THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List – new lease – analysed lease – comparable rental evidence and details of their analysed rent – VOA caseworker who prepared Challenge Decision Notice and the caseworker attending differ in opinion to how the rents devalued although at hearing caseworker used analysed rents as per the Challenge Decision Notice – appeal allowed in part.

Re: Unit 7B, The 02 Centre, London, W3 6LU

APPEAL NUMBER: CHG100394375

BETWEEN:	Pizza Express (Restaurants) Ltd	Appellant
	and	
	The Valuation Officer	Respondent
PANEL:	Mr K Everett (Senior Member)	
	Mr T Rakhim	
CLERK:	Mr A Jolly	
REMOTE HEARING:	Monday 14 February 2022	
APPEARANCES:	Mr R Stoney of Gerald Eve representing Pizza Express (Restaurants) Ltd (appellant)	
	Miss D Castle representing the Valuation Officer (respondent)	

Summary of decision

1. Appeal allowed in part. Rateable Value (RV) £95,500 confirmed with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: .The Valuation Officer issued the Challenge Decision Notice on 21 June 2021 confirming the assessment at £107,000 with effect 1 April 2017. The appellant's representative lodged his appeal on the Valuation Tribunal Service on 30 July 2021 seeking a reduction to £92,500 with effect 1 April 2017 based on a price of £300 per m². At the hearing the appellant's representative sought a reduction to £95,500 based on a price of £310 per m2.

3. 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.

4. 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.

5. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link..

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.

7. Mr Stoney 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 Stoney’s declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Stoney 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.

Issues

8. The issue before the panel concerned the price per m² to be adopted for the appeal hereditament having regards to the rent passing on the appeal hereditament and the comparable hereditaments cited by both the appellant’s representative and the Valuation Officer.

9. The appeal hereditament was formerly a large unit but was split into 7a and 7b in 2015. It was located on the first floor of the 02 Centre which was a leisure and shopping centre anchored by Sainsbury’s with a gym on the ground floor and a cinema on the first floor. At the material date there were seven other restaurants and two cafes within the scheme.

Preliminary Issue

10. The appellant’s representative provided an Expert Witness Pack on 11 February 2022 containing all the evidence previously submitted when lodging his appeal together with email correspondence between the himself and the Valuation Officer following the lodging of the appeal. The Valuation Officer raised no objection to its inconclusion at the hearing.

11. The panel, mindful of both the legislation concerning new evidence in relation to 2017 Rating Appeals and also the Court of Appeal decision of *Denton* v *TH White Ltd* [2014] 1 WLR 3926, allowed the new evidence as there was no objection to its inclusion by the Valuation Officer and therefore the panel deemed no disadvantage for that party.

Evidence and submissions

12. Mr Stoney provided a history of his expertise including assisting the Valuation Office Agency in relation to schemes for restaurants within this Rating List and the 2023 Rating List.

13. Mr Stoney stated that with the boom in casual dining out 2012/13 and following Wetherspoons relocation Unit 7 was reconfigured into two units with the appeal hereditament being one. He considered that works had a detrimental effect on the scheme with rents falling and units closing due to having too many restaurants. Rent reviews carried out in November 2017 and June 2018 produced nil increases. He stated that it took a further 18 months to let Unit 7a and the rent achieved on that unit illustrated that the rent for the appeal hereditament was not a one off to secure the tenant.

14. He considered the best evidence was the new lettings between 2012 and 2017. He informed the panel that the appeal hereditament lease commenced 25 December 2014 at £110,000 per annum. There was a 14 month rent free period and also a landlord contribution of £21,795. He analysed the rent to £312 per m².

15. Mr Stoney referred to a number of emails between Miss Castle and himself in relation to the analysed rents. In the emails it showed that Miss Castle devalued the rents differently to the original caseworker and therefore he did not consider you could rely on the Valuation Officer's analysed rents. He had analysed the rents to between £270 per m² to £313 per m² for a number of the units which was in line with his analysed rent of the appeal property. He had based his valuation on a price per m² of £310 which resulted in an RV of £95,500. He requested the panel to allow the appeal and confirm RV £95,500.

16. Miss Castle stated that whilst she accepted that she had devalued the rents differently to her colleague she was using the analysed rents as per the Challenge Decision Notice which she considered supported £350 per m² being adopted.

17. Miss Castle accepted that the rent passing on the appeal hereditament was lower than the other devalued rents. She considered the rent could be an outlying rent to entice a tenant especially considering the incentives of 14 months rent free and the capital contribution.

18. Having regards to the rental evidence she was satisfied that RV £107,000 was correct and requested the appeal be dismissed

Decision and reasons

19. The panel had to consider whether the price per m² to be adopted was £310 per m² as sought by the appellant's representative or £350 as applied by the Valuation Officer.

20. The panel had been provided with the rent for the appeal hereditament which commenced on 25 December 2014 at £110,000 per annum. There was a 14 month rent free period and also a landlord contribution of £21,795. The appellant's representative analysed the rent to £312 per m² whilst the Valuation Officer had analysed the rent, in their challenge decision notice, to £268.55 per m²

21. In the correspondence between the appellant's representative and the Valuation Officer's caseworker, submitted in Mr Stoney's Expert Witness Report, it showed that whilst the challenge decision notice was being adhered to at the hearing the caseworkers had differing opinions as to the analysed rents for the comparable properties. The panel considered that it could not rely on the devalued rents by the Valuation Officer due to the differences in the caseworkers devaluing.

22. The panel considered the rents analysed by Mr Stoney of the appeal hereditament and his comparable hereditament, which were other restaurants within the 02 Centre, which

devalued to between £270 per m^2 and £313 per m^2. The panel was persuaded that this provided the best evidence in this instance as it could not rely on the Valuation Officer's analysed rents.

23. The panel noted that the Valuation Officer had adopted £350 per m^2 but this was not supported by devalued rents which it had accepted as the best evidence whereas the appellant's representative valuation based on £310 per m^2 was supported by the rental evidence. The panel therefore adopted £310 per m^2 which gave an RV £95,500.

24. The panel considered that £107,000 was incorrect and that the correct RV was £95,500 based on a price of £310 per m2. The panel therefore allow the appeal in part.

Order

25. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £95,500 with effect from 1 April 2017 within two weeks of the date of this order.

26. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take six weeks to process.

Date: Wednesday 2 March 2022

Appeal number: CHG100394375