THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; restaurant and premises; comparable evidence; rental evidence; allowances; tone; appeal allowed in part.

RE: 41-43 Wardour Street, London, W1D 6PY

APPEAL NUMBER: CHG100099817

BETWEEN:	Jexstar Ltd T/a Wong Kei	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs S Nix (Senior Member)
Mr D Greensmith

CLERK: Mrs A Keohane

REMOTE HEARING ON: Thursday 10 June 2021

APPEARANCES: Mr R Clifford of Aitchison Rafferty on behalf of the appellant as both advocate and expert witness
Mr C Cates on behalf of the respondent as both advocate and expert witness

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Summary of decision

1 Appeal allowed in part. The appeal property's assessment was reduced to £585,000 rateable value (RV), with effect from 1 April 2017.

Introduction

2 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.

3 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. The hearing was conducted via Microsoft Teams and the panel was satisfied that all parties were fully able to participate in the hearing.

4 This is a 2017 rating list appeal that has been brought in respect of 41-43 Wardour Street, London, W1D 6PY (the ‘appeal property’). The appeal property had been entered into the rating list as ‘restaurant and premises’ at £650,000 RV with effect from 1 April 2017, based on a main space price of £2025/m^2 and with a 10% allowance to reflect the various floor levels.

5 The challenge proposal was submitted by Mr Clifford on behalf of the appellant and was received by the Valuation Officer on 23 May 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £480,000 RV was proposed with effect from 1 April 2017, based on a main space price of £1800/m^2 and with a 12½% allowance to reflect the various floor levels and 12½% to reflect quantum.

6 The Valuation Officer issued a challenge case decision notice on 19 November 2020 which stated that based upon the evidence and information available, the current rating list entry was considered to be unreasonable and would be altered to £625,000 RV with effect from 1 April 2017. This was still based on £2025/m^2 but in addition to the 10% allowance for varying floor levels, a 4% allowance was conceded for quantum.

7 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 23 February 2021.

8 The property comprises a mid-terrace period building, over seven floors, occupied as a restaurant and premises. It is situated on the west side of Wardour Street, south of, but close to the junction with Shaftesbury Avenue and on the western edge of Chinatown; consequently, there are a number of other restaurants in the vicinity. The restaurant trades over four floors, namely, basement, ground, first and second floors, each of these having public WCs. There are storage areas at basement, second and fourth floor levels and a bin store on the ground floor. The kitchen is located on the third floor and a dumb waiter is used to assist in the service of food. Access between the floors is via a central staircase and the restaurant areas are air conditioned.

9 Mr Clifford appeared on behalf of the appellant as advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Clifford’s declaration included that he was not instructed under a conditional/contingency fee arrangement. He 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 the client’s case.

10 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 placed before it by the parties should not be construed as it being overlooked by the panel.

Issues

11 The floor areas had been agreed between the parties. The original dispute related to the price/m^2 to be adopted in the appeal property's assessment and the level of allowances to reflect the various floor levels and quantum. The parties confirmed that a tone had since been established for properties in the appeal property's locality at £1900/m^2. Both had provided valuations based on this revised tone. The only issue remaining was the level of allowances applicable to the appeal property.

12 Mr Clifford argued for 12½% for varying floor levels and 12½% for quantum and Mr Cates considered 10% was sufficient for the varying floor levels and 4% for quantum was reasonable.

Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges during the challenge process; rental and assessment evidence for comparable properties; photographs of the appeal property; details of the challenge in relation to 11 Wardour Street; the rating representative's revised valuation for the appeal property based on £1900/m^2; case law; the definition of rateable value and the Valuation Officer's challenge case decision notice.

14 Mr Clifford outlined his experience within the forum of rating. He argued that the appeal property, being located over seven floors and trading over four of these, had a layout that was not ideal for a restaurant. Therefore, substantial allowances had been included in his revised valuation of £510,000 RV, based on the agreed tone of £1900/m^2, to reflect the various floor levels and quantum.

15 In determining his level of allowances, Mr Clifford had considered the following:

i. The rent of the appeal property had been agreed in March 2014 as a lease renewal at £420,000 per annum (pa); it was subsequently agreed on review in March 2018 at £520,000 pa. The Valuation Officer had indicated in correspondence that the tenant had paid a premium of £100,000 in 2014; Mr Clifford was unaware of this and could not give any explanation for it. When adjusting the 2014 rent to reflect the premium Mr Clifford had come to £445,000. The Valuation Officer had also adjusted the 2014 rent and come to £448,058. Mr Clifford accepted the Valuation Officer's adjusted rent.

ii. As the rental market had increased between 2014 and 2018, Mr Clifford considered that if a straight line growth was adopted over this period, the rental value of the appeal property as at the antecedent valuation date

(AVD) of 1 April 2015 would be in the region of £510,000; somewhere between the 2014 and 2018 rents.

iii. Mr Clifford's revised valuation was based upon the agreed tone of £1900/m^2. However, as this was well in excess of the price/m^2 the appeal property's rents analysed to, he considered that the figure it produced before allowances, namely, £680,000 RV, was excessive when a stand back and look approach was taken. Mr Clifford argued that the subject rents suggested that allowances for quantum and layout were appropriate. To achieve a RV that fitted within the parameters of the subject property's rents either side of the AVD, he had adopted allowances of 12 ½% for the varying floor levels and 12 ½% for quantum. Applying these reduced £680,000 RV to £510,000 RV, his estimated rental value of the appeal property as at the AVD.

16 Having regard to the above, Mr Clifford sought confirmation of his revised assessment of £510,000 RV with effect from 1 April 2017.

17 On behalf of the Valuation Officer, Mr Cates explained that he was in attendance as advocate and due to his experience, as an expert on general rating matters. He provided a revised valuation for the appeal property of £585,000 RV, based on the agreed tone of £1900/m^2 and allowances of 10% to reflect varying floor levels and 4% for quantum.

18 Mr Cates explained that the appeal property's rents had been weighed within the basket of rents that had ultimately been used to support a reduction in the tone applied to properties within this area. He believed it was not unusual for some of the rents within the basket to analyse above or below the agreed tone; the established tone would be the starting point in the assessments. He considered an element of double counting arose when unsubstantiated levels of allowances were applied, in this case 25% in total, to bring the assessment down further, particularly to match an estimated rental level as at the AVD that was unsupported by evidence.

19 Mr Cates did not consider the level of allowances included in his revised assessment were insufficient. He was aware that the appeal property had been occupied and run as the same restaurant for 15 years, which suggested that the demands and challenges put forward by the appellant were overstated.

20 Mr Cates considered it erroneous to place a great deal of weight to the appeal property's 2018 rent as it was remote from the AVD. In the absence of any evidence to show that other properties had received allowances at the level sought by the appellant for the same issues, Mr Cates asked for confirmation of his revised assessment of £585,000 RV based on the reduced tone and the existing level of allowances.

Decision and reasons

21 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where 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.

22 In respect of an appeal against an entry in the 2017 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).

23 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, as this is a compiled list appeal, the material day is 1 April 2017.

24 In this appeal, the outstanding issue was the level of allowances to be adopted in the appeal property's assessment. Mr Clifford had sought a total of 25% to reflect the appeal property's varying floor levels and for quantum. Mr Cates maintained that the allowances currently applied, 14% in total, were not unreasonable.

25 In consideration of all of the evidence presented, the panel was not persuaded of the merits of Mr Clifford's approach to determining the level of allowances adopted in his assessment of the appeal property. The panel did not consider it appropriate to apply allowances, in this case 25% in total, which appeared principally to ensure that the appeal property's assessment fitted an assumed rental level as at the AVD, based upon two rents agreed four years apart, the latter of these being set some years distant from the AVD. There was no evidence to demonstrate the changes to the wider rental and economic market that had occurred between these dates and those pertinent to the AVD.

26 In accepting that a tone had been established for properties within this area and that the appeal property's proposed assessments were based upon this agreed tone, the panel considered the level of allowances to be applied in the assessment to reflect its varying floor levels and quantum. Mr Clifford had argued that the appeal property was larger than the typical restaurants found in and around this area and that multiple trading areas was not an ideal layout, factors reflected in the lower rents which justified allowances in the assessment.

27 The panel did not consider it unreasonable for the size and nature of the appeal property to be reflected by allowances in its assessment; however, it was not convinced of Mr Clifford's method of determining the appropriate level, furthermore, no evidence had been provided to show comparable assessments with similar allowances to reflect the same factors. When asked, Mr Cates considered that in determining the 10% allowance to reflect the appeal property's multiple trading floors, it was likely that other restaurant assessments had been looked at. Addressing the issue of quantum, the panel found that within the evidence bundle, two assessments were quoted. 20-21 Leicester Square, a restaurant and premises situated 0.3 miles from the subject and of 646.84m^2 in terms of main space (ITMS), had an allowance of 5% for size and layout. Bst and Gnd Floor 1 Upper James Street, a restaurant and premises of 351.89m^2 ITMS, also located 0.3 miles from the appeal property, had an allowance of 4% in the assessment to reflect size/quality.

28 On balance, the panel found insufficient evidence to demonstrate the allowances incorporated in the appeal property's revised assessment by the Valuation Officer to be unreasonable. Accordingly, it determined the revised assessment proposed by the Valuation Officer of £585,000 RV for the appeal property incorporating allowances of 10% to reflect the varying floor levels and 4% for quantum.

Order

29 As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £585,000 RV with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

30 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 (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Date 22 June 2021

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