THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; amusement arcade and premises; unit price per square metre disputed; removal of value for air conditioning, lighting issues, position of appeal property on the promenade, removal of allowances given on 2010 assessment, non-use of first and second floors due to reduced footfall; R v Melladew [1907] 1 KB 192; Principled Offsite Logistics Ltd, R v Trafford Council [2018] EWHC 1687; appeal dismissed.

Re: Silcocks Leisure Group, 125-141 Promenade, Blackpool FY1 5BE

APPEAL NUMBER: CHG100148349

BETWEEN:	Silcocks Leisure Group	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 Sherratt – 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 £155,000 rateable value (RV), 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 Sherratt 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 at issue.

7. This appeal has been brought in respect of 125-141 Promenade, Blackpool (the "appeal property"), which was originally entered in the 2017 rating list as "amusement arcade and premises" at £169,000 RV effective from 1 April 2017. The respondent agreed to reduce the main space rate from £110/m^2 down to £100/m^2. The current RV of £155,000 with effect from 1 April 2017 reflects this change.

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 was wrong and that it should be reduced to £108,000 RV. However, he also provided an alternative valuation without the first and second floors of £70,000 RV.

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 a number of issues in dispute as follows:

a. The inferior position of the appeal property compared with other properties north of Chapel Street.

b. No natural light whatsoever on the first floor.

c. Poor lighting in the centre of the ground floor.

d. The first floor had been sealed off and was not used due to insufficient footfall to support the use of the first and second floors.

e. The air conditioning system although still in the building was totally defunct. The cost of trying to replace the R22 coolant system was beyond his clients capacity and should be removed from the assessment.

f. Allowances which were given on the 2010 Rating List have been removed. This includes a 12.5% allowance for triple unit and a 10% quantity allowance. These should be reinstated.

g. The price per square metre in the valuation should be reduced from £100/m^2 to £90/m^2 to reflect the property's position and reduced footfall. The appellant's representative cited two comparable properties, one in Lytham St Annes at £20/m^2 and one in Morecambe at £40/m^2 main space price.

12. At the hearing, Mr Batty informed the tribunal that he had just found out that the air conditioning had been replaced so it was no longer in dispute. He also stated that he accepted the upper floors could be used as storage, so he was no longer contending for their removal from the valuation. The £108,000 RV he was now seeking included the air conditioning and the upper floors of the appeal property.

Evidence and submissions

13. 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, a 2010 rating list decision for the appeal property, rental evidence and case law referred to below.

- R v Melladew [1907] 1 KB 192
- Principled Offsite Logistics Ltd, R v Trafford Council [2018] EWHC 1687.

14. The appeal property is a circa 1980's end terrace property. It had an actual area of 2037.01m^2. It was originally nine individual units before becoming a single property. It is of steel frame construction with brick work to the side and rear elevations. The front elevation is mainly metal frame with metal cladding to the upper elevations.

15. The property is situated on the promenade in Blackpool. It also has access to Foxhall Road. It is close to the junction with Chapel Street and the central pier.

Decision and reasons

16. There was a number of issues for the panel to determine in this case which included the main space price, its position on the Promenade, the removal of allowances given on the 2010 rating list, the poor lighting on the ground floor and no natural light on the first floor, the sealing off of the first and second floors and the defunct air conditioning.

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;
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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".

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 decided to begin by determining the unit price per metre for the main space. The appellant's representative contended that the subject property should be valued at no more than £90/m^2. To support his case, he referred to two comparable properties, one in Lytham St Annes at 20/m^2 and the other in Morecambe at £40/m^2, to illustrate values in an inferior location.

21. The respondent argued that these two properties were some distance away from the promenade in Blackpool. He contended that there were other comparable properties closer to the appeal property which would be more relevant. In referring to his schedule of amusement arcades situated on the Promenade, the respondent confirmed that the subject

property was valued lower than any other assessment, which in his view, reflected its size and location.

22. The respondent referred to three lettings on the Promenade.

    25-43 Promenade was a lease renewal from March 2015 at £200,000 per annum. This property had an actual area of 2031.40m^2. The adopted value for this property was £140/m^2.

    181-191 Promenade was a new letting from September 2013 at £40,000 per annum. This property had an actual area of 241.08m^2. The adopted value was £156/m^2.

    67-73 Promenade was a new letting from January 2013 at £120,000 per annum under a three-year stepped rent. This property had an actual area of 1224.06m^2. The adopted value on this property was £150/m^2.

23. Although accepting that the latter two properties were smaller units, the respondent believed that the rents still supported the £100/m^2 main space price applied to the appeal property when taking into account the quantum element.

24. The panel considered the comparable evidence provided by the parties. The two properties put forward by the appellant's representative were located too far away from the subject property to be useful, even from an inferior location point of view. The panel noted that the £100/m^2 which had been applied to the appeal property was lower than those amusement arcades that were closer to Blackpool Tower. Therefore, bearing in mind that the subject property was now valued on an overall basis, the panel found that £100/m^2 did not appear unreasonable as a reflection of its size, location and lighting issues. The panel was of the view that the lack of natural light or poor lighting was not uncommon in a building of this size and occupation.

25. In relation to the removal of the various allowances in the 2017 assessment which had been included in the 2010 rating list, the respondent contended that these should not have been removed as they were previously agreed allowances for triple unit and quantity. The respondent explained that when the 2010 list was compiled the appeal property assessment was on a zoned basis. However, for the 2017 list the valuation was changed to an overall approach which would reflect these two features. He added that it would be double counting if they were included in the current assessment.

26. The panel found that in changing the valuation approach from zoning on the 2010 list to the overall approach on the 2017 list would mean that any disadvantages would be incorporated in the adopted rate. The panel was therefore satisfied that these two allowances for triple unit and quantity should not be included in the assessment as additional allowances.

27. In appeals of this nature the burden of proof rests 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 on all the issues raised. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Friday 19 November 2021

Appeal number: CHG100148349