THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; end allowance for masking; rental evidence; appeal dismissed.

Re: 172 Stretford Road, Manchester M15 5TL

APPEAL NUMBER: CHG100134871

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 G Willetts – 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 £8,700 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 Valuation Tribunal. Furthermore, he stated that he was not instructed under a conditional fee arrangement or other success related fee.

5. Mr Willetts 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.

7. This appeal has been brought in respect of 172 Stretford Road, Manchester (the "appeal property"), which is currently entered in the 2017 Rating List as "shop and premises" at rateable value £8,700 effective from 1 April 2017.

8. 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 £8,700, was wrong and that it should be reduced to rateable value £6,500.

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

10. 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

11. There were originally three issues in dispute as follows:

    (a) The price per square metre in the valuation. The valuation officer had used £150/m^2 (in terms of zone A), but the appellant's representative had requested a reduction to £115/m^2.

(b) The appellant’s representative sought an allowance for poor natural light (PNL).

(c) The appellant’s representative sought a 2.5% end allowance for masking due to the pillars situated at the front right and left-hand sides of the premises in zone A. However, he admitted that there was also masking in zone B which he had failed to include in his evidence. Therefore, the appellant’s representative sought a 2.5% masking allowance in both zone A and zone B, although he did not intend on introducing a new figure.

The Valuation Officer rejected the masking allowance as he felt that the two small pillars at the front of the shop did not obstruct the view from the pavement in any way.

12. At the hearing, Mr Batty stated that he wished to forego the PNL allowance and that he was prepared to accept the basis of £150/m^2 zone A figure. The only issue that remained was that of masking.

13. Mr Willetts agreed to allow Mr Batty to introduce his floor plan as evidence.

Evidence and submissions

14. 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 and rental evidence.

15. The subject property was a 1998 built, brick and tile, four storey building situated on the A5607 Stretford Road on the outskirts of Manchester City Centre. The building comprised four shops on the ground floor with residential accommodation on the first to third floors.

Decision and reasons

16. The only issue for the panel to determine was whether or not an allowance for masking was justified.

17. 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".

18. 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).

19. 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.

20. The panel examined the rent passing on the appeal property as it considered this would assist in determining whether any allowances were justified. The panel was informed that the rent on the appeal property was on a renewal basis at £12,000 per annum with reviews at five years, upward only. The review showed an analysed rent of £205.90/m^2. However, the proposer declared £10,000 per annum from 1 April 2017 which would indicate an analysed rent of £171.58/m^2. In both instances, the panel noted that the figures were well above the £150/m^2 which had been applied as a zone A price in the appeal property's assessment.

21. Turning to whether an allowance for masking was justified, the appellant's representative had sought a 2.5% allowance to be applied in the assessment for the pillars situated in the corners of both the right and left-hand side of the shop front. He referred to the photographs to illustrate the issue, which he believed affected, in particular, approximately five to six feet of shelving on the left-hand side of the shop front.

22. The respondent contended that there was no issue with masking. He argued that the view from the pavement into the shop was not obstructed as both pillars were situated well into the corner of the shop unit. Furthermore, no comparable properties had been provided by the appellant's representative to show that allowances had been given for masking elsewhere and, having looked at the other properties within the same building, none of them had allowances for pillars or any other allowances. The respondent added that the rent did not justify an end allowance as it was well in excess of the £8,700 rateable value.

23. Having examined the evidence provided by the parties, the panel determined that the assessment should not be reduced. The photographs, both externally and internally, showed that masking was not an issue. The front pillars did not suggest any masking from the pavement and the shelving, as referred to by the appellant's representative, was visible from the shop front. Furthermore, the panel found that the rent, being so much higher than the rateable value, would reflect any disabilities such as minor masking, if it had been an issue.

24. 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 an allowance for masking. 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: CHG100134871