THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; End allowance for access, No internal access; Restaurant and premises; Appeal dismissed.

RE: Units Lg01 & Pt Lg02, Resorts World Birmingham, Pendigo Way, National Exhibition Centre, Birmingham B40 1PU

APPEAL NUMBER: CHG100163917

BETWEEN:	Thursdays (UK) Limited (represented by Gerald Eve)	Appellant
	and	
	Dal Virk (Valuation Officer)	Respondent

PANEL: Miss L Sharkey (Senior Member)
Mr S M Hooberman

CLERK: Ms S Hodgson

ON: 22 April 2022

REMOTE HEARING

APPEARANCES: Mr J Davies of Gerald Eve for the appellant
Mr D Greaves of the Valuation Office Agency for the respondent

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Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £141,000 rateable value (RV) with effect from 28 July 2018.

Introduction

2. This appeal had been brought in respect of the following: Units Lg01 & Pt Lg02, Resorts World Birmingham, Pendigo Way, National Exhibition Centre, Birmingham B40 1PU which was entered in the 2017 rating list as ‘Restaurant and premises’ at RV £141,000 effective from 28 July 2018. The challenge stage was completed on 21 June 2021 and Mr Davies was seeking an RV of £125,000 by way of a 10% end allowance for access issues.

3. The appeal property was located on the lower ground floor of Resorts World which was a shopping and hotel complex located in Birmingham. It was one of four units on the lower ground floor and had a total area of 748.40m^2 which included an outdoor seating area.

4. 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.

Issue

5. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

6. Mr Davies appeared on behalf of the appellant as both advocate and expert witness. Mr Davies’ statement of truth declared that he was not instructed under any conditional fee arrangement. Mr Davies declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the case.

7. Mr Greaves appeared on behalf of the respondent as both advocate and expert witness. Mr Greaves’ statement of truth declared that he was not instructed under any conditional fee arrangement. Mr Greaves declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the case.

8. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

9. Prior to the hearing Mr Greaves submitted a document that had corrected data for the VO’s rental evidence. Mr Davies did not object to this new evidence as the appeal had previously been postponed to allow him to consider the data.

10. The parties also agreed that there would be references made to Valuation Officer Notices (VON’s) that had been issued in the preceding three weeks to the three other units on the lower ground floor of Resorts World Birmingham.

Decision and reasons

11. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

    2(1) 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.

12. 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).

13. 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 was 28 July 2018.

14. Originally, there was a dispute between the parties on the base rate to be applied to the assessment which was raised at the challenge stage. At that stage Mr Davies was asking for the base rate to be reduced from £315 per square metre (psm) to £199.75 psm which incorporated the re-application of a previously agreed quantum allowance of 15% and resulted in an RV of £133,000.

15. By the time the appeal was before the Tribunal, changes had been made to the respective valuations of the subject property due to agreements on other units in Resorts World, and the re-application of the quantum allowance by the VO.

16. At the hearing Mr Davies put forward his proposed valuation, rounded down to £125,000, as follows:

Description	Area m^2	£ per m^2	Value (£)
Ground floor sales	656.6	250.00	164,150
Outdoor display/seating area	91.8	31.25	2,869
		Sub-total	167,019
Quantum allowance	-15.00%		-25,053
Access allowance	-10.00%		-16,701
		Total	125,264

17. At the hearing Mr Greaves put forward his valuation which is as it is in the current rating list, rounded down to £141,000, as follows:

Description	Area m^2	£ per m^2	Value (£)
Ground floor sales	656.6	250.00	164,150
Outdoor display/seating area	91.8	31.25	2,869
		Sub-total	167,019
Quantum allowance	-15.00%		-25,053
		Total	141,966

18. While the parties still referred to the rent of other units in Resorts World and spoke to their respective comparable properties, it can be seen from the valuations above that the only remaining issue between the parties was whether a 10% end allowance for access was warranted for the subject property.

19. The panel heard from Mr Davies that the entrance to the subject property was external and there was no entrance from inside Resort World. He stated that the other three restaurants on the lower ground floor with the subject property all had internal entrances.

20. Mr Davies stated that there was no precedence within Resorts World of other units not having internal entrances and therefore the figure of 10% came from his experience in the industry. He explained that it was not to do with the amount of business lost, but about the rents being reduced or increased due to the property location. He gave two examples to the panel to demonstrate that where a property has a double frontage, you would expect to see a higher rent, and in the case where the property faces masking issues, it was usual to see 10% reductions.

21. Mr Greaves argued that if there were significant issues with the access to the subject property, this would have been reflected in the rent for the property. By contrast he had analysed the rent of the subject property to £258.97 psm which supported the current rate of £250 psm put forward by both parties.

22. The panel heard that the subject property had a large internal window within the lower ground floor of Resort World and there was a door from the lower ground floor that led outside and to the entrance of the subject property. Mr Davies stated the entrance to the restaurant was 75 yards away from the exit door from the lower ground floor.

23. The panel reviewed the evidence in the bundle and the photograph of the subject property that showed its outdoor seating area and the external view of the restaurant. It was the panel's view that the subject property had a large external seating area and frontage to the unit, and in addition to this had visibility from inside Resort World.

24. The panel found that there was not sufficient evidence to establish that a 10% end allowance for access issues was warranted.

25. Consequently, based on the evidence before it, the panel dismissed the appeal and the RV of £141,000 as detailed in paragraph 18, was confirmed with effect from 28 July 2018.

Date: 21 May 2022

Appeal number: CHG100163917