VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556]; the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]; Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269];

APPEAL NUMBER:	CHG100100431
RE:	3-5 Caxton Walk, London, WC2H 8HD (the "subject hereditament")

BETWEEN:	Revell Ltd	Appellant
	and	
	The Valuation Officer	Respondent

SITTING:	*remotely via Microsoft Teams conference call*
ON:	Tuesday 23 November 2021 at 14:15 hours
BEFORE:	Mr AV Clark (Vice President)
CLERK:	Mr W Hamilton IRRV(Dip) A.Inst.Pa
APPEARANCES:	Mr S Carter of Altus Group for the Appellant (Advocate) Mr P Barney of Altus Group for the Appellant (Expert Witness) Mr K Abbass of Valuation Office Agency for the Respondent

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DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is allowed.

2. I am satisfied that –

   (1) the rateable value shown in the 2017 non-domestic rating lists for the subject hereditament is not reasonable; and that

(2) the correct rateable value for subject hereditament is £85,000 with effect from 1 April 2017.

3. A copy of my valuation for the subject hereditament is appended to this decision and statement of reasons.

Introduction

4. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings. I gave proper judicial consideration to all the evidence and arguments put forward in the course of the proceedings whether or not it is fully set out in this statement of reasons.

Background

5. This appeal has been brought pursuant to Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] (the "ALA Regulations"). The appeal challenges the Respondent's decisions that the Appellants' proposal (also known as a "challenge" under the "check, challenge, appeal" framework) was not well-founded.

6. The Appellants' proposal sought an alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the subject hereditament is incorrect.

Remote hearing

7. On 29 July 2020, the President of the Tribunal issued the COVID-19 Variation of Practice Statement. In that statement, the President has determined, for the purposes of Regulation 6(3)(g) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations"), that the form of any hearings before the Tribunal would include "remote hearings". Specifically, the President states that this is to include the use of Microsoft Teams conferencing software. Further, the President directs that remote hearings would be the default until such time as it is safe for the Tribunal to return to normal practice.

8. In accordance with that Practice Statement, I conducted the hearing of the appeal remotely via Microsoft Teams conference call. I attended the hearing by way of video-link, as did the Clerk to the Tribunal and the representatives for both parties. There were no technical issues during the course of the hearing consequent to it being held remotely. For the avoidance of any doubt, I am satisfied that those present were able to fully participate in the proceedings.

Appellant's representative

9. Mr Barney, a member of the Royal Institution of Chartered Surveyors, appeared on behalf of the Appellant's as expert witness with Mr Carter as advocate. At the commencement of proceedings, I confirmed that I had read Mr Barney's written declaration that he was instructed under a contingency based fee, a

type of success-related fee arrangement. In his declaration, Mr Barney stated that he understood and accepted that his duty was to the Tribunal in giving his evidence, that he would comply with this duty, and the requirements of his professional body, regardless of whether or not the evidence supported the Appellant's case. Mr Barney also confirmed this orally prior to commencing his evidence.

10. Noting the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), I nevertheless accepted his expert witness evidence on the above basis because –

    (1) the appeal was not complex;

    (2) to do otherwise would be contrary to the requirements to deal with cases proportionately, avoiding unnecessary formality and ensuring parties are able to participate in proceedings (provided by Regulation 3 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations")); and

    (3) it was nevertheless permissible whether or not it would be admissible in a civil trial (provided by Regulation 17(2)(a) of the Tribunal Procedure Regulations).

11. I therefore considered Mr Barney's expert evidence and attached such weight to it as it saw fit.

Additional evidence

12. Prior to the commencement of the hearing the Respondent's representative submitted a further location plan. This was agreed as admissible by the Appellant's advocate prior to the hearing.

Relevant Law

The non-domestic rate

13. Part III of the Local Government Finance Act 1988 (the "Act") makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act (which is commonly referred to as the "rating hypothesis").

14. For these proceedings, it is not necessary to set out all the provisions but suffice it to say that the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

The material day

15. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the "material day". The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (the "MD Regulations") provides for determining the material day. So far as is relevant for these proceedings, Regulation 3 of the MD Regulations provides –

> ***3 Material day for list alterations***
>
> *(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.*
>
> *(2) Where the determination is with a view to making an alteration to correct an inaccuracy in the list on the day on which it was compiled, the material day is the day on which the list was compiled.*

Decision

16. The parties' representatives took me through their respective submissions and evidence orally at the hearing. I carefully considered the parties' respective submissions, together with the legislative tests set out above. I am grateful to the parties' representatives for their submissions.

17. The subject hereditament is a restaurant and premises located within a 1900 masonry-construction building featuring a ground floor restaurant with residential accommodation above. The kitchen and customer toilets are in the basement. The building is located on a pedestrian area – Caxton Walk – which is set back from Charing Cross Road, London. The subject hereditament consists of ground floor restaurant floor space measuring 109.8m^2, with the basement kitchen and customer toilets measuring 125.93m^2. The Respondent's representative – although not having inspected the subject hereditament – had made assumptions regarding the availability of outdoor seating. However, the Appellant's representative – having fully inspected the subject hereditament – confirmed that the outdoor seating visible in the photographs provided to me is not part of the subject hereditament. The subject hereditament is held on a 20-year lease commencing from 21 October 2009 at a rent of £82,500 per annum. However, a professionally negotiated rent review, effective from 21 October 2014, resulted in a nil increase in rent.

18. The subject hereditament was originally shown in the 2017 non-domestic rating list with a rateable value of £164,000 from 1 April 2017, based upon a main space rate of £1,250/m^2. Upon completion of the challenge, this was reduced to a rateable value of £100,000, calculated on a main space rate of £765/m^2.

19. The crux of the dispute between the parties turns on the appropriate main space rate to applied to the subject hereditament in the calculation of the

rateable value. There is no dispute over the areas adopted or the relativities used in respect of different areas, nor is there a dispute over a 7% end allowance for the subject hereditament being a divided unit. The Appellant's representatives contend that a base rate of £650/m^2 is more appropriate, which would result in a revised rateable value of £85,000.

20. I was referred by the parties to multiple proposed comparable assessments of nearby hereditaments.

21. The Respondent's only proposed comparable was shown in the list as "Bst & Gnd F Of 24 Cambridge Circus & Inc's Bst & Gnd F 84-86 Charing Cross Road". I will refer to this hereditament as "24 Cambridge Circus", for simplicity. 24 Cambridge Circus is also a restaurant and premises located in a preeminent location on Cambridge Circus, London. It measures 511.20m^2 (309.55m^2 in terms of main space). Based upon the form of return information held by the Respondent, 24 Cambridge Circus is held on a lease from 25 September 2014 at a rent of £475,000. This has been analysed to a main space rate of £1,440/m^2.

22. Naturally, the Appellant contend that 24 Cambridge Circus is not comparable to the subject hereditament. Indeed, I agree that with the Appellant's representatives that 24 Cambridge Circus, whilst of the same mode and category, is a different creature to the subject hereditament. Not only is 24 Cambridge Circus significantly larger – measuring just under three times the size in terms if main space – it is also in a completely differing type of location. Whilst unquestionably nearby, the prominence and footfall of the location is completely different. That has clearly translated to the rents, and the Respondent's own valuation, which adopts a valuation which is almost 50% lower than 24 Cambridge Circus. I therefore cannot find significant weight in this as a proposed comparable assessment.

23. The Appellant's representatives referred me to the nearby split assessment of "Unit 4 Grd Flr 127-133 Charing Cross Road" and "Stores at Unit 4 Grd Flr 127-133 Charing Cross Road". I will refer to these assessments simply as "127-133 Charing Cross Road". These assessments, whilst held under a single lease are split assessments due to the presence of a communal space between the main unit and the storage space. The main unit at 127-133 Charing Cross Road is a club and premises (with the connected stores, being store and premises) with public access at the rear of the building in Goslett Yard. Importantly, 127-133 Charing Cross Road is held on a sub-lease, which dictates that the rent is set at 50% of the headlease, which itself was the subject of arbitration, further undermining its reliability in the overall basket of evidence.

24. Notwithstanding the forceful disagreement of the Respondent's representative, I find that the best evidence available in the basket of evidence is the passing rent on the subject hereditament. The passing rent is the starting point in a valuation exercise, in any event. The fact that it was set in a 2014 rent review – without an option to walk away – does mean it is lower in the basket of evidence that of a new letting on the antecedent valuation date. But I do not

have such a comparable in the basket of evidence. I must therefore consider, as the Appellant's representative has done, an appropriate level of value based upon the best evidence available.

25. In view of the above, I am satisfied, on balance, that the Respondent's valuation of the subject hereditament is not reasonable. Accordingly, I fully adopt the Appellant's valuation and allow the appeal.

Order

26. The Tribunal orders –

(1) the Respondent shall alter the entry in the 2017 non-domestic rating list to show the subject hereditament with a rateable value of £85,000, as set out in the appended valuation, with effect from 1 April 2017; and

(2) the Respondent shall comply with this order within two weeks.

Refund of appeal fee

27. Further, in view of the above decision, the appeal fee shall be refunded.

Appeal Number: CHG100100431 **Issued:** 22 December 2021

Appendix: The Tribunal's valuation

3 -5, Caxton Walk, London, WC2H 8HD

Floor	Description	Area m²	Price per m²	Value
Ground	Restaurant	109.80	£650.00	£71,370
Basement	Kitchen/Prep and Customer WCs	125.93	£162.50	£20,464
	Total	**235.73**		**£91,834**
	Divided or split unit - Less 7%			£6,428
				£85,405
	wef 1st April 2017		**Say**	**£85,000**

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