusion that Mr Barney had insufficient evidence to discount the evidence in respect of 61 Chapel Market. The analysis at £964/m^2 could have been higher adjusting for the premium, and there was no evidence presented to show that A3 use had resulted in a higher rent.

32. There was a rent in respect of 52 Chapel Market but, as this was locked into an agreement from 2005, the panel agreed with Mr Barney that it was not good evidence given the remoteness from the AVD.

33. After careful consideration of the evidence, the panel decided that £850/m^2 was reasonable having regard to the basket of AVD rental evidence for 32, 38 and 61 Chapel Market.

34. In view of the foregoing, the appeals were therefore dismissed.

Date: 8 March 2021

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