THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List – Price per m² to be adopted – new premises built as extension of existing shopping centre – fitting out costs – should a percentage of the analysed rent be used or should full regard be taken of the fitting out costs - Edma (Jewellers) Ltd v Moore (VO) 1975 – Appeal Dismissed

Re: Unit 2 Castle Street Mall, Grosvenor Shopping Centre, Macclesfield, SK11 6AF

APPEAL NUMBER: CHG100126013

BETWEEN:	T K Maxx	Appellant
	and	
	The Valuation Officer	Respondent

PANEL; Miss L Sharkey (Senior Member)

Dr P Thomson

CLERK: Mr A Jolly

REMOTE HEARING: Monday 23 August 2021

APPEARANCE: Mr Y Ke of Deloitte Real Estates representing the occupier T K Maxx (appellant) accompanied by Mr R Edwards also of Deloitte Real Estates

Ms M Davenport representing the Valuation Officer (respondent)

Summary of decision

1. Appeal dismissed. Rateable Value (RV) £216,000 with effect from 14 August 2018 was confirmed as correct.

Introduction

2. This appeal has been brought in respect of the following: The appeal was lodged on 20 April 2021 in response to the Valuation Officer's Challenge Decision Notice of 17 February 2021.

3. 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.

4. 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.

5. 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.

6. Mr Ke and Mr Edwards appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Ke and Mr Edwards declaration of truth included a statement that they were not instructed under any conditional fee arrangement. They declared that they understood and accepted that their duty was to the Tribunal in giving their evidence and they would comply with this as well as the requirements of their professional body regardless of whether or not the evidence supported the client's case.

Preliminary Issue

7. Both parties had submitted new evidence after the lodging of the appeal and both parties objected to the other parties' new evidence. The panel decided to allow both parties to provide reasons at the hearing as to why they consider their evidence should be admitted and the reasons for their objections. Following both parties giving statements, the appellant's representative withdrew his objection followed by the Valuation Officer's withdrawal of her objections.

8. As the parties agreed that all evidence submitted could be admitted the panel did not make a judgement on this issue.

9. It was noted that the parties needed a short adjournment to allow for confirmation of the issue remaining and a 15 minute adjournment was granted. During this time the panel members took the opportunity to read the new evidence.

Issues

10. The issue before the panel concerned how the appeal hereditament should be valued having regard to the fitting out costs. Both parties agreed that the actual rent for the appeal property analysed to £38 per m² but differed on the price per m² to be adopted due to the differences between how the parties had regard to the fitting out costs.

Evidence and submissions

11. Mr Ke stated that he had not initially been aware that the fitting out costs had been an issue and had followed the Rating Manual in which it stated that a 10% addition should be made to the analysed rent to arrive at the price per m². He stated that as both parties agreed the rent analysed to £38 per m² he was seeking to apply £42 per m² which gave £100,000 RV.

12. He referred to the Lands Tribunal decision of *Edma (Jewellers) Ltd v Moore (VO)* 1975 and stated that the cost of fitting out did not always equate to add value and nor did it always improve the landlord's hereditament.

13. Mr Ke stated that he had experience of valuing properties and that he had agreed with other Valuation Officers an addition of 10% to take account of fitting out costs including TK Maxx in Ipswich and Ealing Broadway.

14. Mr Ke also provided an alternative valuation using the fitting out costs and deducting the contribution costs and then analysing the remaining figure over the term of the lease, (15 years), which resulted in £39.03 per m². This produced a revised assessment of £94,007.31 RV.

15. Mr Ke did not consider Boots assessment and rental evidence to be of assistance as it was two leases for two hereditaments that had been merged and valued using the zoning method of valuation. The appeal property was valued differently on an overall basis. He also considered Wilkinson in Crewe, being 20 miles away, was in a different locality to Macclesfield and therefore not of assistance.

16. Mr Ke considered the Heads of Terms which was agreed in 2015 to be of assistance as terms were agreed close to the AVD. The lease was agreed in 2016 and started in 2018 with minimal changes made from the Heads of Terms.

17. Ms Davenport stated that the rent had been analysed to £38 per m² but she contended that as the appeal hereditament was occupied by an anchor tenant, caution should be applied to the rent and in addition, the rent agreed was too remote from the antecedent valuation date.

18. She stated that whilst the Rating Manual did say that a 10% uplift of the analysed rent could be applied for fitting out costs, this was when it was a rent review or the fitting out costs were unknown. She also referred to the Rating Manual in support of her contention that a full analysis of the fitting out cost should be taken when valuing the appeal hereditament. She also stated that the appellant's representative had, in his alternative valuation, analysed the fitting out costs over the whole of the lease but as there was a break clause at year 10 the fitting out costs should be analysed over 10 years and not 15 years. She confirmed that when analysing the fitting out costs, she also had deducted the landlord's capital contributions and had regard to the 15 months rent free period. She had analysed the fitting out costs to £87.56 per m²

19. In support of her contention, she also cited the Lands Tribunal decision of *Edma Jewellers Ltd v Moore (VO*) 1975.

20. Ms Davenport considered Boots, which was an older store with a poor layout, supported her price per m² being applied together with Wilkinson, Crewe. She stated that whilst Boots was held on two leases they were taken together with the same start and finish date. She stated that B & M in Macclesfield, as supplied by the appellant's representative in his challenge, was located outside of the main town centre and therefore was in a poorer location. She stated that whilst the rental evidence from 2014 analysed to £50 per m² the adjacent car park was under a Compulsory Purchase Order (CPO) for redevelopment at that time. However, this had been removed by the material date of the 2017 Rating List and the rental value had since increased to reflect the change. She stated that as she considered B & M to be an older property in an inferior location, she believed it supported her opinion that the value adopted by the appellant's representative was too low.

21. Having regard to her evidence, she sought dismissal of the appeal.

Decision and reasons

22. The panel considered that whilst Grosvenor Shopping Centre had been long established, the new extension in which the appeal hereditament was located was built to enhance the centre. The panel found the new store to be larger and newer than those in the original shopping centre and agreed that TK Maxx was an anchor tenant of the extended shopping centre and this could be reflected in the agreed level of rent; given it analysed to £38 per m². This was supported by the news article presented as new evidence by Mr Ke dated 21 June 2018 confirming that TK Maxx was considered to be an anchor tenant.

23. The panel therefore considered that the rental evidence for the appeal hereditament must be viewed with caution and minimal weight should be applied.

24. The panel had been presented with rental and assessment details of other properties in and around Macclesfield and also Crewe. The panel considered this evidence to be of limited assistance as Boots, whilst located in the older section of the shopping centre, was two units merged into one and had been valued using the zoning method, whilst the appeal hereditament was valued on an overall basis. It also considered that B & M was not of great assistance due to its location outside of the main shopping centre of Macclesfield and the first rent quoted had been affected by a CPO that had been withdrawn by April 2017. The panel placed no weight upon the assessment of Wilkinsons in Crewe as this was located in a town some 20 miles from Macclesfield.

25. The panel noted that adding 10% to the analysed rent was an accepted method of reflecting fitting out costs; however, this method was applied in certain circumstances such as following either a rent review or when fitting out costs were not available. In this instance the Panel had been provided with fitting out costs and the letting was new, therefore it did not accept that adding a percentage to the analysed rent, was the correct method of valuing the appeal hereditament. Particularly as it had already decided that the rent should be treated with caution; given that the appeal property was let to an anchor tenant.

26. The panel noted that Mr Ke had agreed assessments in Ipswich and Ealing Broadway using the 10% addition to the analysed rent, but the panel was advised that fitting out costs had not been available in those instances.

27. The panel noted that Mr Ke had provided an alternative valuation based on analysing the fitting out costs over 15 years, whereas Ms Davenport had analysed the fitting out costs to reflect the 10 year break clause in the lease. The panel considered that analysing the fitting out costs over 10 years was correct and therefore accepted the valuation method adopted by the Valuation Officer.

28. The panel having considered all the evidence had not been persuaded by the appellant's representative that RV £216,000 was incorrect. The appeal is dismissed.

Date: Friday 17 September 2021

Appeal number: CHG100126013