THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; relativities applied to lower ground floor; application of relativities within the whole assessment; comparable properties; appeal dismissed.

Re: Manor Pharmacy, 367 Brandlesholme Road, Bury BL8 1HS

APPEAL NUMBER: CHG100118442

BETWEEN: Freshphase Ltd Appellant

and

Mr R Roberts Respondent

(Valuation Officer)

PANEL: Miss M Dowrick (Senior Member) and Mrs V Hollender

CLERK: Mrs S Morgan

REMOTE HEARING: Wednesday 20 October 2021

PARTIES PRESENT: Mr K Batty – Appellant's representative

Mr C Ogbuagu – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel made no change to the appeal property's existing assessment of £14,000 rateable value, effective 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.

4. Mr Batty, as the appellant’s representative, appeared in a dual role of advocate and expert witness. He was aware that in giving expert evidence his responsibility was to the VTE. Furthermore, he stated that he was not instructed under a conditional fee arrangement or other success related fee.

5. Mr Ogbuagu also appeared in the dual role of advocate and expert witness.

6. The dual role is allowable in VTE proceedings having regard to procedure regulations and rules regarding admissibility of evidence. However, it was necessary to consider the “expert” evidence and assess what weight, if any, to give it in the context of the matters in issue.

4. This appeal has been brought in respect of Manor Pharmacy, 367 Brandlesholme Road, Bury (the “appeal property”), which is currently entered in the 2017 Rating List as “shop and premises” at rateable value £14,000 effective from 1 April 2017.

5. The challenge process began when the appellant made a proposal to the respondent on the grounds that the entry shown in the rating list on 1 April 2017, the rateable value £14,000 was wrong and that it should be reduced to rateable value £13,000.

6. In accordance with regulations, an appeal was made to the VTE on the grounds that the valuation for the appeal property was not reasonable.

7. 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, should not be construed as it having been overlooked.

Issues

8. The appellant’s representative disputed which part of the building was covered by the allowances. He also queried how the 7.5% allowance(s) had been applied to the assessment.

9. The appellant’s representative also contended that instead of using one over ten as the relativity for the lower ground floor, it should be one over twenty to reflect its external access and inferior condition.

Evidence and submissions

10. The appellant’s representative had submitted documentation from both parties in respect of this appeal. It included correspondence exchanged between the parties, their valuations, plans, photographs, rating assessment details in respect of comparable properties, rental

evidence, 2010 agreement on appeal property signed by Ken Batty Chartered Surveyors, definition of rateable value and case law.

11. The subject property was built circa 1920's, early 1930's. It is a semi-detached property of brick and slate roof construction with an extension having a mineral felt flat roof. It has an total area of 140.70m^2 over its ground and lower ground floors.

12. The property is situated on the periphery of Bury on a secondary road connecting Bury with Ramsbottom. The town centre is two miles south of the subject property. It is located in a group of around 12 shops and a children's nursery.

Decision and reasons

13. The issue for the panel to determine was whether or not the 7.5% allowance for access and layout had been applied correctly to the whole assessment and whether or not the relativity applied to the lower ground floor should be calculated at one over twenty rather than one over ten.

14. The term 'rateable value' is defined in paragraph 2(1), 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".

15. 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).

16. 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 is 1 April 2017.

17. In relation to how the two allowances were applied, the appellant's representative, in accepting the base price of £225/m^2 for the zone A, had argued that the Valuation Officer should have applied a straight 7.5% (£208.12) to reflect access and layout rather than a sequential 5% for access and then 2.5% for layout (£208.42) and the relativities thereafter. The appellant's representative also believed that the existing allowances were not for the whole building, as he contended additional allowances should be applied to the lower ground floor to reflect its external access and inferior condition.

18. The respondent contended that the two allowances had been applied correctly. He demonstrated that the current 2017 valuation covered the entirety of the property which included the external access.

19. From the evidence presented, the panel considered that the allowances were reflected in the whole valuation which covered the ground and lower ground floors in this assessment. Although the panel accepted the appellant's representative's argument on applying a straight 7.5% allowance, which equated to £208.12 rather than £208.42, it found that it would not make any difference in the assessment, as the rounding down process would still leave the assessment at £14,000 rateable value.

20. Turning to the second issue concerning the lower ground level, the appellant's representative, with the aid of a photograph, explained that the only approach to this area was by going outside of the building and accessing the steps down to the staffroom and storerooms on the lower ground level. For this reason, he believed that a relativity of one over twenty should be applied as opposed to the basic one over ten.

21. The respondent argued that the current rate adequately reflected the disadvantages associated with the subject property. He understood that there had been no physical changes to the property since the assessment was agreed on the 2010 list. Therefore, he was of the opinion that the current assessment reflected all warranted allowances.

22. The panel found that the 2010 assessment, which was agreed by the same appellant's representative, took account of the external access. It was confirmed by the appellant's representative that he had agreed a one over ten relativity for the lower ground area on the 2010 rating list and nothing had changed since that agreement to suggest a greater allowance. It was also noted that there had been a -5% line allowance for no natural light in the two storerooms on the lower ground floor. With this in mind, the panel believed that everything had been addressed when the 2010 list was challenged. There had been no physical changes in the intervening period to suggest any changes had taken place since the 2010 agreement was reached, therefore the panel found that all contended allowances in the 2017 challenge had been adequately reflected in the current assessment.

23. Having examined the evidence provided by the parties, the panel determined that the assessment should not be reduced. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in this case, the panel concluded that the appellant's representative had failed to produce sufficient evidence to justify his claim for adjusting the relativity on the lower ground floor. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Wednesday 17 November 2021

Appeal number: CHG100118442