THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; shop and premises; measurement of areas; recessed frontage; access; fragmentation; end allowances; Decision: appeal allowed in part.

RE: 3 Milsom Street, Bath BA1 1DA

APPEAL NUMBER: CHG100176383

BETWEEN:	Mayther	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL:	Ms A Ursprung (Presiding Senior Member) Prof. P Catterall
CLERK:	Mrs A Sloan
HEARING:	Remote hearing No.2 on 12 January 2022
APPEARANCES:	Ms L Rabbette of Paul Rabbette Ltd (for the Appellant) Mr R Albert (for the Respondent)

Summary of decision

1. Appeal allowed in part. The rateable value was reduced to £112,000 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of 3 Milsom Street, Bath BA1 1DA (the “appeal property”) which was entered in the 2017 rating list as ‘shop and premises’ at a rateable value of £125,000, effective from 1 April 2017.

3. The challenge process began when the Appellant made a proposal to the Valuation Officer (VO) on the grounds that the accuracy of the rateable value shown in the rating list on 1 April 2017 was disputed. The VO decided that the proposal was not well founded and issued a decision maintaining the existing entry in the rating list on 22 April 2021. The Appellant then

lodged an appeal with this Tribunal to dispute that decision on 21 August 2021 seeking a reduction to a rateable value of £99,000 with effect from 1 April 2017.

4. 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. 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.

5. 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. This hearing was conducted via video conference using Microsoft Teams.

6. 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

7. The dispute concerned the correct valuation for the appeal property in the compiled 2017 rating list. The parties disagreed on the correct measurement of the property and whether end allowances should be given for access and layout.

Evidence and submissions

8. The appeal to the Tribunal included all submissions from the parties exchanged during the Challenge process. Ms Rabbette was acting as both Advocate and Expert Witness for the Appellant. Mr Albert was also acting as both Advocate and Expert Witness but confirmed he had not prepared the Challenge decision notice and was presenting the case for a colleague.

Decision and reasons

9. The appeal property is a Grade II Listed Georgian building located in a retail area of Bath. It comprises ground floor retail space, basement storage and further office and storage space on the first, second and third floors.

10. The first area of dispute between the parties concerned the measurement of the appeal property. Ms Rabbette stated that the VO had last inspected the shop in 2009 and, despite the Challenge lodged, had not inspected recently. She demonstrated with photographs of the appeal property that it remained unaltered since at least 1911. She highlighted that the glazed retail frontage is interrupted by an external doorway created to provide access via a staircase to the upper floors and contended that this doorway reduces the retail frontage by around 1.06m, masking the area behind it. She also referred the panel to the recessed frontage, formed by two elongated curved glass windows either side of the door to the shop. The entrance is sloped, with the retail frontage elevated either side of the entrance and a

slope up from pavement level to access the shop. The recessed entrance is set back by around 3.7m.

11. Ms Rabbette contended that the recessed area should be considered as permanent circulation, or a recess associated with access, and excluded from the zone A area, with no value applied to it. She referred the panel to the established rating principle of *rebus sic stantibus* and the matters to be considered when valuing a property under schedule 6, paragraph 2(7) of the Local Government Finance Act 1988 –

    (7) The matters are—

    (a) matters affecting the physical state or physical enjoyment of the hereditament,

    (b) the mode or category of occupation of the hereditament,

    …….

12. Both parties agreed that the mode or category of use was correct, as the appeal property is clearly a shop and should be valued as such. However, Ms Rabbette argued that, by including the recessed entranceway in the measurements, the VO was valuing the property as it could be, rather than as it stood on the material date of 1 April 2017. She explained that, as a Listed building, the appeal property's frontage could not be altered to suit the occupier, as would be the case with more modern shops. She considered that the VO's approach failed to consider the physical limb of *rebus* and the fact that any alteration to the frontage would involve more than minor works.

13. Mr Albert explained that the shop had been measured in accordance with the RICS Code of Measuring Practice and all shops in Milsom Street, with similarly recessed frontages, had been measured in the same way as the appeal property, with the recessed area included. He disagreed with Ms Rabbette's reliance on section 3.15(b) in the list of exclusions to Net Internal Area shown in the Code of Measuring Practice as follows –

    "3.15(b) – Permanent circulation areas, corridors and thresholds/recesses associated with access, but not those parts that are useable areas"

14. Mr Albert argued that this section related to offices and not shops but Ms Rabbette argued that this was not stated in the guidance. She maintained that the recessed doorway at the appeal property is not a 'useable area' and could not be used by the occupier for selling goods as it was unsecured and only 1.045m wide. Ms Rabbette provided an extract of the Code of Measuring Practice part 16.2 in the 'Special use definitions' section as follows –

    16.0 Retail Area (RA)
    The retail area of the shop is the Net Internal Area (NIA)

    Including
    …..

    16.2. Recessed and arcaded areas of shops created by the location and design of the window display frontage.

15. Ms Rabbette contended that it would be correct to include a value on a recessed area of a shop where the recess could be removed under *rebus* but the same cannot be said where the recess is permanent. She argued that, in the case of the appeal property, the occupier has no choice but to accept the current layout and therefore the recess should be excluded.

16. The panel considered the submissions from both parties on the issue of areas and found that the recessed entrance should be included in the zone A measurements. Whilst it accepted Ms Rabbette's point that the Code of Measuring Practice is not law, it found that it is the established method of valuation used to ensure all properties of a similar type are measured consistently. The guidance at 16.2 is clear that recessed areas created by the window display frontage in shops should be included and Mr Albert confirmed that all shops in Milsom Street with similar frontages had been measured with the recess included. In the panel's opinion the recessed area was not entirely without value as goods could be displayed behind the glazed windows and viewed by customers entering the shop. The panel also noted Mr Albert's comment that appeals had been made on 3 Milsom Street against entries in the 2005 and 2010 rating lists, yet no issue had been raised previously with the zone A measurement. He contended that similar recessed frontage shops in Milsom Street have also been subject to appeals and measured by the VO along with rating agents and the inclusion of the recessed entrance had never been questioned. The panel did not consider that the appeal property was unique in having a deep recessed entranceway from the evidence presented and found that the recess formed part of the zone A retail space.

17. However, the panel was disappointed that the VO had not inspected the appeal property given that disputes over measurement, access and layout were highlighted in this appeal. Ms Rabbette had pointed out that the VO's plans from 2009 did not reflect the columns in certain areas of the building that restricted use of the space. Mr Albert acknowledged that such columns should be excluded from the measurements but contended that the areas concerned were small and any difference in rateable value would be minimal and lost in rounding. The panel did not agree with this position and, aside from the recessed frontage, found that Ms Rabbette's measurement would be more accurate, given she had inspected in 2019. The panel therefore determined that the area for the recessed frontage should be added back into Ms Rabbette's zone A measurements and her other measurements for basement and upper floors should be adopted in the valuation.

18. Ms Rabbette also asked the panel to allow a 5% end allowance for access issues and a further 5% for layout. Referring to photographs of the appeal property, Ms Rabbette explained that there is no internal access to the upper floors where the only toilet facilities are situated. In order to access the upper floors, the occupier must leave the shop via the front door to the pavement and enter the staircase by way of the separate external door. There is no lift access in the property so using the first to third floors involves climbing steep flights of stairs.

19. Examples were provided by Ms Rabbette of other retail shops in the area where end allowances had been given for access and layout. 2-2a Burton Street is similar to the appeal property in that it is arranged over ground, basement and three upper floors. Internal access is available between the ground and basement levels but, similar to the appeal property, there is no internal access to the upper floors. The Burton Street example has a goods lift between ground and basement level with toilet facilities in the basement. Ms Rabbette was of the opinion that this shop is not as severely affected by layout issues as the subject property so a similar 5% end allowance for 3 Milsom Street was reasonable.

20. Also presented as comparable was 20 Milsom Street. The panel noted from the photograph provided that this shop was very similar to the appeal property in appearance and was located in the same street. Ms Rabbette confirmed that this assessment included basement, ground and first floors and a 5% allowance had been given for layout, along with a further 5% for access. Unlike the appeal property, 20 Milsom Street has internal access between

basement, ground and first floors but it does have similar issues to 3 Milsom Street with areas being masked. Mr Albert stated that the layout allowance on 20 Milsom Street reflected its depth to width ratio. Ms Rabbette stated that this example supported her request for similar allowances on the appeal property.

21. The panel noted the other comparable properties presented by Ms Rabbette at 8 Abbey Green and 2a Wood Street and accepted that end allowances had been granted in both cases to reflect issues with layout and access. Mr Albert contended that these properties were not comparable as the set up was different with issues such as step access being a consideration and the Wood Street shop being all on one level and much larger than the appeal property.

22. During the hearing, Mr Albert stated that line adjustments had been made in the VO's valuation to reflect access issues in certain areas of the appeal property. He explained that, if the VO did not consider that an allowance should apply to the whole property, adjustments can made on a line-by-line basis in the valuation to address the affected areas. However, no breakdown of these adjustments was provided to the panel. Mr Albert indicated that adjustments had been made for the first to third floors because the access to these areas did not affect customers visiting the property, only staff. He explained that the survey data should have been included in the evidence bundle as this would have set out more clearly for the panel where adjustments had been made. The panel noted Mr Albert's point but found that it could only consider the evidence before it and the survey data was not included.

23. After considering the parties' submissions on the issues of access and layout, the panel concluded that there was a disadvantage to the Appellant in the layout of the appeal property. The fact that the upper floors could only be accessed via an external door and steep staircases clearly caused difficulties in moving between floors. In addition to the challenges of moving stock between floors, the panel found that having toilets only on the upper floors would be considered a disadvantage. The panel accepted that the Listed building status of the property prevented many alterations and the fact that the disadvantages were felt mainly by the occupier rather than their customers did not mean that an end allowance should be ruled out.

24. It was noted by the panel that the zone A price of £2,100/m^2 was not in dispute. In the Challenge decision notice, the VO had stated that a rent of £125,000 was agreed on the appeal property as a new letting in March 2011 and increased to £135,000 from March 2016. Ms Rabbette had commented that this was not representative of the property's value as the Appellant had not employed an agent or negotiated the rent and had since vacated the property as the rent was not sustainable. The panel was nevertheless satisfied that the VO had provided evidence to support the tone and Ms Rabbette had used the same zone A price in her valuation.

25. After considering all the evidence presented, the panel concluded that the Zone A area should be measured from the property line, as was the case with other similar shops in the area and in accordance with the extract at 16.2 of the Code of Measuring Practice. The measurements provided in the evidence bundle gave the recess a width of 1.045m and a depth of 3.7m so the panel found that an area of 3.87m^2 should be added back into Ms Rabbette's zone A measurements. By adopting Ms Rabbette's measurements for the remainder of the property, the panel presumed that any layout issues such as masking and restrictive columns had been addressed.

26. The panel agreed with Ms Rabbette that an end allowance was warranted to reflect the access issues caused by the layout of the property with the upper floors only being accessible via an external door. It therefore found that an end allowance of 5% should be given to reflect access issues and the rateable value should be reduced to £112,000. The appeal was therefore allowed in part.

Floor	Description	Area (m^2)	At £/m^2	Relativity	£/m^2	Value
Ground	Retail Zone A	28.74	£2,100	1.00	£2,100	£60,354.00
Ground	Retail Zone B	28.33	£2,100	0.50	£1,050	£29,746.50
Ground	Retail Zone C	22.00	£2,100	0.25	£525	£11,548.43
Ground	Internal Store	0.67	£2,100	0.10	£210	£140.70
First	Office	37.37	£2,100	0.05	£99.75	£3,727.66
Second	Internal Store	45.96	£2,100	0.04	£79.80	£3,667.61
Third	Internal Store	33.22	£2,100	0.02	£39.90	£1,325.48
Basement	Internal Store	65.30	£2,100	0.05	£105	£6,856.50
Subtotal		261.59				£117,367
		Additional items				
Air conditioning system		79.07	£7.00	1.00	£7.00	£553
Layout		Deduct			-5%	-£5,896
Total value						£112,024
Rateable Value						£112,000

Order

27. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list for 3 Milsom Street, Bath BA1 1DA to show a rateable value of £112,000 with effect from 1 April 2017.

28. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fee

29. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date: 26 January 2022 **Appeal number:** CHG100176383