THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; shop and premises; unit price per square metre disputed; proposed end allowances for masking and a double unit were disputed; appeal allowed in part.

Re: Geoffrey and Joy, Units 5 and 6 Tarleton Courtyard, Church Road, Tarleton, Preston PR4 6UP

APPEAL NUMBER: CHG100399903

BETWEEN: Pervez Roscoe Appellant

and

Mr R Roberts Respondent

(Valuation Officer)

PANEL: Miss M Dowrick (Senior Member) and Mrs V Hollender

CLERK: Mrs S Morgan

REMOTE HEARING: Wednesday 20 October 2021

PARTIES PRESENT: Mr K Batty – Appellant's representative

Mr J Wainwright – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. The panel reduced the assessment to £13,250 rateable value (RV) with effect from 12 June 2017.

Introduction

2. 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.

3. 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.

4. Mr Batty, as the appellant's representative, appeared in a dual role of advocate and expert witness. He was aware that in giving expert evidence his responsibility was to the Valuation Tribunal. Furthermore, he stated that he was not instructed under a conditional fee arrangement or other success related fee.

5. Mr Wainwright also appeared in the dual role of advocate and expert witness.

6. The dual role is allowable in VTE proceedings having regard to procedure regulations and rules regarding admissibility of evidence. However, it was necessary to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters at issue.

7. This appeal has been brought in respect of Geoffrey and Joy, Units 5 and 6 Tarleton Courtyard, Church Road, Tarleton, Preston PR4 6UP (the "appeal property"), which was originally entered in the 2017 rating list as "shop and premises" at £14,750 RV effective from 12 June 2017. The Valuation Officer agreed to give a 5% allowance for being a double unit. The current assessment of £14,000 RV with effect from 12 June 2017 reflects this change.

8. The challenge process began when the appellant made a proposal to the respondent on the grounds that the entry shown in the rating list on 1 April 2017 was wrong and that it should be reduced to £10,500 RV.

9. In accordance with regulations, an appeal was made to the VTE on the grounds that the valuation for the appeal property was not reasonable.

10. As a preliminary issue the appellant's representative wished to include photographs of the appeal property to assist the panel, a parish map of Tarleton and a brief summary of his knowledge of the area. He accepted that the photographs should have been included at the beginning but, in his view, there was no prejudice, it was just information to assist the panel in making its decision. The Valuation Officer's representative objected to this evidence being admitted as it was outside of the relevant time frame for evidence to be submitted.

11. The panel adjourned to consider the matter.

12. In *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460 the Upper Tribunal's guidance to tribunal panels was that the three-stage test as outlined in *Denton v*

TH White Ltd [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction.

Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).
Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).
Stage 3 - The panel must consider all the circumstances of the case including:

I. The need for litigation to be conducted efficiently and at a proportionate cost;
II. A failure to grant a sanction may leave an inaccuracy being uncorrected;
III. The need to enforce compliance with rules, directions, and orders (para. 55). However, such matters are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice (para. 56).

13. Having considered the matter, the tribunal determined that the breach was serious as the evidence had not been served on the respondent within the relevant time frame. However, the appellant had stated that he believed it would assist the panel in making its decision.

14. The panel took the view that the appellant had not advanced good reason as to why the additional material he wished to rely on could not have been obtained and disclosed to the respondent at an earlier stage. The production of this document within four weeks of the hearing was late. However, it was not new evidence and as such the valuation officer would not be prejudiced if these photographs were admitted. The panel found that the photographs, the parish map and the short statement made by the appellant's representative would bring all the issues together and therefore the hearing continued, and the photographs, parish map and statement were admitted.

15. 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 item of evidence, should not be construed as it having been overlooked.

Issues

16. The issues in dispute were as follows:

(a) The price per square metre in the valuation. The valuation officer had applied £170/m^2 (in terms of zone A), but the appellant sought a reduction to £130/m^2.

(b) The appellant requested a 2.5% masking end allowance for the front elevation in the form of a pillar.

17. The third issue in dispute was a 5% allowance for being a double unit. This issue was conceded by the valuation officer and the 5% allowance for double unit was included in the reduced assessment of £14,000 RV with effect from 12 June 2017.

Evidence and submissions

18. The appellant's representative had submitted documentation from both parties in respect of this appeal. It included correspondence exchanged between the parties, their valuations, plans, photographs, rating assessment details in respect of comparable properties and rental evidence.

19. The building in which the appeal property is situated was built in 2017 and is of steel frame construction. The building consists of 7 ground floor retail units with the appeal property being Units 5 and 6. The dividing wall within the appeal property has been removed to make a larger retail space. The premises are situated in Church Road, Tarleton in a retail area known as The Courtyard. There is parking at this site.

20. The appeal property is owner occupied and therefore there is no rent passing on the property.

Decision and reasons

21. The two issues for the panel to determine concerned the price per m^2 applied in terms of zone A and a 2.5% end allowance for masking.

22. 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;
>
> 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".

23. 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).

24. 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 12 June 2017.

25. The panel decided to begin by determining the unit price per m^2 in terms of zone A. The appellant's representative contended that the subject property was overvalued at £170/m^2 and that it should be valued at no more than £130/m^2 for zone A. He referred to three comparable properties at 226 Hesketh Lane where £125/m^2 had been applied as the zone A rate, 53 Church Road where £120/m^2 zone A had been applied and 21 Station Road, Hesketh Bank. He contended that all three properties were located in prominent positions unlike the appeal property. He therefore believed that £130/m^2 zone A was justified for the appeal property bearing in mind its hidden position from the main road away from the village centre.

26. Going through the photographs, the appellant's representative demonstrated the appeal property's position in The Courtyard was set back behind properties fronting Church Road. He added that advertising boards had to be placed on Church Road to draw customers into The Courtyard due to its lack of visibility from the main road. The appellant's representative also made comparisons with retail units in Mark Square which he contended were in a better position nearer to the village centre of Tarleton. The established tone in Mark Square was £160/m^2 zone A.

27. The respondent believed that the three properties put forward by the appellant's representative were not suitable for comparison purposes as 226 Hesketh Lane was situated one mile away from the subject property on a main road outside of the village centre with limited parking. It was therefore not comparable in terms of location as the subject property was situated in the village centre with ample parking.

28. 53 Church Road, although accepting this property was more visible, it was located on the outskirts of Tarleton and therefore it had less passing trade/footfall.

29. 21 Station Road, Hesketh Bank was situated in a different location on the outskirts of Hesketh Bank. It was situated on a main road but suffered from the lack of passing foot trade. Being situated opposite a Booths super store could also affect its appeal to customers.

30. The respondent also contended that Mark Square was not comparable with The Courtyard and that both locations should be valued on their own merits. The Courtyard was a newer development with ample parking. Mark Square was built around 1978. The respondent contended that the location of Mark Square was not as obvious as the appellant's representative had made out.

31. In support of his case that £170/m^2 for zone A was reasonable, the respondent referred to the two rents passing on Unit 2 and Unit 3 The Courtyard, Tarleton. Both were new lettings in 2018 which supported £170/m^2. The respondent contended that this should be the starting point in determining the price per m^2 for the appeal property. It was the best evidence having

regard to the hierarchy of evidence in *Lotus and Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA141 and he had given greatest weight to it.

32. The panel found that the appellant's representative's comparable evidence was less reliable due to their locations away from Tarleton village centre. Although noting the two rents on Unit 2 and Unit 3 supported £170/m^2 they were set two years after the antecedent valuation date. In the panel's view, Mark Square may not have been in the centre of Tarleton, but neither was The Courtyard. The panel was not convinced that The Courtyard was more valuable than Mark Square at £160/m^2 when considering both locations. The panel was therefore persuaded to reduce the price per m^2 for the appeal property to £160/m^2 in line with Mark Square.

33. With regard to masking, the appellant's representative believed that a 5% allowance for masking was justified due to the front elevation being partially masked by a prominent pillar at the front of the premises.

34. The respondent contended that an allowance for masking was not warranted.
In his opinion, the photograph showing the front of the shop unit did not suggest that the central pillar near to the front door obstructed the view of either display window. Furthermore, no evidence had been provided to suggest that masking was an issue.

35. With the aid of a photograph of the front of the appeal property, the panel was not persuaded that there was any masking from the pillar at the front of the premises. There appeared to be no obstruction to either display window and, as such, the panel was satisfied that no allowance was justified for masking.

36. The panel's decision results in the following revised valuation:

Floor	**Description**	**Area**	**£ per m^2**	**Value**
Ground	Zone A	54.17	160	8,667
Ground	Zone B	51.18	80	4,094
Ground	Zone C	10.06	40	402
Ground	Staff Toilets	N/A		
Ground	Kitchen	7.5	16	120
	Air Conditioning	102.56	7	718
				14,001
	Double unit - 5%			700
				13,301
			say	13,250

37. Rounding down in line with the framework used by the Valuation Office Agency, the panel decided that the assessment must be reduced to £13,250 RV, effective from 12 June 2017.

Order

38. 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 respondent to reduce the entry in the rating list to rateable value £13,250 with effect from 12 June 2017.

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

Refund of appeal fee

40. 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: Friday 19 November 2021
Appeal number: CHG100399903