THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; Workshop and premises; Accuracy of compiled list entry; Subject property found to be a Marina and Premises; Should be assessed in line with the Memorandum of Agreement; appeal allowed in part.

RE: Aldermaston Wharf, Padworth, Reading RG7 4JS

APPEAL NUMBER: CHG100306794

BETWEEN:	ABC Leisure Group Limited	Appellant
	And	
	Mr D Virk (Valuation Officer)	Respondent

PANEL:	Mr F J Rogers (Chairman) Mr O Miller
CLERK:	Mr J Massey
HEARING:	Remote hearing No.1 on 6 March 2023
APPEARANCES:	Mr K Rabbette from Paul Rabbette Ltd Chartered Surveyors (Appellant's representative) Ms P Rowntree - Valuation Officer's representative

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Summary of decision

1. The appeal was allowed in part. The panel determined that Aldermaston Wharf, Padworth, Reading RG7 4JS (the 'subject property') was a 'Marina and Premises' and determined that a valuation carried out in accordance with the Memorandum of Agreement on Marinas (MOA) at rateable value (RV) £11,000 with effect from 1 April 2017 was reasonable.

Introduction

2. This appeal has been brought in respect of the appeal property which was entered in the 2017 rating list as workshop and premises at RV £21,250, effective from 1 April 2017.

3. The appellant had made a proposal to the Valuation Officer on the grounds that the entry shown in the rating list on 1 April 2017 was wrong and that it should be reduced to RV £10,000. However, no alteration was made to the rating list by the Valuation Officer.

4. In accordance with regulations[1], an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable. The description of the appeal property was also questioned.

5. The subject property comprises an industrial building and a chandlery/shop extending to around 257m^2 in total. The former building is laid out as workshop, staff room, office, kitchen and internal storage. It was situated adjacent to the Kennet and Avon canal and included around 139m of moorings, of which 81m benefitted from services.

6. This hearing was held remotely via Microsoft Teams.

7. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

8. The issue in dispute concerned the rateable value of the appeal property. It had been assessed on a hybrid basis by the Valuation Officer as a Workshop and Premises at a main space rate of £53.38 per m^2, and the ancillary moorings at £100 per m. An allowance of 5% had been applied to reflect poor access. The appellant believed that it should be valued as Marina and Premises at RV £10,000 in accordance with the MOA on marinas based on its fair maintainable trade (FMT) at the AVD.

Evidence and submissions

9. The appeal to this Tribunal included correspondence between both parties and the evidence which they had exchanged. It included:

   - a challenge proposal which disputed the assessment of the appeal property as a workshop and premises based on its use and the assessment of a number of comparable properties in the Reading area as Marina and Premises. The proposal also included an alternative valuation of the subject property as a Marina and Premises.

   - the Valuation Officer's initial response and challenge decision
   - the appellant's appeal to this Tribunal.

10. As Mr Rabbette appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC).

11. It was established that Mr Rabbette's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, Mr Rabbette 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

[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

requirements of his professional body regardless of whether or not the evidence supported the client’s case.

12. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was 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). The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

13. Ms Rowntree appeared in a dual role of advocate and expert witness for the Valuation Officer. In her statement of truth she stated that her primary duty in giving expert evidence was to the Tribunal and that she was not instructed under a conditional fee arrangement or other success related fee.

Decision and reasons

14. The panel noted the parties’ description of the subject property, the site of which Mr Rabbette stated had been used as a wharf or marina since at least 1899.

15. The main crux of this appeal related to the respondent’s assessment of the subject property as a workshop and premises.

16. To understand what rateable value had to be determined for the appeal property it was necessary to have regard to 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;
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> (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”.

17. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

18. The appellant considered that in line with *Williams (VO) v. Scottish & Newcastle Retail* it must be assumed that the subject property could only be occupied for the same purpose as its existing use and any value attributable to the prospect of using it for another purpose must be

disregarded. As such, it must be valued based on its existing use as a marina, and not as a workshop.

19. The panel noted that the subject property had been occupied and used by the appellant as a marina since 2010 and that it provides the following:

- Reception, souvenir, chandlery and brokerage;
- Approximately 138.8 metres of alongside berth moorings;
- Water and electric supplies to some moorings;
- Diesel and pump-out facilities;
- Wi-Fi access for customers and moorers; and
- Workshop accommodation permitting limited boat services.

It concluded that these facilities were in line with services provided by other similar properties, which had been assessed as Marina and Premises.

20. Ms Rowntree contended that the subject property was a workshop, and that the mooring facilities were ancillary to this. It had therefore been assessed correctly on a rentals' basis, with a hybrid valuation for the moorings. She referred to the income streams provided by the appellant, which showed that income from berthing was less than 10% of the total income, whereas income from boat repairs was significantly higher. She considered that in order to be assessed as a marina, the proportion of income from berthing would need to be much higher.

21. The panel noted that the occupier of the subject property owned a hire fleet of around 200 boats, and that the moorings at the subject property were often used to accommodate these vessels. It accepted Mr Rabbette's contention that as a result of this, the income from berthing did not fully reflect the extent use of the moorings. It was satisfied that it was reasonable to expect that the average occupier would achieve a higher income from berthing at the subject property. It also considered that it was reasonable to expect that a marina would provide some repair facilities.

22. The panel also placed some weight on the recent agreement by the respondent with regards to Viking Afloat, Wrexham Road, Whitchurch, Shropshire, SY13 1HS. Previously assessed as 'Showroom and Premises' with an RV of £11,000, its property class had been amended to Marina and Premises with an RV of £4,750 with effect from 1 April 2017. The panel noted that the income from berthing for this assessment was approximately 20% of the total income. Taking into account the supressed income of the subject property due to the accommodation of its own hire boats, the panel considered that the proportion of income from berthing for a hypothetical tenant at the subject property would be similar to that at Viking Afloat. It therefore considered that this agreement supported the assessment of the subject property as a Marina and Premises.

23. Having considered the arguments put forward by both parties, the panel was satisfied that the subject property was a Marina and Premises. At the relevant date, it was being used as a marina, and had all the facilities associated with a marina. The panel did not consider that the respondent had provided any substantive evidence from which it could conclude that the berthing at the subject property should be considered as 'ancillary' and that the level of berthing income provided by the appellant prevented the subject property from being assessed as a marina.

24. It therefore concluded that the subject property should be assessed, in line with other properties with this description, using the receipts and expenditure method set out in the MOA for marinas.

25. Whilst neither party had included a full copy of the MOA for marinas in their respective submissions, Mr Rabbette had included various excerpts from it within his proposed revised valuation for the subject property. He had set out what he considered to be the average income for the subject property at the AVD, based on the income for the various streams for the financial years 2012, 2013, 2014 and 2015:

Berthing	£ 8,200
Brokerage	£ 8,000
Repairs and workshop	£ 57,500
Fuel sales and chandlery	£ 87,500
Other retail.	£ 12,000
	£173,200

26. As the respondent had not provided an alternative valuation using this method, the panel was satisfied that these figures accurately reflected the average income. Mr Rabbette stated that the maximum income for berthing based on the available accommodation and the tariffs was £16,893.41 which indicated that the average occupancy for the subject property was 48.54%. He accepted that this figure was artificially low as the use of the berths for boats owned by the company was not included in the income. Taking this into account, he stated that in his opinion a potential occupancy of 85% was reasonable for the subject property.

27. The panel noted that the RV is calculated by applying a relevant percentage to each income stream, based on the type of marina and the potential occupancy, and obtained from a table set out in the MOA. Mr Rabbette had included a copy of this in his submission. Whilst he had determined that the current percentage to use was 11.25%, the panel noted that according to the table, the RV for inland marinas with a potential occupancy of between 80% and 90% falls to be assessed at between 11.6% and 13.5%.

28. Mr Rabbette stated he had used the figure of 11.25% as this had been adopted for another marina with a similar occupancy level. However, the panel did not consider that this provided justification for adopting a figure outside the range of values agreed for occupancy of between 80% and 90%. It therefore determined that the correct percentage to be used to value the subject property was 12.5%. Using the maximum income for berthing, along with the relativity factors for the other income streams set out in the MOA, the panel calculated that the RV for the subject property consisted of the following components:

Income stream	Amount	Percentage to RV	Proportion to be applied to non-berthing income	Contribution to RV
Maximum income from Berthing	£16,893.19	12.5%	-	£2,111.65
Income from Brokerage	£8,000	12.5%	0.9	£922.50

Income from Repairs and workshop	£57,500	12.5%	0.7	£5,031.25
Income from Fuel sales and chandlery	£87,500	12.5%	0.25	£2,734.38
Income from Other retail	£12,000	12.5%	0.25	£375.00
Total				£11,174.77 (Say £11,000)

29. In view of the foregoing, the appeal was therefore allowed in part.

Order

30. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for the appeal property to 'Marina and Premises', RV £11,000 with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

31. A refund of the paid fee will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refund will take around six weeks to process.

Date: 4 April 2023

Appeal number: CHG100306794

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.