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; rental evidence; comparable assessments; appeals allowed.

RE: Costa Coffee, 3 The Clarendon Centre, Oxford OX1 3JD

APPEAL NUMBERS: CHG100082314 and CHG100079968

BETWEEN:	Costa Limited	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Mr W Read (Senior Member)
Mrs F Duggan

CLERK: Mrs H Beresford

REMOTE HEARING ON: 30 November 2020

APPEARANCES: Mr R Stoney of Gerald Eve LLP (Appellant's representative)
Mr S Boyd (Expert witness for the Appellant)
Mr T Jackson (for the Valuation Officer)

Summary of decision

1. The appeal was allowed, the assessment was reduced to rateable value (RV) £52,500 with effect from 1 April 2017 and £56,500 with effect from 24 October 2017.

Introduction

2. This appeal has been brought in respect of the following: Costa Coffee, 3 The Clarendon Centre, Oxford OX1 3JD (the 'appeal property'), which was entered in the 2017 rating list as 'shop and premises' with a rateable value (RV) £105,000 effective from 1 April 2017 and for £114,000 with effect from 24 October 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Costa Ltd 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 following the appellant's check and challenge. The appellant had sought a reduction to RV £52,500 with effect from 1 April 2017 and £56,500 with effect from 24 October 2017. The value of the property was £1,800/m^2 in terms of main space (ITMS) however a 7.5% allowance had been adopted for the period 1 April 2017 to 24 April 2017 to reflect the closure of Westgate car park. The property had been valued on the zoning basis.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal hereditament comprises a cafe with an overall area of 139.7m^2. It is situated close to one of the entrances to the Clarendon Centre, a shopping centre built in 1984. The property is arranged over ground and first floor.

6. The appellant's representative, when 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. There were two issues in dispute. Firstly, should the appeal property be valued on the zoned or overall basis. Secondly, what main space/Zone A rate should be applied.

Evidence and submissions

13. Mr Stoney, the appellant's representative, had submitted evidence which included: the appellant's case; photographs of the appeal property; a location plan; details of comparable properties; a map of the comparable properties; a copy of the Scottish Lands Valuation Appeal Court's decision in respect of *Glasgow City Assessor v Monti Marino (Glasgow) Ltd* [2012] CSIH 55; an extract from the lease of the property's permitted user clause; notice of grant of planning permission for use of the property as a cafe; evidence of cafes in Oxford valued on an overall approach; examples of agreed cafe assessments in England where the valuation approach had been changed from zoning to overall basis; a copy of the Valuation Office guidance for valuing cafes and restaurants; a copy of Valuation Tribunal decision 451025967982/539N10; and revised valuations in respect of the appeal property.

14. Mr Stoney argued that the property should be valued with reference to the mode and category of use, he stated that the property was incorrectly described as shop and premises whilst the planning permission and permitted use in the lease was for a café and premises. He contended that the rent which had been agreed at £60,000 in June 2016 analysed to £550.00/m^2 on an overall basis which Mr Stoney believed was supported by his comparable properties.

15. Mr Stoney contended that the subject property should have been valued on an overall basis rather than a zoning basis because it is a café, he believed this approach was supported by the Valuation Office guidance manual. He argued that the property should be valued on an overall basis, based on £550/m^2 ITMS and he therefore sought a revised RV of £52,500 with effect from 1 April 2017 and £56,500 with effect from 24 October 2017.

16. The Valuation Officer's representative, Mr Jackson, had provided: rental evidence for five comparable properties in the Clarendon Centre; a valuation of the appeal property; and a response to the challenge. Mr Jackson gave an oral submission in response to Mr Stoney.

17. Mr Jackson argued that zoning is a standard method for measuring and valuing retail premises, he stated that it is assumed properties are vacant and on the market to be let, the actual use of a property by an occupier being irrelevant unless it had undergone significant alterations. Mr Jackson referred to comparable premises on Cornmarket Street and Queen Street in the Clarendon Centre which are valued on a zoned basis rather than an overall basis and which are cafés and restaurants in close proximity to the subject property. He contended that the rental evidence for the shops in The Clarendon Centre supported the adopted rate of £1,800/m^2.

18. Mr Jackson argued that, after considering the guidance given in the Court of Appeal decision *Williams (VO) v Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd* [2001[EWCA Civ 185 the property should remain valued on a zoned basis. He stated that based on the rental evidence for 3 Clarendon Centre, which as at the antecedent valuation date (AVD) of 1 April 2015 was £132,000 per annum, as vacant and to let, an RV of £114,000 was fair and reasonable.

19. Mr Jackson attested that the rental agreement made in June 2016 was some sixteen months after the AVD, he also noted that the landlord of the premises had paid the appellant a £20,000 capital grant and that he believed that in effect the landlord had paid Costa to stay in the property and therefore the rent passing of £60,000 did not amount to an open market rent. Mr Jackson asked the panel to confirm the RV at £105,000 with effect from 1 April 2017 and £114,000 with effect from 24 October 2017.

Decision and reasons

20. 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 AVD,1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

21. 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;
>
> 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"

22. 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.

23. The panel noted that the Valuation Officer had based his valuation on a rent of £132,000 which had been agreed in 2006, however, the panel attached little weight to this evidence as it was aware that the rent had been renegotiated to £60,000 in June 2016 which was much closer to the AVD. Whilst the panel were aware that the rents on shops in the centre were much higher, they accepted that the rent for a café could be lower as profitability of a café was likely to be lower and the landlord would be keen to keep a variety of shops and cafés and restaurants to encourage shoppers to stay in the centre.

24. After careful consideration of the evidence presented, in particular the planning permission to change the subject property from retail (Class A1) to coffee shop (Class A3) and the

extract from the lease of the property's permitted user clause for a retail coffee shop, the panel were of the opinion that the description of the property should be considered to be a café and premises. In cross examination Mr Jackson agreed that this was the case.

25. Consequently, the panel was not persuaded by Mr Jackson's argument that the property should be valued by the zoning method in line with other shops in the Clarendon Centre where a tone of £1,800/m^2 for zone A had been adopted. In light of the evidence presented and advice given in the Valuation Office guidance manual, the panel held that the subject property should be valued on an overall basis.

> *"Rents paid in respect of restaurants appear to increasingly support an overall approach when performing analyses, as opposed to the traditional zoned method for shops: the evidence may support a different valuation approach to that of the surrounding shops. In a town/ city centre, in general, one would expect to see the value of restaurants varying, as Zone A pitches do……. in some prime high Zone A pitches the overall price of restaurants may lead to a lower valuation than for a shop. For example in a shopping centre the landlord will want to have a mixed tenant use and may be prepared to accept lower rents from A3 users in order to maximise the value of their development by encouraging shoppers to linger and take lunch as part of their visit. Lower rents for A3 users in such shopping centres may also reflect the restricted opening hours of the centre."*

26. The panel turned to the rental evidence provided by Mr Jackson and noted that whilst the rents supported a rate of £1,800/m^2 the majority of the comparable properties were shops.

27. The panel found the evidence presented by Mr Stoney to be the most compelling. Mr Stoney had provided evidence of various properties in England which had been altered from a zoning to overall method of valuation in the 2010 rating list and which had been valued on an overall basis in the 2017 list. Mr Stoney had also provided details of twenty-two properties with mode and category of use 'café and premises' in Oxford which had been valued on an overall basis. In particular the panel noted that the Costa Coffee shop situated in the Westgate shopping centre in Oxford had been valued on an overall basis at a rate of £400/m^2. The panel found that the Valuation Officer had been inconsistent in his approach.

28. The panel found the valuation proposed by Mr Stoney to be fair and reasonable and accepted a rate of £550/m^2 ITMS based on a rent of £60,000 per annum. The panel noted that a 7.5% reduction should be applied to this valuation for the period 1 April 2017 to 24 October 2017 due to a closure of the Westgate car park.

Floor	**Description**	**Area m^2**	**Price /m^2**	**Value £**
Ground	Sales	78.69	550.00	43,280
Ground	Customer WC	5.22	275.00	1,436
First	Kitchen	10.53	269.50	2,838
First	Internal Storage	45.26	192.50	8,713
First	Staff WC	0.00	0.00	0.00
Total area		139.70	Sub-total	56,267
Additional items				
Air-con		94.44	7	661
Sub-total				56,928
Rateable Value			**RV say**	**56,500**

29. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

30. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £52,500 with effect from 1 April 2017 and £56,500 with effect from 24 October 2017.

31. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 11 December 2020

Appeal numbers: CHG100082314 and CHG100079968