THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; zone A price per m^2 in dispute; rental evidence; comparable assessments; allowance for shape warranted; appeal allowed in part.

RE: Unit 3, Provost & East Building, at 145 City Road, London EC1V 1AZ

APPEAL NUMBER:	CHG100448558	
BETWEEN:	Phew Foods Ltd t/a ATIS	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent
PANEL:	Mr A Backway, Presiding Senior Member Mrs A Fielder, Senior Member	
CLERK:	Mrs R Muller	
REMOTE HEARING ON:	Wednesday 26 July 2023	
APPEARANCES:	Mr P Willmore from Rupert David Ltd, representing the Appellant Mr C Cates, representing the Respondent	

Summary of decision

1. The appeal was allowed in part. The panel decided that the present zone A price of £780 per m^2 was reasonable. However, due to the design and layout of the appeal property, the panel held that an allowance was warranted of 9%. Therefore, the panel confirmed a revised rateable value (RV) of £79,500 with effect from 28 September 2019.

Introduction

2. This is a 2017 rating list appeal. Unit 3, Provost & East Building, at 145 City Road, London EC1V 1AZ, (hereafter, known as the ‘appeal property’) had been entered in the 2017 rating list as ‘shop and premises’ at a RV of £88,500 with effect from 28 September 2019.

3. The challenge proposal was submitted by Rupert David Ltd on behalf of Phew Foods Ltd t/a ATIS and was received by the Valuation Officer (VO) on 16 November 2020. It had been made on the grounds that the RV shown in the rating list on 28 September 2019 was inaccurate. A revised RV of £61,500 was proposed with effect from 28 September 2019.

4. The VO issued a challenge case decision notice on 26 January 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

5. During discussions, it had been agreed that the areas assessed as outside seating was not particularly useful due to its sloping nature. Therefore, the VO removed this area from the assessment on 27 January 2022, which resulted in a reduced assessment of £87,500 RV with effect from 28 September 2019.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 23 May 2022.

7. As Mr Willmore 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).

8. Mr Willmore declared that he was instructed on a conditional fee arrangement. He confirmed 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. 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 in England).

9. The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

10. Mr Cates, the representative for the Respondent confirmed that he was appearing as advocate only.

11. The appeal property was a shop, which provided food with seating inside. It was located on the ground floor of a newly constructed complex with 38 floors of residential accommodation and nine floors of office accommodation above. It was centrally located in the City Road area of London. It is assessed in valuation scheme 405371.

12. The present valuation of £87,500 RV was based upon a total area of 150.4m², or 112.20 m² in terms of zone A (ITZA), at a zone A price of £780 per m².

13. At the beginning of the hearing, the member, Mrs Fielder, was disconnected from the hearing. The clerk informed the Presiding Senior Member, Mr Backway, who adjourned proceedings until Mrs Fielder had been able to re-join the hearing. All parties were satisfied that the appeal was heard in full without any further disruptions.

14. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary issue

15. It was noted by the clerk that the table of rental evidence mentioned by the VO within the challenge decision had been omitted from the bundle of evidence provided to the Tribunal. The panel asked Mr Willmore if he had seen sight of the rental evidence during the challenge stage. Mr Willmore informed the panel that he had not had sight of this document. The VO stated that it would be unfair to introduce any further rents at this stage. He would therefore, rely upon the three rents that had been provided within the challenge decision and will not be using the table of rents that was missing from the bundle of evidence.

16. The panel noted that both parties were happy to proceed with the appeal based on the evidence before it.

Issues

17. Prior to the hearing the VO confirmed that the Appellant's survey details had been accepted and floor areas agreed. Therefore, the only issue in dispute was the zone A price per m² to be adopted in the valuation.

Evidence and submissions

18. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, further evidence exchanges, Valuation Officer's challenge case decision notice, and Appellant's challenge submission.

19. In support of his proposed zone A price of £550 per m², Mr Willmore relied upon comparable assessment evidence from the locality.

20. Mr Cates defended the present zone A price of £780 per m² with reference to comparable rental evidence. Following the removal of the outdoor seating area areas from the assessment, he requested that the panel determine the revised RV of £87,500 with effect from 28 September 2019.

Decision and reasons

21. In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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.

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 was 28 September 2019, the date the subject property had entered the 2017 Rating List.

24. Neither party had referred specifically to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, however, the panel was aware that this was a leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. The remaining propositions required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

25. The appeal property was subject to a lease effective from 23 July 2019 at a rent of £95,000 per annum (pa) with a six month rent free period. Mr Willmore stated the rent of £95,000 adjusted to a rent of £85,500 pa, albeit over four years after AVD. The panel held that the rental details in respect of the subject property were too far removed from the AVD to be considered as good evidence. Furthermore, neither party placed significant weight on the subject rent.

26. Mr Willmore stated that the shops nearby of Fraser & Co, Sainsbury and Pret A Manager, 161 City Road were valued at £350 per m^2 on an overall basis, whereas the shops near to the Old Street roundabout were valued at a higher rate of £780/m^2 zone A. Due to where the appeal property was located and the distance when approaching the 161 City Road shops, Mr Willmore suggested that £780/m^2 was excessive and should be reduced to be in line with the shops located nearby.

27. To arrive at his proposed price of £550 per m², Mr Willmore added the values of £350 per m² and £780 per m² and divided the total by two. However, the panel noted that even though these comparable properties were described as ‘shop and premises’ within the 2017 Rating List, the VO highlighted that the shops valued at £350 per m² had been valued on an overall basis and not on a zoned basis. The panel held that the details of shops that had been valued on an overall basis at the lower value of £350 per m^2 would not assist it when considering the appeal property that had been valued on a zoned basis.

28. Mr Willmore referred the panel to the layout of the appeal property. The panel noted that no layout plans had been provided by either party, but photographs had been provided to show that the appeal property was of an usual shape. A location map had also been provided where the appeal property had been highlighted in red. The panel discussed the layout of the appeal property with Mr Willmore. The panel accepted that the appeal property had a very unusual jagged layout.

29. Mr Cates stated that the appeal property was situated next to two other units, let to Pret and Itsu. Unit 1 had a rent of £205,000 pa with a one year rent free period, which adjusted to £181,000. This gave a price per m² of £954 zone A. Unit 2 had a rent of £140,745 pa with a six month rent free period, which adjusted to £132,573. This gave a price per m² of £1,023 zone A. Mr Cates stated that the appeal property’s rent of £95,000 pa adjusted to £89,848 which allowed for the three month rent free period. This gave a price per m² of £786 zone A, which was in line with the current value of £780 per m² zone A.

30. Mr Willmore stated that Units 1 and 2 rents had commenced in 2019, like the appeal property. He added that all three units were valued at the same zone A rate of £780 per m². The panel was informed that Units 1 and 2 go back into the body of the building. This was unlike the appeal property, which was cut out to the rear to make room for three passenger lifts. As such, the panel noted that those units did not suffer to the same degree from unusual shape as the appeal property. Mr Willmore proposed a reduced zone A rate for the appeal property of £550/m^2 to reflect its the frontage to depth, its location close to the shops valued at £350/m^2, its unusual layout and jagged shape. He contended that the appeal property’s lower adjusted rent justified a reduced zone A rate.

31. The panel decided to attach most weight to the VO’s rental evidence as it was drawn from properties closest to the appeal property and was in respect of properties that were also valued on the zoned basis. Having regard to the evidence presented, the panel concluded that the current zone A rate of £780/m^2 applied to the appeal property was not excessive.

32. However, whilst the panel had concluded that the current zone A rate was not excessive, it did accept that Mr Willmore had made a valid point regarding the very unusual, jagged shape of the subject property. Mr Cates stated that if the panel held that the appeal property should have a reduction in RV due to its shape and layout, that the panel leave the set tone of £780 per m² and include an allowance to the zone A and B areas. However, he gave no opinion on the level of allowance warranted. Mr Willmore contended that 20% would be a true reflection of the disability of the shape of the appeal property.

33. The panel concluded that the weight of the evidence supported a zone A rate of £780 per m² for the appeal property. However, due to the shape and layout of the appeal property, the panel held that an end allowance for shape and layout should be included. Whilst the panel accepted that the appeal property had been let at a lower rate than Units 1 and 2, it was not convinced that an allowance of 20% was warranted. The panel concluded that an allowance of 9% was held to be fair and reasonable and more accurately reflected the disabilities it suffered due to its shape. The allowance was only applied to the zone A and B areas. Therefore, the appeal was allowed in part. The panel determined a revised RV of £79,500 with effect from 28 September 2019. A breakdown of the assessment has been shown below:

Unit 3 at 145, City Road, London EC1V 1AZ					
Floor	Description	Area m²	£/m²	Allowance	Value £
Ground	Retail Zone A	78.27	780.00	9%	55,556
Ground	Retail Zone B	67.86	390.00	9%	24,084
Ground	Public Toilets	4.27	78.00		333
Total area		150.40			
Subtotal					79,973
Adopted Rateable Value					£79,500

Order

34. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Unit 3, Provost & East Building, at 145 City Road, London EC1V 1AZ to £79,500 RV, with effect from 28 September 2019 within two weeks of the date of this order.

35. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 7 August 2023

Appeal number: CHG100448558

Right of 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.