THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal – new pharmacy premises within medical centre on outskirts of town – rental evidence – capital contribution paid in consideration that new licence to operate as pharmacy would be granted – should capital contribution be included in devaluing the rent for rating purposes – licence not granted but appellant transferred licence from another of their premises which was then closed – appeal dismissed

Re: Dean and Smedley Pharmacy, Ashby De La Zouch, LE65 2LP

APPEAL NUMBER: CHG100340870

BETWEEN:	Dean and Smedley Ltd	Appellant
	and	
	The Valuation Officer	Respondent

PANEL:	Ms L Dubow (Senior Member)
	Mrs F Duggan
CLERK:	Mr A Jolly
REMOTE HEARING:	Wednesday 16 March 2022
APPEARANCES:	Mr F Smith of Salloway Property Consultants representing the occupier Dean and Smedley Ltd (appellant)
	Ms S Howson representing the Valuation Officer (respondent)

Summary of decision

1. Appeal dismissed. Rateable Value (RV) £36,750 confirmed with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: .An appeal was lodged by Mr Smith of Salloway Property Consultants on behalf of the occupier on 28 October 2021 against the Valuation Officer's Challenge Decision Notice of 8 October 2021.

3. The appeal hereditament was a pharmacy within a medical centre built approximately in 2015. The property was located on the outskirts of Ashby De La Zouch. A lease was entered into in 2015 at a rate of £25,000 per annum over 25 years. Also paid was a premium of £300,000.

4. The appeal property was originally entered into the 2017 Rating List at £37,250 but was amended to £36.750 on the check stage of the appeal due to amendment of the areas. The

price per m² adopted by the Valuation Officer was £300 per m². The appellant sought a reduction to £27,750 based on a price per m² of £225. The effective and material date was 1 April 2017 with the antecedent valuation date being 1 April 2015.

5. 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.

6. 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.

7. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link. The appellant's representative lost connection during the Valuation Officer's submission, having re-established the connection and having established when connection was lost, the Valuation Officer continued with her submission with no further issues.

8. 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.

9. Mr Smith appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Smith's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Smith 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 the client's case.

Preliminary Issue

10. On 7 February 2022 Mr Smith had submitted new evidence to the Valuation Tribunal Service regarding a sale of a pharmacy in Derby and current pharmacies for sale. The Valuation Officer had not been copied into the email. The information was forwarded to Ms Howson on 4 March 2022 by the Valuation Tribunal Service. Ms Howson had informed the panel that she was on leave until 14 March 2022. Mr Smith stated that he was not aware that the premium was being included as part of the rental payment until the challenge notice decision and therefore had not provided the information earlier and that he was not aware of who it should be sent to at the Valuation Officer as the officer he had been dealing with was no longer dealing with the matter. Ms Howson stated that she had no objection to its inclusion. The panel therefore admitted the information.

Issues

11. The issue before the panel concerned the price per m² to be adopted and whether or not the premium paid by the appellant should be taken into account when analysing the rent payable.

Evidence and submissions

12. Mr Smith stated that the nub of the issue was how the premium of £300,000 was treated. He contended that the payment was paid to secure a licence to operate as a pharmacy at the new pharmacy within a medical centre and should not be treated as a rent paid whereas the Valuation Officer had included the premium as rent paid which increased the price per m².

13. Mr Smith explained that a new medical centre was built on the outskirts of Ashby De La Zouch with planning permission for a pharmacy. The appellant already operated a pharmacy in the town centre and was concerned that another pharmacy may operate from the new property which may reduce its trade. A lease was agreed for a period of 25 years with a rent of £25,000 per annum from November 2015. He stated that a premium of £300,000 was also paid by the appellant in the expectation that a new pharmacy licence would be granted by the NHS and was not an advance rent payment. He therefore considered that the premium should not be added to the rent payable when analysing the rent.

14. He stated that if the property is being valued as a pharmacy then it must have a licence to trade and therefore the hypothetical tenant could choose any pharmacy to trade from with similar prescription numbers and not have to pay a premium.

15. Unfortunately his client had not been granted a new licence and therefore transferred their licence from their other pharmacy in Ashby De La Zouch to the appeal hereditament. Also subsequently they had found they were the only bidders for the pharmacy at the medical centre.

16. Mr Smith stated that it was very difficult to find the correct approach to valuing a property as to whether it was by rental evidence or by tone of the list. He cited a pharmacy in Coalville where the rent was well in excess of the RV applied which supported a tone being used whereas the Valuation Officer in this instance was using the rental evidence as the driver to establish the RV.

17. Mr Smith also stated that in recent times pharmacies had lost their funding from the NHS which in this case was a grant of approximately £25,000. He stated that services were changing with patients now able to identify which pharmacy they wish to pick up their prescriptions from and on-line services including Amazon delivering peoples prescriptions.

18. In questions Mr Smith considered the pharmacies were aware of the loss of funding in the earlier 2010s and funding was withdrawn in a phased approach from around 2017. He also confirmed that his client operated a number of pharmacies and that the company had been going for around 90 years.

19. Ms Howson stated that whilst she was appearing as both expert witness and advocate she had only inspected the appeal hereditament externally.

20. She stated that the issue concerned the price per m² to be adopted. The property was originally entered into the 2017 Rating List at RV £37,250 but at the check stage areas were

amended and the RV was reduced to £36,750. Ms Howson stated that she considered that the premium of £300,000 should be included when analysing the rent of the appeal hereditament as the appellant was willing to pay the annual rent of £25,000 plus the premium to secure the tenancy of the property. She stated that she had divided the premium over the 25 year tenancy at 6.5% and after stripping out air-conditioning came to a rent of £45,350 which analysed to £377.66 per m². She therefore considered that the basic rate of £300 per m² was reasonable when compared with her analysed rent of the appeal hereditament and her comparable properties. She requested the panel uphold the current RV and dismiss the appeal.

21. In questions Ms Howson confirmed that she considered the premium was rent paid in advance and that when valuing the appeal hereditament she could not deviate from the rent and that the valuation was therefore based upon the rent. She stated that when valuing you consider the basket of evidence and weigh that evidence accordingly and if a rent appears too high when compared with others a lower price per m² may be adopted. She stated that from her evidence she was satisfied that £300 per m² did not appear unreasonable. She stated that she had not been party to the Coalville assessment and therefore could not comment on why its RV was lower than the rent payable but stated that if it was incorrect it would be corrected.

Decision and reasons

22. The panel had to consider whether or not £300 per m² adopted by the Valuation Officer was reasonable. In considering whether it was reasonable the panel had to have regard to how a £300,000 premium paid by the appellant should be treated. The appellant's representative did not consider the premium should be treated as an advanced rental payment as the payment was made on the expectation that a new licence to operate the premises as a pharmacy would be granted whereas the Valuation Officer considered that the payment was to secure premises.

23. The panel considered that whilst the appellant's representative stated that the premium was paid in the expectation that a new licence to operate a pharmacy would be granted it would appear that without the premium payment to the developer the appellant would not have secured the premises. It also noted that the premium of £300,000 was as a result of a competitive bidding system which the panel considered illustrated how much the appellant was willing to pay for the appeal hereditament. It was noted that although it the premium was offered as a competitive bidding system the appellant was the only bidder.

24. As the panel considered that the premium was paid to secure the premises it should be included as rent paid in advance and therefore should be included in the analysed rent. The panel therefore considered that the Valuation Officer had correctly analysed the rent by including the premium paid by the appellant to secure the premises.

25. The panel considered that the rent passing, in this instance was the best evidence. When considered with other analysed rents in the basket of evidence, it was not out of kilter, and £300 per m² adopted appeared reasonable.

26. The panel had been provided with marketing and sales information of other pharmacies in the locality but these were recent and therefore too remote from the AVD and material date to be of assistance.

27. The panel noted the comments concerning the issue of other pharmacies issuing similar number of prescriptions but having lower RVs based on lower price per m^2. The RV was not based on the number of prescriptions issued but on the level of rent a hypothetical tenant would be prepared to offer and the level of rent a hypothetical landlord would accept. The panel considered in this instance the rent, including the premium, provided the best starting point and having considered that with the other evidence the RV adopted by the Valuation Officer was reasonable.

28. The panel had not been persuaded by the appellant that the RV £36,750 was not reasonable when considering and weighting the evidence. The appeal was therefore dismissed.

Date: Wednesday 6 April 2022

Appeal number: CHG10034087