THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *shop and premises; zone A rate; appeal allowed in part.*

RE: The Crafty Norman, 9-10 High Street, Battle, East Sussex, TN33 0AE

APPEAL NUMBER: CHG100111148

BETWEEN: Mr P Baker and Mrs H Baker Appellants

and

Mr A Corkish (Valuation Officer) Respondent

BEFORE: Mr A Jobanputra (Senior member sitting alone)

CLERK: Mr R Gath

REMOTE HEARING 2 ON: 13 November 2020

APPEARANCES: Mrs H Baker (appellant)
Mr S Madiyiko (Valuation Officer's representative)

Summary of decision

1. Appeal allowed in part. The rateable value is reduced to £14,000 effective from 3 October 2018.

Introduction

2. This appeal has been brought in respect of the following: The Crafty Norman, 9-10 High Street, Battle, East Sussex, TN33 0AE (the 'appeal property'), which was entered in the 2017 rating list as 'Shop and premises' at rateable value £15,250 effective from 3 October 2018.

3. At the start of the rating list, the rateable value for the appeal property was £9,800, based on a Zone A rate of £165pm^2. There was also an ATM located at the appeal property with its own rateable value of £3,750. However the ATM was removed in October 2018. Following the removal of the ATM in October 2018, the Valuation

Office Agency (VOA), increased the Zone A rate to £250pm^2 in line with other shops in the immediate locality. This increased the rateable value for the appeal property to £15,250.

4. 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.

5. 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.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr and Mrs Baker made an appeal to this Tribunal because they disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is an appeal against a VOA notice of alteration so the material day is 3 October 2018. The appeal to this Tribunal was made on 27 February 2020 following the Valuation Officer's Decision Notice of 28 October 2019 in respect of the appeal property (hereditament).

8. I heard this appeal alone as the Tribunal's business arrangements permit me to do so.

9. The absence in this decision 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 me.

Issues

10. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

11. The appellant had provided the Tribunal with both parties submissions. The evidence included the following: a copy of the challenge proposal, the Valuation Office Agency's challenge decision notice and copies of correspondence that had passed between the parties.

12. Since the removal of the ATM, the rateable value had increased from £9,800 to £15,250, even though there had not been any other changes to the appeal property. Mrs Baker argued that there was no justification for this increase as it was

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[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

accepted by the VOA that the appeal property suffered from various disabilities, and she asked me to allow the appeal.

13. Mr Madiyiko was representing the Valuation Officer as advocate and expert witness. He submitted that the rateable value was originally based on an incorrect Zone A rate of £165pm^2. Following the removal of the ATM the VOA realised it's error and increased the Zone A rate to £250pm^2.

14. The Zone A rate of £250pm^2 was in line with all the other shops in the immediate locality and in his opinion, there was no reason for the Zone A rate to be lower than these other shops, and he asked me to dismiss the appeal.

Decision and reasons

15. The task for me was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

16. There was another important date for rating appeals and that was known as the 'material day.' This was the date on which the physical factors had to be taken into account. In this appeal, the material day was 3 October 2018.

17. 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 –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> 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"

18. 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.

19. Mrs Baker argued that the appeal property suffered from various disabilities such as:
    a) a lobby that could not be used;
    b) different windows to the neighbouring properties which made it difficult for customers to see in; and
    c) the shop was at an angle.

20. Due to these disabilities, the appeal property was not as valuable as other properties in the immediate locality. In previous rating lists the VOA had agreed with this which was the reason for the appeal property always having a lower Zone A rate than the neighbouring properties.

21. Mr Madiyiko contended that the appeal property was located in a prominent position. It had been inspected by the VOA in 2016. As he was unable to inspect the appeal property now due to the Covid restrictions, he was relying on historic survey data to support the revised rateable value.

22. He had analysed the current rent and found that it analysed to a Zone A rate of £250pm^2. He contended that the burden of proof was on the appellant to show that the rateable value was unreasonable, and that Mrs Baker was unable to satisfy that burden of proof especially as the rent equalled the Zone A rate.

23. The appeal property was held on a twelve year lease from 2009. It was subject to three yearly rent reviews, with the last rent review in 2016, increasing the rent from £14,000 to £17,000 which I found useful. Mrs Baker had stated that the rent was originally agreed on the basis that the appeal property was trading as a post office, but, the rent was increased in 2016 and therefore would have reflected the rental value as a shop.

24. In the evidence bundle, there was no Regulation 17 rental evidence, so I was unable to verify that the rents in the locality supported the Zone A rate of £250pm^2, however, the VOA must have established the Zone A rate from an analysis of the rents in the locality and Mrs Baker did not present any evidence to prove otherwise. I concluded that the property should remain at a Zone A rate of £250pm^2 as there was no evidence presented to justify a reduction in the main space price.

25. During the hearing, Mr Madiyiko had explained that the appeal property had an area of 66m^2 in terms of Zone A (ITZA). 66m^2 multiplied by £250pm^2 totals £16,500 yet the rateable value was £15,250 giving a main space price of £231pm^2. It was therefore clear to me that the appeal property must have already been granted an allowance of 7.5%. I was disappointed that no party had provided a summary valuation as I could have questioned Mr Madiyiko for the reasons for this allowance. I am assuming that it must be for one of the reasons Mrs Baker had argued for.

26. Mrs Baker had explained to me the reasons for the Zone A rate being lower than the neighbouring properties and therefore, given that the property did suffer from some disabilities, as there had already been an allowance granted, I concluded that a further 7.5% allowance should be given. Therefore, the total allowance granted

for all the disabilities associated with the appeal property will be 15% with the resulting rateable value of £14,000. (£231pm^2 - 7.5% = £213.68) x 66m^2 (ITZA) = £14,102.88, or £14,000 when rounded down.

27. When I stand back and look at the revised rateable value, this is equal to the rent paid at the AVD and therefore fits the rating hypothesis of the rateable value being equal to the rent.

Order

28. 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 as follows:

    To rateable value £14,000 with effect from 3 October 2018.

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

Refund of appeal fees

30. The appellant is entitled to a refund of the appeal fees paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 11 December 2020

Appeal number: CHG100111148