THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of Compiled List RV in 2017 Rating List; Restaurant and Premises; subject property let on licence inclusive of rates and utility bills; comparable properties. Appeal allowed.

Re: 47- 49 Camden Road, London NW1 9EU

APPEAL NUMBER: CHG100119570

BETWEEN:	Prompt Exit	Appellant
	and	
	Valuation Officer	Respondent

PANEL: Mr S Wood (Senior Member)

Mr J Percival

CLERK: Mechile Hempton

REMOTE HEARING on 13 November 2020

APPEARANCES: Mr A Rose of Tanner Rose represented the appellant

The Respondent VO was represented by Mr C Tawonezvi

Summary of decision

1. The appeal is allowed, and the panel confirms a revised RV of £38,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £73,500 from 1 April 2017, with a description of Restaurant and Premises. At challenge stage, the VO's decision was to alter the list otherwise than in accordance with the proposal; this resulted in a revised entry of £55,000 RV. This appeal was made on 11 March 2020 against the Valuation Officer's (VO) Decision Notice of 20 January 2020 in respect of the appeal property (hereditament) and the revised RV of £55,000. Mr Rose maintained that a RV £38,000 was the appropriate value for the appeal property.

3. The panel was informed by Mr Rose that the appeal property was built within railway arches next to Camden Road station. Prompt Exit had leased unfitted out arches, approximately 950 m^2 in size, from 13 November 2013 from Network Rail for a term of twenty five years. The appeal property comprised some 251.06 m^2 of the total area, with the remainder of the space at 21 Bonny Street undergoing a conversion into serviced offices.

4. As Mr Rose appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

5. Mr Rose declared that he was not instructed under any conditional fee arrangement. The panel accepted the representative's expert witness evidence on the basis that Mr Rose appeared at the hearing on the understanding and in acceptance of his duty to the Tribunal in giving his evidence, and in compliance with the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

6. 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.

7. 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.

8. 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 evidence, should not be construed as it having been overlooked.

Issues

9. The matter before the panel was to determine the correct level of the RV for the appeal property, having regard to the weight of evidence to be attached to the rental evidence in

respect of the property and the levels of value placed on comparable assessments from the locality.

10. There was no dispute between the parties on the floor area of the appeal property.

Evidence and submissions

11. The appellant's representative explained that his client spent £300,000 to convert the arches into a restaurant and into serviced offices. The restaurant was then let on licence to Camden Pizza Ltd from 9 May 2016 on a rent of £52,000 per annum inclusive of business rates and service charges. Prompt Exit received one bill for utilities, so Mr Rose had deducted a nominal amount of £2,000 per annum for the appeal property. In 2016/2017 the business rates bill was £18,886. He had devalued the rent of £52,000 by the two amounts of £2,000 and £18,886 to arrive at the figure of £31,114 for the year after the antecedent valuation date (AVD). He had also differed from the VO's valuation of the appeal property, which was on an overall basis, by adopting the zoned valuation approach to reflect the various disadvantages inherent in the layout of the appeal property.

12. Turning to his comparable property at 35 Camden Road, he said Costa Coffee was on the same side of the road as the appeal property but located by the canal with an entrance on the lower level from the canal footpath as well as having an entrance on Camden Road. It measured 234.53 m^2 and was valued on a zoned basis of £600 per m^2 in terms of main space (ITMS) when entered into the 2017 list at RV £63,000. Subsequently an appeal against the compiled list RV had been submitted and the RV had been reduced at the Challenge stage to £49,500. He described the Costa Coffee property as being modern, with a modern layout and benefitting from having two entrances. In the 2010 rating list its RV had been £42,000 – therefore the increase in RV between the 2010 and 2017 lists was 17.1%.

13. Mr Rose returned to his earlier analysis for the appeal property of £31,000. He increased the figure of £38,000 by the 17.1% increase between the 2010 and 2017 rating lists which came to £45,000. He had added together £31,000 and £45,000 and when the overall sum was divided by two, it gave an average of £38,000, the figure which he was contending for,

14. His assessment of the VO's comparable property, 94 Camden Road, was that it was a significantly different property situated on the other side of the road and within a parade of shops. It measured 55.7 m^2 (the panel noted that in the VO's submission his measurement was 49.87 m^2) and, in the representative's opinion, there was no comparison to be made between the type of operator the appeal property and this property would attract.

15. Mr Tawonezvi's case was that on receipt of the initial proposal, the VO had requested information from Mr Rose to ascertain how much of the £300,000 fit-out costs were spent on the appeal property, followed by a further request for clarification on how much the business rates and utility bills were within the licence so that the Valuation Office Agency (VOA) could deduct the correct amount from the gross rent of £52,000. Mr Rose had provided Local Authority business rate bills from 2010 to 2021 but had not provided the itemised bills for water, gas and electricity used on the appeal premises.

16. He said that Mr Rose's comparable property, 35 Camden Road, was valued as a shop on a zoned basis. The appeal property was not a shop, it was a restaurant and valued on an overall

basis of £400 per m^2. The VO had chosen as his comparable property another restaurant at 94 Camden Road, which was on the opposite side of the road. The rent on this property analysed to £400 per m^2 and was valued on the overall basis. The VO had reviewed the evidence and had decided that a reduction to £300 per m^2 was more appropriate for the appeal property when allowance was made for it not being in the same location as the comparable property.

17. His opinion on the fact that Prompt Exit had let the appeal property on a licence was that seeking to reduce one's liability by subletting was not the same as a landlord seeking to maximise their investment value; a rent under licence may not reflect an open market value; and a licence inclusive of rates and utility bills had too many adjustments to make to reach a net rental figure, and was therefore less reliable as evidence.

Decision and reasons

18. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD).

19. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

20. The panel considered that the one comparable property each party had provided had not been particularly helpful in making their respective cases. Costa Coffee was valued as a shop on a zoned basis and on what may be termed a corporate rental. The VO's comparable property at 94 Camden Road was much smaller than the appeal property and, in the VO's own remarks, in a better location on Camden Road in relation to the appeal property.

21. The VO had not placed weight on the licence for the appeal property and had disregarded it as a means to offset the landlord's liability, but the panel found that the circumstances existing at the appeal property did not conform to this reading. The panel concluded that Prompt Exit was in business as a landlord to make an investment borne out by the fact that there was a lease on 950 m^2 of space for which it had paid a total of £300,000 in fit-out costs in order to create lettings and generate a rental income.

22. The reality of letting this type of hereditament was that the tenant was renting arches, which the panel concluded could not be deemed as straightforward or as attractive a rental as was to be found elsewhere on the Camden Road. Therefore, the panel decided that the licence on the appeal property could not be discounted and was a better indicator in this appeal than perhaps ordinarily was the case.

23. Where the panel placed little weight in Mr Rose's submission was his linking of the 2010 and 2017 rating lists to show the percentage movement between the two lists for his comparable property and then applying it to the appeal property. Each rating list is complete in itself and the legislation sets an AVD on which rental evidence is compiled for every list – the panel was not persuaded by this line of argument which was not anchored in the legislation.

24. The panel then looked at Mr Rose's approach of separating out the different elements within the licence to arrive at the passing rent. There was a spread of obligations within the licence for the appeal property and adjustments had to be made for them; the panel found that Mr Rose's approach was quite methodical and reasonable in arriving at a net rent.

25. The panel did accept Mr Rose's zonal valuation of the appeal property which kept to £400 per m^2 for Zone A as it was evident from the plan and photographs of the interior that there were significant intrinsic disadvantages present in the lighting and layout of the restaurant area.

26. Therefore, the panel is satisfied from the evidence presented that the valuation of the hereditament is unreasonable, and the appeal is allowed with the representative's revised valuation confirmed at £38,000 with effect from 1 April 2017.

Order and refund of appeal fee

27. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the appeal property's entry in the Rating List to £38,000 Rateable Value with effect from 1 April 2017. The Valuation Officer must comply with this Order within two weeks of its making.

28. As the appellant has been successful in their appeal, in accordance with Regulation 13E of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appellant's fee must be refunded.

Date: 30 November 2020

Appeal number: CHG100119570