THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; price per m^2 in dispute; size of property in dispute; rental evidence; double unit allowance; masking/pillar allowance; appeal allowed in part.

RE: 19-21 Chapel Street, Chorley PR7 1BN

APPEAL NUMBER: CHG100111497

BETWEEN	Outdoor Land	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Mrs X Holt (Senior Member) and Mr A Wheeler

CLERK: Mrs A Keohane

REMOTE HEARING 1: Wednesday 15 December 2021

APPEARANCES: Mr K Batty of Ken Batty Ltd on behalf of the appellant, as advocate and expert witness
Mr A Glover on behalf of the Valuation Officer, as advocate

Summary of decision

1 Appeal allowed in part. The appeal property's assessment was reduced to £29,500 rateable value (RV), with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. 19-21 Chapel Street, Chorley PR7 1BN (the 'appeal property') had been entered in the 2017 rating list as 'shop and premises' at £31,250 RV with effect from 1 April 2017, based on a zone A rate of £350/m^2.

3 The challenge proposal, submitted by Mr Batty on behalf of Outdoor Land, was received by the Valuation Officer on 16 July 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 £21,750 RV was proposed with effect from 1 April 2017, based on a zone A rate of £285/m^2.

4 The Valuation Officer issued a challenge case decision notice on 30 January 2020, which stated that based upon the evidence and information available, the existing rating list entry was considered to be reasonable, and no amendment would be made.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal had been made on the grounds that the rating list was inaccurate. The appeal was received by the Tribunal on 24 March 2020.

6 As Mr Batty appeared on behalf of the appellant as both advocate and expert witness and in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Batty confirmed that he was aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was not instructed under a conditional fee arrangement or any other success related fee.

7 The appeal property is a shop and premises situated in Chorley town centre, off School Lane and in close proximity to the A674. It is a double fronted inner terraced shop of brick construction, rendered to the upper front elevation and under a pitched slate roof. The ground floor area is used for sales. The first floor is used for storage, with a kitchen and staff WC. No rental evidence relating to the appeal property was referred to.

8 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.

9 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.

10 In accordance with that Practice Statement, the VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.

11 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 the panel.

Issue

12 The following issues were in dispute:

- The appeal property's area;
- the rate/m^2 to be adopted in the assessment;
- an allowance to reflect the appeal property was a double unit; and
- an allowance to reflect masking due to pillars in zone A and zone B.

13. In respect of the area dispute, Mr Batty provided his measurement of the property and a plan to confirm how this had been calculated. Mr Glover confirmed that, by arrangement with Mr Batty's office, the appeal property had been inspected and re-measured on 10 December 2019; the Valuation Officer's measurements had been confirmed, a plan was also provided. Mr Glover explained that the area had also been checked using an Ordnance Survey plan, which confirmed the Valuation Officer's measurement. Mr Glover believed that at least part of the area discrepancy could be due to the cladding displays attached to the walls. Mr Batty confirmed that his calculation reflected the measurement of the property from the internal wall surface and not the fittings attached to it.

14. After some debate, and to expedite the appeal, Mr Batty accepted the Valuation Officer's areas and provided a revised valuation for the appeal property of £24,750 RV, based on those areas, with effect from 1 April 2017.

15. In this case, a breakdown of the appeal property's current assessment had not been included to confirm the measurements used in its valuation. Also, there was no assessment details for 42-44 Chapel Street, although it was being relied upon, nor a location plan. The parties held this information, and both agreed it should be submitted to assist the panel. This information was therefore accepted at the hearing.

Evidence and submissions

16 The bundle submitted comprised all of the documents exchanged between the parties as part of the challenge process. This included the appellant's challenge submission and supporting information; the Valuation Officer's initial response; the exchanges of evidence between the parties; the Valuation Officer's challenge case decision notice; rental evidence; internal and external photographs of the appeal property; plans of the appeal property's internal area; and details of properties cited by the parties as comparable.

17 To support his revised assessment, Mr Batty outlined in his challenge documentation and oral presentation the reasons he believed the appeal property's current valuation was not reasonable. Very briefly these included:

i. The appeal property, as a double unit, should be granted a 5% allowance.
ii. The property contained substantial pillars within zone A (0.47 x 0.64) which masked viewing of the sales area.
iii. The property contained three very substantial pillars in zone B (0.91 x 0.89 and 0.88 x 0.60).
iv. Three comparable properties, 46-48 Market Street, Bolton, Ground Floor 85-87 Market Street, Bolton and 182-184 Haywood Road, Accrington were in receipt of allowances to reflect they were double units.
v. A copy of a previous valuation tribunal decision for The Window Box, 73A & 73B Church Road was provided, where an allowance was given for fragmentation and masking.
vi. The following properties had received allowances for issues similar to those outlined in the subject appeal, 15-16 Hoxton Walk, London, 185 Monton Road, Eccles, 30-36 Nevill Street, Southport, and 9-11 Darlington Street, Wigan.
vii. 42-44 Chapel Street, a property in close proximity to the appeal property had an allowance for being a double unit.
viii. The property subject to rental evidence, 22 Chapel Street, was on the opposite side of the road to the appeal property, which was a better trading location.

18 Mr Glover, on behalf of the Valuation Officer, referred to the challenge decision notice and the reasons the appeal property's assessment was considered to be correct. Very briefly, these included:

i. The properties with allowances referred to by Mr Batty were situated in different locations. Each of these properties had been valued by reference to the local rental market for the area in which they were situated. Any allowances given would be reflective of the rental evidence and any particular disabilities pertinent to those properties. Mr Glover considered that these properties did not support allowances in the appeal property's assessment.

ii. The assessment proposed by Mr Batty for the appeal property appeared to be based on the zone A rates applied to properties situated further from the main shopping area, however, the rate/m^2 adopted in their assessments reflected this.

iii. Rental evidence was available for 22 Chapel Street, a unit almost opposite the appeal property, which confirmed that the zone A rate of £350/m^2, adopted in the appeal property's assessment was not excessive. The assessment of 15 Chapel Street, a property on the same side of the road as the appeal property had been subject to a settled challenge, the assessment being based on £350/m^2.

Decision and reasons

19 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, provided that:

> "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;
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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.

20 In respect of an appeal against an entry in the 2017 rating list, the rental levels were 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).

21 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, the material day was 1 April 2017.

22 The starting point in any valuation for rating purposes was usually the rental evidence for the subject property, however, in this appeal no such evidence was available. However, rental evidence had been provided for 22 Chapel Street and therefore the panel gave consideration to this.

23 Number 22 Chapel Street had been subject to a new letting on a five-year lease at a rent of £23,500 per annum (pa), with effect from 1 June 2014. When adjusted this rent had come to £21,150 pa, which analysed to £352.56/m^2. Mr Batty had suggested that this comparable property was in a better trading location; however, no evidence had been provided to support this view. From the location plan, the panel found this comparable property to be on the same street as the appeal property and situated almost opposite. It therefore considered the rental information to be good evidence and placed the most weight to it. This evidence demonstrated that the zone A rate of £350/m^2 applied in the appeal property's assessment was not excessive.

24 The panel then addressed Mr Batty's contention that the appeal property should be granted allowances in the assessment to reflect that it was a double unit and that it suffered from masking by the pillars in existence within the zone A and B areas. In considering these aspects of the appeal, it was noted that in rebutting the evidence of some of the properties submitted by Mr Batty, Mr Glover confirmed the following:

- 46-48 Market Street, Bolton, had a 5% allowance to reflect that a solid wall remained in situ, not because it was a double unit.
- Ground Floor 85-87 Market Street, Bolton, had been subject to an appeal and a panel had determined that an adjustment to reflect the property was a double unit was not applicable.
- 182-184 Haywood Road, Accrington, had been given an allowance to reflect its non-standard frontage and not because it was a double unit.
- 30-36 Nevill Street, Southport, had an allowance to reflect it was a quadruple unit with a variation in floor levels. No adjustments for fragmentation or masking had been given.
- 9-11 Darlington Street, Wigan, had a 10% adjustment for layout. A solid wall separated two parts of the property.
- 15-16 Hoxton Walk, London, had been valued with reference to a completely different rental market.
- 185 Monton Road, Eccles, had no masking allowance in its assessment.

25 In consideration of the allowances sought in the appeal property's assessment, the panel accepted that any adjustments it made had to be reflective of the nature of, and the disabilities affecting, the appeal property; therefore, allowances given to other properties which were reflective of specific factors pertinent to those properties were not useful in the subject appeal.

26 Preferring comparable properties within the same proximity and rental market to the appeal property, the panel noted that the Valuation Officer had submitted that 12-14 Chapel Street and 42-44 Chapel Street were both double units and no allowances

had been given for this. Mr Batty argued that the assessment of 42-44 Chapel Street included a 5% allowance to reflect that it was a double unit. Mr Glover revisited this assessment and conceded that a 5% allowance appeared to have been granted, which was described as for shape/double unit. He was unable to provide any further information in relation to this. The panel looked at the plan showing the comparable properties, and this did not suggest that 42-44 Chapel Street was of an unusual or problematic shape, it therefore considered that the allowance more likely reflected that the property was a double unit. Having regard to this, the panel did not consider it unreasonable for the appeal property's assessment to also be adjusted by 5%, in line with this comparable property.

27 The panel then addressed whether an allowance was warranted to reflect the issue of the pillars, masking and fragmentation within the zone A and zone B areas of the appeal property. In the absence of any rental evidence to show whether the existence of pillars was value sensitive for a retail property in this location, attention was paid to the photographs and plans provided. From these, the panel found the view from the pavement into the shop was not obstructed. The positioning of the pillars did not mask the display windows or hinder their use, nor did they cause fragmentation. Goods were capable of being displayed within the property without difficulty and customers were able to walk freely around the sales area. The panel was not convinced that a hypothetical tenant would offer, or a landlord accept, a lower rent to reflect factors that did not have any significant effect on the use of the property. Having regard to the above, the panel was not persuaded that an allowance was applicable.

28 In consideration of the evidence presented, the panel determined the assessment below, based upon a zone A rate of £350/m^2 and with a 5% allowance to reflect that the appeal property was a double unit.

Floor	Description	Area m^2/unit	£ per m^2/unit	Value £
Ground	Retail zone A	56.20	350.00	19,670
Ground	Retail zone B	56.60	175.00	9,905
Ground	Retail zone C	6.30	87.50	551
First	Store	34.70	16.63	577
First	Store	34.70	16.63	577
First	Kitchen	3.20	17.50	56
First	Staff toilets	n/a	n/a	0
				31,336
			Less 5% for double unit	1,567
			Total	29,769

Say £29,500 RV with effect from 1 April 2017.

Order

29 Under the provisions of regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the respondent to alter the Rating List within two weeks of the date of this order to show 19-21 Chapel Street, Chorley PR7 1BN at £29,500 RV with effect from 1 April 2017.

Refund of appeal fee

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: 7 January 2022

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