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: Unit 8 at 15, Western Gateway, London E16 1AP

APPEAL NUMBER: CHG100092351

BETWEEN:	Al Masar Restaurant Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr R White (Senior Member)
Mrs F Higgins

CLERK: Mrs H Beresford

REMOTE HEARING ON: 13 May 2021

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors (Appellant's representative)
Mr M Paterson (for the Valuation Officer)

Summary of decision

1. The appeal was allowed in part, the assessment was reduced to rateable value (RV) £64,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Unit 8 at 15, Western Gateway, London E16 1AP (the 'appeal property'), which was entered in the 2017 rating list as 'shop and office' at RV £95,500, effective from 1 April 2017, but is now in use as a restaurant.

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 £61,000 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 comprises a restaurant and premises on the ground floor of a multi-storey residential building constructed in 2008. It is a corner unit within the Royal Victoria Docks development. The property does not front the marina, but it benefits from water views from the return frontage and a paved area outside.

6. Since the check was made the address of the property had been changed to Unit 8, Excel Marina, London E16 1AP, however the parties agreed that this had been an administrative amendment and there had been no alteration to the assessment.

7. 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.

8. 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).

9. 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.

10. 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.

11. 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.

12. 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

13. The base level of value adopted for the appeal property was not agreed. The value recorded on the 2017 rating list was £318/m^2. The appellant sought a reduction to £195/m^2. By the time of the appeal hearing, the Valuation Officer had agreed to amend the list entry to £240/m^2 in respect of the appeal property. However, the appellant did not agree and continued to seek a reduction to £195/m^2. A further issue was whether an end allowance should be adopted for the split levels within the property.

Evidence and submissions

14. 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.

15. Mr Bacon contended that the current main space rate suggested by the Valuation Officer for the appeal property's rating assessment of £240/m^2 is excessive. He argued that an RV of £74,000 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 restaurant should be valued in line with other properties within the Marina area. He also contended that an end allowance of 5% should be adopted for split levels within the property.

16. Mr Bacon argued that the main space price on the subject property should be reduced to £195/m^2 as he believed that it should be valued lower than a marina fronted unit as the subject property does not front the marina and does not have an outdoor seating area. Mr Bacon's main comparable property was Unit 4A, Excel Marina, which he argued had the rent closest to the antecedent valuation date (AVD) this being a new letting in September 2014, this property does not have an outdoor seating area and fronts the marina, its rent analyses to £200/m^2.

17. Mr Paterson, the Valuation Officer's representative, argued that the subject property, whilst it does not front the marina, has a prominent position on the roadside and is much closer to the marina than Unit 4A, Excel Marina. He believed the best comparable property to be Unit 7, Excel Marina, this property was situated next door to the subject property and had a rent which was a new letting agreed in August 2014 this rent analysed to £298/m^2, it was also of a similar size to the subject property.

18. Mr Paterson contended that the subject property is in an ideal location for a restaurant being close to several hotels, Emirates Air Cable and the Excel Exhibition Centre nearby. Mr Paterson explained that it had been accepted that the current valuation was excessive and had made a revised valuation of £240.00/m^2 resulting in an RV of £74,000, however, the appellant continued to argue for a base rate of £195.00/m^2. Mr Paterson asked the panel to determine an RV for the appeal property of £74,000.

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 there was no significant rental evidence for the subject property. The two rents available were too remote from the AVD and equated to £48,700 at £162/m^2 agreed in 2012 and £77,500 at £258/m^2 agreed in 2017. These were also stepped rents which the panel found did not necessarily reflect open market rental values. The panel was therefore unable to attach significant weight to this evidence.

23. Mr Bacon had argued that the best evidence upon which to base the valuation was Unit 4A, Excel Marina. The panel found that this property was similar to the subject property in that it didn't have an outdoor seating area but was situated further away from the marina than the subject property. This property was somewhat smaller than the subject at 94.75m^2 and the rent analysed to £201.12/m^2, it had an RV of £22,250.

24. Mr Paterson had argued that in his opinion the best rental evidence was Unit 7, Excel Marina, it was of a similar size to the subject at 291.44m^2 and the rent analysed to £297.66/m^2, it had an RV of £45,750. The panel found that a hypothetical tenant coming fresh to the scene would not have been prepared to pay the same amount of rent for Unit 8 as he would for Unit 7. Clearly Unit 7 was the superior property having views of the marina and a significant outdoor eating area whilst the subject property fronted the roadside and had little or no outdoor facilities.

25. In the absence of any other evidence and taking into account the limited evidence of comparable properties provided, the panel decided to allow the appeal in part. An

unadjusted base price of £220.00/m^2 was considered fair and reasonable for the subject property. Taking into consideration the split level of the property the panel found that this was a disadvantage and agreed that a 5% end allowance should be adopted to reflect this. The panel also agreed that an uplift of 5% should be added to reflect the return frontage and a rate of £7.00/m^2 should be added for the air conditioning and therefore a revised valuation of RV £64,500 was determined.

	Area m^2	£/m^2	Relativity	Total £
Restaurant	284	220	1.05 (RF)	65,604
Kitchen	3.6	220	0.7	554
			total	66,158
		-5% split level		62,850
A/C	284	7		1988
		Say **64,500**		64,838

26. 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

27. 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 £64,500 with effect from 1 April 2017.

Date: 28 May 2021

Appeal numbers: CHG100090277