VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; club and premises; rental evidence; comparable assessments; appeal allowed in part.

RE: Units G13 LG1 & LG2, The Corner House, Nottingham, NG1 4DB

APPEAL NUMBER: CHG100090277

BETWEEN:	EQ Entertainment Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL:	Mr MF Hunt (Senior Member) Ms S Eze
CLERK:	Mrs H Beresford
REMOTE HEARING ON:	16 April 2021
APPEARANCES:	Mr A Simons of Altus Group (Appellant's representative) Ms P Bailey (for the Valuation Officer)

Summary of decision

1. The appeal was allowed in part, the assessment was reduced to rateable value (RV) £81,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Units G13 LG1 & LG2, The Corner House, Nottingham, NG1 4DB (the 'appeal property'), which was entered in the 2017 rating list as 'club and premises' at RV £95,500, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, EQ Entertainment 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 £43,750 with effect from 1 April 2017.

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 property is a night club and premises located in Nottingham city centre in close proximity to other entertainment venues. It has a total significant internal area of 755.80m^2. The club has the benefit of a lift facility and is air conditioned.

6. The appellant's representative, when appearing as expert witness, stated that he was 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.

Issue

12. The base level of value adopted for the appeal property was not agreed. The value recorded on the 2017 ratings list was £142/m^2. The appellant had originally sought a reduction to £70/m^2. By the time of the appeal hearing, the Valuation Officer had agreed to amend the list entry to £120.00/m^2 in respect of the appeal property. The appellant did not agree, but amended his request, seeking a reduction to £90.00/m^2.

Evidence and submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer’s challenge case decision notice; rental evidence summaries; appellant’s challenge submission; photographs and location plans of the appeal property; and comparable assessments.

14. Mr Simons contended that the current unadopted main space rate applied to the appeal property’s rating assessment of £142.00/m^2 is excessive. He argued that the RV of £95,500 shown in the 2017 rating list with effect from 1 April 2017 does not represent the rental value of the hereditament under the rating hypothesis at the antecedent valuation date (AVD) 1 April 2015. He believed that the club had been valued in line with other properties within the Corner House development rather than with other clubs in Nottingham.

15. Mr Simons argued that the RV of the club is not supported by the rental evidence and that the rating assessment of the subject property is not aligned to other clubs in the area. He had provided details of several other clubs in Nottingham city centre and a statement of truth from the appellant confirming that a large service charge was included in the rent payable for the appeal property. Mr Simons stated that an amendment had been made to the lease effective from the 1 October 2016 on the following terms, “effective from 1 October 2016 – 30 September 2018 the rent, service charge & insurance was not to exceed £100,000 per annum and there was a turnover rent if turnover were to exceed £1.19 million.” As part of the agreement, ownership of the fixtures and fittings in the appeal property transferred to the landlord. He stated that the service charge was initially around £60,000 per annum but by 2015 it had increased to roughly £90,000 per annum. No independent documentation was provided to support these contentions, save for an invoice covering the year 2013/14, nor was any breakdown of the services covered by the charge provided.

16. Mr Simons explained that since making the challenge he had amended his valuation of £70.00/m^2 to £90.00/m^2 which resulted in what he believed to be a fair and reasonable RV of £56,500. This was based on a recent settlement on Retro Night Club 22, St James's Street, Nottingham which has been agreed at £90/m^2. Mr Simons asked the panel to confirm an RV of £56,500 for the appeal property.

17. Ms Bailey, the Valuation Officer’s representative, argued that no comparable rental evidence had been offered by Mr Simons to support his contentions and the rent on the appeal property had not been corroborated. As well as this she referred to the information given on the statutory Form of Return, which had been completed by Mr Simons and was dated 30 April 2015. This information confirmed a rent of £101,250 agreed in February 2010 and reviewed in February 2015 and stated that the rent did not include a service charge.

18. Ms Bailey contended that there is very little rental evidence for clubs in Nottingham city centre, however she had based her valuation on a new letting for The Cookie Club, 9 Pelham Street, Nottingham NG1 2EH from March 2014, in this case the rent analysed to

£136.69/m^2. Ms Bailey explained that in light of this evidence she had contacted the appellant prior to the hearing with a revised valuation of £120.00/m^2 resulting in an RV of £81,000, however, the appellant had not accepted this offer and continued to argue for a base rate of £90.00/m^2. Ms Bailey asked the panel to determine an RV for the appeal property of £81,000.

Decision and reasons

19. 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.

20. 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".

21. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell* (VO) [1976] RA 141 had been referred to by both parties. This decision 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.

22. The panel noted that the rent recorded on the statutory Form of Return in March 2015 by Mr Simons was disputed. The rent agreed in 2016 included a service charge, was a turnover rent, and included an element of property transfer from the tenant to the landlord. The panel found it was unable to attach significant weight to the rental evidence for the appeal property as there was insufficient information about what was included in the service charge and about the property being transferred, and found that a turnover rent was not particularly useful in determining a rateable value. There was also a dispute over the information recorded on the Form of Return, which was unfortunate due to the lack of supporting documentation provided about the original lease and service charge.

23. Mr Simons had argued that the best evidence upon which to base the valuation was the recent settlement in respect of the Retro Night Club 22, St James's Street, Nottingham which had been agreed at £90/m^2. The panel found that this property was not situated in the vicinity of the appeal property which is situated in a prime location close to the University Halls of residence and close to Forman Street which is considered to be a night life destination. As such the panel found that the appeal property would command a higher value than the Retro Club.

24. The panel found the comparable rental evidence presented by the respondent to be the more compelling evidence. Whilst very little rental evidence was available Ms Bailey had referred to the rent passing on The Cookie Club, 9 Pelham Street, Nottingham which was a new letting from March 2014, the rent on this club analysed to £136.69/m^2 and Ms Bailey had applied a 12% reduction to this rent to take into account the size of the property which measured 100.80m^2 as opposed to 755.80m^2 for the appeal property. On questioning both parties had agreed that an element of quantum existed in the valuation of clubs.

25. The panel noted Mr Simons' comparable assessment evidence however it found that the clubs referred to were situated in locations which were inferior to that of the appeal property. The panel found that the best evidence upon which to base its decision was the rental evidence submitted by the Valuation Officer in line with the valuation principles set out in the authority of *Lotus and Delta* v *Culverwell* (VO) [1976] RA 141.

26. Taking into account all of the evidence of comparable properties provided, the panel decided to allow the appeal in part in as far as conceded by the Valuation Officer. An unadjusted base price of £120.00/m^2 was considered fair and reasonable for the subject property, and therefore a revised valuation of £81,000 was determined.

27. The appeal is allowed in part, and a refund of the paid fee will now be arranged in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended) provided that there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Order

28. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £81,000 with effect from 1 April 2017.

Date: 10 May 2021

Appeal numbers: CHG100090277