THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; preliminary issue on fit out costs; café and premises; end allowances; basis of valuation; appeal dismissed.

RE: 72 Wolverhampton Road, Codsall, Wolverhampton, WV8 1PE ("the subject property")

APPEAL NUMBER: CHG100167992

BETWEEN:	Pioneers (UK) Ltd (Trading as Costa Coffee)	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mr M Smith (Senior Member)
Mr S Hooberman

CLERK: Mrs A Sloan

HEARING: Remote hearing No.1 on 14 April 2022

APPEARANCES: Mr M Radford of Mark Radford Rating (for the Appellant)
Mr C Cowper (Respondent's representative)

Summary of decision

1. Appeal dismissed. The panel made no change to the entry in the rating list.

Introduction and preliminary issue

2. This appeal was lodged to challenge the Valuation Officer's (VO) decision notice of 5 August 2021 refusing to reduce the Rateable Value (RV) in the 2017 rating list.

3. Mr Cowper raised a preliminary issue at the hearing in respect of fit out costs for the subject property. He explained that both parties had used a percentage of fit out costs in their respective valuations, but he considered it would be useful for the panel to have the actual costs. He stated that requests had been made of Mr Radford to provide the fit out costs during the challenge stage but they had not been provided. Mr Radford acknowledged that

a request was received from the VO in February 2021 for a copy of the lease and a breakdown of fit out costs. He had supplied the lease but not the costs breakdown as, in June 2021, the VO's challenge update referred to a recently settled proposal on another Costa Coffee property where a percentage of fit out costs was accepted. A revised valuation was then provided based on a percentage of the total fit out costs. Mr Radford suggested that the request for fit out costs at this late stage was raised because Mr Cowper did not agree with the decision made by his colleague, and he felt a different approach was better.

4. After hearing from both parties, the panel concluded that Mr Cowper was essentially seeking an adjournment of the appeal for the Appellant's representative to provide a breakdown of fit out costs. He had provided the panel with a copy of the 2021 VTE decision of *Acenden Ltd and Fe Fundinfo (UK) Ltd v Bunyan* [appeal numbers CHG100018760 and CHG100066431]. These appeals were heard by a Vice President of the Tribunal who determined that, as the Appellant for Hollywood House had failed to provide a breakdown of fit out costs, the full costs were used and the appeal was dismissed. Mr Radford was clear that he did not consider an adjournment was needed and he did not feel that a breakdown of costs was needed to resolve this appeal. The panel therefore decided that the appeal would not be adjourned and should proceed on the evidence provided when the appeal was lodged.

Issue

5. The issues before the panel were the tone of the rating list in the locality, the weight to be applied to the rent agreed on the subject property and whether an allowance should be given to reflect disadvantages.

Evidence and submissions

6. Mr Radford stated that he was appearing as both advocate and expert witness in these proceedings and he was appointed on a contingency fee basis. In giving expert evidence, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

7. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters at issue before it.

8. The panel was supplied with the evidence provided by Mr Radford when the appeal was lodged, which included the challenge (proposal), exchanges between the parties, photographs, maps, a copy of the lease from March 2018 for the subject property along with an email from the Appellant's agent confirming the side agreement regarding the rent and a copy of that agreement letter, a schedule of comparable properties and rent from the VO and the VO's decision notice.

9. The entry in the 2017 rating list had been altered to £27,500 RV with effect from 20 March 2018 and Mr Cowper asked the panel to confirm this valuation. Mr Radford considered that

the correct valuation was £20,000 RV and asked the panel to reduce the entry to that figure from the same effective date.

Decision and reasons

10. The subject property was constructed between 1965 and 1970, according to the VO's records, and was formerly a bank. It is located at the end of a parade of smaller shops and a Co-Op store. In 2018 the subject property was refurbished and is now trading as a franchised Costa Coffee outlet.

11. Mr Radford stated that, when the bank closed, the unit was stripped out and the brick wall to the side of the property replaced with glazing. It was re-fitted to Category A stage (known as 'white box'), with a shop front, flooring, power and so on. When taking over the property, the Appellant added toilets, kitchen and the Costa Coffee branding. The lease agreed was effective from 20 March 2018 for ten years, full repairing and insuring basis, with a five-month rent free period and five yearly reviews. The rent was £26,000. However, the landlord and tenant made a side agreement that the rent to be paid, after the rent free period, was £20,000 per annum until the first rent review. The email from the Appellant's agent contained in the evidence pack stated that the property had been extensively marketed and both parties agreed that the open market value was £20,000. The side agreement was structured so that the landlord could keep the headline rent as high as possible, but the Appellant was content that only £20,000 would be paid.

12. In accordance with *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, Mr Radford considered that the starting point of a valuation should be the rent passing on the subject property. He considered that the VO's valuation of £27,500 did not reflect the rent agreed between the landlord and tenant. Mr Radford explained to the panel that the VO had introduced the settled challenge on 27 Swan Walk, Burton -on-Trent, where the agreement reflected the annual value with 50% of the fit out costs being added to the rent over the first five years of the lease. He had therefore adopted the same approach for the subject property, using the passing rent of £20,000.

13. Mr Cowper referred the panel to the table of comparable properties in the evidence pack and the rental evidence. He highlighted that the subject property had been valued on a unit price of £340/m^2 and this was the same for the three other shops included in the table. 84, 88 and 108 Wolverhampton Road were located in the parade close to the subject property and their rents were agreed closer to the Antecedent Valuation Date (AVD) of 1 April 2015 than the subject property.

14. The panel agreed that the starting point of any valuation should be the rent passing on the subject property. However, it found that the lease for 72 Wolverhampton Road was agreed nearly three years after the AVD and required adjustment, so it was of limited use when considering the market on 1 April 2015. Mr Radford suggested that the market value should be taken to be £20,000 because that was the annual rent agreed between the parties, but the panel noted that the lease stated £26,000 and concluded that, along with the rent free period, the reduced rent was an incentive to the tenant. It found that, given the rent was agreed so far beyond the AVD and there was a side agreement in place, the subject property's rent should not be taken in isolation and other rents from the locality should be considered.

15. The closest rent to the AVD was that of 84 Wolverhampton Road. The rent agreed in June 2015 was a rent review determined from open market value. Whilst not as useful as a new lease, the panel found this example helpful as it was noted that this was an increased rent on review so would reflect the market very close to the AVD. The only new lease presented was that of 88 Wolverhampton Road in December 2012. Although this was a new letting, the panel noted that this rent was still agreed over two years from the AVD. Finally, the VO had included a lease renewal from December 2014 on 108 Wolverhampton Road. This was just four months before the AVD, so the panel found this renewal to be useful evidence. All three shops presented by the VO had been valued on the same £340/m^2 basis as the subject property. The panel noted that all three shops were smaller than the subject property, 108 Wolverhampton Road significantly so, but Mr Radford had provided no alternative comparable properties for the panel's consideration.

16. The panel understood that an allowance was agreed in the 2010 list to reflect the non-traditional frontage at the subject property and its isolated position at the end of the parade. Mr Radford considered that the allowance should apply in the 2017 rating list. Mr Cowper explained that, since the subject property had been re-fitted, he did not consider the same allowances were justified. He stated that an allowance had been incorporated in the Zone A price used in the current valuation.

17. After considering the evidence presented, the panel concluded that the rent negotiated in the side agreement for the subject property was specific to the Appellant company. It was clear from the submissions that the property had been marketed at £26,000 and the lease was signed at that amount. The side agreement to reduce the amount payable to £20,000 was an incentive to attract the Appellant ratepayer and would not necessarily apply to the hypothetical tenant on the AVD. Although smaller in size, the units in the same parade provided by the VO demonstrated a tone that supported the current valuation. No alternative rents were provided by Mr Radford.

18. The panel did not find that the photographs provided, showing the property before and after the refurbishment, demonstrated a particularly isolated location or unusual frontage. It noted that the subject property is now an attractive shop which benefits from large windows on at least two sides and does not resemble the structure when it was used as a bank. The panel did not find therefore that any additional allowance was justified to reflect isolation or disabilities.

19. The burden of proof in this appeal lay with the Appellant's representative to demonstrate that the existing valuation was wrong. Mr Radford had relied heavily on the side agreement negotiated between his client and the landlord but provided no supporting evidence to demonstrate that the rent shown on the lease was not reflective of the open market. After considering all the evidence presented, the panel was not persuaded that the valuation of £27,500 from 20 March 2018 was unreasonable and the appeal was therefore dismissed.

Date: 4 May 2022
Appeal number: CHG100167992