THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Café and Premises; The Valuation for the hereditament is not reasonable; Rental evidence; Base rate £m^2; Tone and comparable properties; End allowances; Masking; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal part allowed.

Re: Brucciani, 91B Fishergate, Preston, Lancashire PR1 2NJ (the appeal property).

APPEAL NUMBER: CHG100390343

BETWEEN:	Brucciani	Appellant
	and	
	The Valuation Officer	Respondent

PANEL:	Ms N E Talbot - Hadley	(Chair)
	Dr Patricia Thomson	(Member)

CLERK:	Mr Duncan Adamson IRRV (Hons)
REMOTE HEARING 1:	22 September 2021
PARTIES PRESENT:	Mr Ken Batty, Appellant's representative (Advocate and Expert Witness)
	Ms Rebecca Fahy, Respondent's representative

Summary of decision

1. The appeal was part allowed. A 5% end allowance was awarded reducing the rateable value of the property from £53,000 to £50,350 with effect from 1 April 2017.

Introduction

2. This appeal was brought in respect of Brucciani located at 91B Fishergate, Preston. It is a brick built, mid-terraced café pre-1900 with a slate roof. The ground floor has a traditional shop glass frontage with a recessed entrance and a display window at either side.

3. The challenge submission date was 3 September 2020 with the challenge being completed on 20 February 2021.

4. The property had a rateable value of £53,500 and the appellant sought a reduction of the base rate from £800/m^2 to £700/m^2. The appellant also sought an end allowance of 2.5% for

the ground floor fragmentation and the removal from zone A of the external entrance. Further, he stated that the VOA had incorrectly valued the masked areas.

5. Overall, these reductions would result in a reduction of the total RV to £38,750. During the appeal process the appellant had offered an amended valuation of £44,000 but this was not accepted by the VO.

6. During the check, challenge, appeal process the VO inspected the property and allowed a 5% end allowance in respect of the raised areas. This resulted in the RV reducing from £53,500 to £53,000

7. The VO stated that it had been accepted in the current valuation that a large area of the hereditament was masked from view. This was already reflected in a 25% reduction in the value of those masked areas.

8. 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.

9. 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.

10. Mr Ken Batty appeared on behalf of the appellant in a dual role as advocate and as expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. 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 the client’s cases.

11. 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 they saw fit.

12. 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 a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

13. The rateable value of the appeal property based on a base rate per square metre with allowances for masking, fragmentation and frontage recess.

Evidence and submissions

14. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; lease agreements and summaries; appellant's challenge submission; photographs and location plans of the appeal property and comparable assessments and email exchanges between the parties.

15. Mr Ken Batty, appearing for the appellant, contended that for any severely masked area, as in this property, zoning is not relevant as the value of that area should drop to remainder value i.e. to 12.5% of its RV.

16. Further, that the main entrance to the café is a deep and open recess classed as zone A by the VO. This should be classed only as an external porch. The property was a listed building dating from 1895 and the main entrance was the only entrance to the property for the public. Zone A is reduced and it would be difficult to re-organise the space.

17. The appellant also contended that footfall is less on the appeal property's side of the street than that for the Fishergate centre and, for this reason, the appeal property should be valued at £700/m^2.

18. The respondent stated that the hereditament is not fragmented as it allows for access to all parts and the 25% reduction for masking incorporates all of the disadvantages of the space. 25% is a substantial allowance and is at the top end of any other allowances for these reasons in the locality.

19. In respect of the main entrance, the respondent stated that such areas are always measured in line with the Royal Institution of Chartered Surveyors Code methods and so should remain in the assessment.

20. In respect of the overall base rate, the respondent was of the opinion that for any such valuation the starting point is the rent on the subject hereditament. She argued that analysis of the current rent for the subject property and assessments of comparable properties support £800/m^2.

Decision and reasons

21. The term 'rateable value' is defined in paragraph 2(1), 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;

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".

22. 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).

23. 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 is 1 April 2017.

24. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

25. The panel noted that the rent of the appeal property was £60,000 at the AVD and found that, in line with the authoritative Lotus and Delta v Culverwell judgment, this was a useful starting point in its valuation.

26. However, other properties' rents and rateable values should also be considered within the basket of evidence for its valuation.

27. The panel was presented with a schedule of comparable properties, the most relevant parts of which are shown below:

Address	Area m^2	RV	Date of rent	Base Rate/m^2	Analysed rent
91b Fishergate (the appeal property)	214.8	£53,000	1/7/14	£800	£889.55
94 Fishergate	769.9	£112,000	24/6/13	£800	£805.75
95 Fishergate	298.9	£55,000	8/10/13	£800	£768.74
84 Fishergate	231.8	£53,500	18/8/13	£800	£870.68
91a Fishergate	145.6	£36,500	24/5/12	£800	£1,188.38
92 Fishergate	189.3	£46,500	1/3/15	£800	£1,146.18
86 Fishergate	173.8	£41,750	27/9/12	£800	£865.33
87 Fishergate	135.1	£46,250	25/12/12	£800	£866.37

28. The panel found that this was very good supporting evidence for the current valuation of the appeal property and there was no evidence that it should be valued at a base rate of £700/m^2. Its valuation was clearly in line with other properties in its immediate vicinity.

29. The appellant had advised that a new rental agreement had been agreed of £42,000 p.a. with effect from 29 September 2020 and this should be taken into consideration for the property valuation. The panel found that this was too far away from the AVD of 1 April 2015.

30. The rental evidence at the AVD was sufficient for the valuation at the AVD and a new rent agreement at the height of the pandemic is not relevant. The panel attached no weight to this piece of evidence.

31. The panel then considered the allowances the appellant had stated were relevant:-

- Masking. The panel found that the 25% allowance related to both zones A and B and was the highest in the immediate locality and considerably higher than most that had been given:

Address	%age
91A Fishergate	10
101 Fishergate	25
48 Fishergate	5
78 Fishergate	5

  The panel found that this was a sufficient reduction for the disadvantages of the areas hidden from public visibility. Although areas were masked, they were still used by customers in much the same way as the rest of the café.

- Fragmentation. The panel found that the appeal property had generally been sufficiently assessed in this respect but noted that there was still scope for the poor layout of the property and the fact that it was a listed property. This meant that there was less flexibility in re-organising the space and the panel therefore felt a reduction was appropriate.

- Frontage recess. The panel found that whilst this was a distinguishing part of the property it also meant that this space could not be used in the same way as the space inside the café.

32. In appeals of this nature the burden of proof rests on the appellant to prove his case. The panel concluded that the appellant had produced sufficient evidence to justify a reduction because of the disadvantages of the property being listed and therefore unable to be easily re-organised, the general layout of the property and for the frontage recess. An end allowance of 5% was adjudged appropriate.

33. The panel found that the rateable value of the property should be reduced to £50,350. The appeal was therefore part allowed.

Order

34. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of Brucciani, 91B Fishergate, Preston, Lancashire PR1 2NJ to £50,350 with effect from 1 April 2017.

35. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 14 October 2021

Appeal number: CHG100390343