THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Club and Premises; Local Government Finance Act 1988; Statutory Assumptions; Economic Repair; Material Day; The Rating (Material Day for List Alterations) Regulations 1992 (S.I. 1992 No. 556); The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (S.I. 2009 No. 2268); Appeal allowed.

RE:	Mercy Night Club, 90-96 Prince of Wales Road, Norwich NR1 1NJ
APPEAL NUMBER:	CHG100467437

BETWEEN:	Yarmouth Road Project Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL:	Ms S Penni (Presiding Senior Member) Mr WJ Read (Senior Member)
CLERK:	Mrs H Beresford
REMOTE HEARING ON:	4 October 2023
PARTIES PRESENT:	Mr BJ Smith from Yarmouth Road Project Ltd Mr S Bicknell - Appellant's representative Mr C Cole - Respondent's representative

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Summary of decision

1. The appeal was allowed. The panel found that Mercy Night Club, 90-96 Prince of Wales Road, Norwich NR1 1NJ, ("the subject property") was beyond economic repair at the material day.

Introduction

2. This appeal has been brought in respect of the subject property, which was entered in the 2017 rating list as "club and premises" with a rateable value (RV) of £255,000 with effect from 1 April 2017.

3. The challenge process began on 21 November 2020 when the appellant had submitted a proposal to the Valuation Officer (VO) that the entry shown in the rating list for the subject property should be deleted with effect from 18 December 2018, on the basis that it was beyond economic repair.

4. Having considered the challenge the VO issued a decision on 22 March 2022 stating that the proposal was not well founded as a reasonable landlord would consider the cost of repairs to be economic.

5. The subject property had operated as a nightclub and is located on Prince of Wales Road which is known as the night life centre of Norwich where many bars, nightclubs and fast food takeaways are located. The property has stood empty since March 2018 when the nightclub ceased trading, it was purchased by the appellant on 18 December 2018, nine months after the club ceased trading.

6. Mr Bicknell was assisting Mr Smith as advocate only.

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

Issue

9. Whether the subject property should be deleted from the rating list with effect from 18 December 2018 (the material day) as it was beyond economic repair on this date.

Evidence and submissions

10. The evidence bundle comprised all the documents exchanged between the parties as part of the challenge process.

Decisions and reasons

16. The material day (the date by which physical factors have to be taken into account) is provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of this appeal, the material day is 18 December 2018, the day the appellant requested the deletion of the subject property from the rating list in accordance with regulation 3(4)(a).

17. 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).

18. The panel referred to the definition of the term 'rateable value' as set out 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 –
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> 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". (Emphasis added)

20. The appellant contended that the state of repair of the subject property and the market for large night clubs had deteriorated to such an extent by 18 December 2018 that the cost of repairing the subject property was uneconomic. He had provided costings for the repairs to the property required to make it suitable for use as a nightclub again, which amounted to £1.26 million. He stated that in the time between the nightclub ceasing to trade in March 2018 and the purchase of the property in December 2018 it had been vandalised. He argued that by 2018 the popularity of large night clubs had declined and if he had carried out the works, he would not be able to recover the costs of doing so.

21. The panel noted that the reports submitted by the appellant were commissioned in 2020 when the challenge was made, and it was aware that the property may have been in a worse state in 2020 than it had been in 2018, as such it attached only moderate weight to this evidence.

22. However, the panel was satisfied from the photographs provided by the appellant that the subject property was in a significant state of disrepair, and it had no reason to doubt the appellant's contention that it was in a similar condition on the material day. The issue for the panel to determine was whether a reasonable landlord would consider those repairs to be economic to carry out to return the property to a state of reasonable repair.

23. The panel determined that any reasonable landlord would first look at the local property market, consider the location of the premises, the likelihood of finding a tenant for the subject property and the likely length of any lease, and whether further tenants were likely. He would then determine over what period he would be prepared to spread the repair costs. For a prime property in a buoyant market, it could foresee a long period of occupation and, consequently, amortisation could be expected to be over a similar period. For a very poor property, where similar properties were vacant, a shorter period might be expected.

24. The appellant had argued that even at a hypothetical rent of £255,000 per annum it would take five years to recover the initial outlay, but he believed given the lack of a market for large night clubs it would not be possible to let the subject property. He also argued that it would not be enough to return the club to a reasonable state of repair. For a new club to be successful it would have to be refurbished and rebranded and a prospective hypothetical tenant would take that into consideration.

25. The respondent argued that other large nightclubs in the vicinity had remained open, he referred to Liquid Night Club, which he stated had closed in 2012 and reopened in 2022 and had remained in the rating list for the full period. The panel was not persuaded by this evidence because the subject property measured 2061.80m^2 whilst Liquid Night Club, even though it was larger than other clubs in the area, only measured 721.70m^2. Furthermore, Mr Smith contended that Liquid Night Club had not reopened in 2022 and remained closed.

26. The panel was persuaded that the market for large night clubs was in decline which had been evidenced by the closure of the subject property and the closure of Liquid Night Club. This was further supported by the report he had submitted which had been written by Fleurets.

27. The respondent contended that the evidence submitted by the appellant had been commissioned in 2020 and might not reflect the state of the property or the rental market for

night clubs in December 2018. The panel noted that the respondent had made no comments as to whether the costings provided by the appellant were excessive or whether they all related to repair; it also noted that the Valuation Officer had not inspected the subject property at the challenge stage and had not submitted an alternative schedule of the likely cost of returning it to reasonable repair.

28. The panel's decision had to be made on the available evidence. Based on what was available to the panel and given the lack of an expert report commissioned by the respondent, the panel determined that the subject property was beyond economic repair at the material day and therefore the appeal was allowed.

Order:

29. 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 Valuation Officer to delete the entry from the rating list with effect from 18 December 2018.

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

31. 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) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 25 October 2023

Appeal number: CHG100596407

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.