THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; restaurant and premises; rent passing on the subject property; rental analysis and assessments of comparable properties; correct main space rate and relativities to be applied to the subject property's assessment; end allowance sought for layout disabilities; it was determined that the current assessment was not unreasonable; appeal dismissed.

RE: Theatre Street Bar and Grill, Theatre Street, Preston PR1 8BQ

APPEAL NO: CHG100547630

BETWEEN:	Theatre Street Bar and Grill	Appellant
	and	
	Mr R Ritchie (Valuation Officer)	Respondent

BEFORE: Mrs A E Fielder (Senior Member)

CLERK: Mrs R James

REMOTE HEARING 1: Wednesday 16 March 2022

APPEARANCES: Mr K Batty of Ken Batty Chartered Surveyors (on behalf of the Appellant)
Mr S Corless (Respondent's representative)

Summary of decision

1. Appeal dismissed; the subject property's assessment remained unaltered at £14,750 Rateable Value (RV) with effect from 1 April 2017, as it was not considered unreasonable.

Introduction

2. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two members of the Tribunal, including at least one Senior Member. However, paragraph 11 of those Arrangements also provide that a Senior Member may sit alone to avoid postponing the hearing where a second panel member is unable to sit for any reason.

3. In respect of this hearing, a second panel member has been unable to sit. In accordance with Paragraph 11 of the Tribunal Business Arrangements, I am satisfied that I am authorised to hear and determine this appeal alone.

4. This appeal has been brought in respect of the following: Theatre Street Bar and Grill, Theatre Street, Preston PR1 8BQ, which was entered in the 2017 Rating List as restaurant and premises at £15,000 RV, effective from 1 April 2017.

5. The appellant's Challenge to the Valuation Officer (VO) was made on 11 January 2021. The appeal to this Tribunal was made on 22 October 2021, following the VO's Decision Notice of 13 July 2021, in respect of the subject property (hereditament). This is a compiled list appeal so the material day is 1 April 2017. The original assessment of £15,000 RV, with effect from 1 April 2017, had been reduced at the challenge stage to £14,750 RV.

6. The subject property was formerly two hereditaments known as 3B Theatre Street, which was a café, and Unit 1 Urban Exchange, which was a shop. The two properties were merged and fully refurbished in July 2015 to create a restaurant and premises. The premises consisted of a dining area, bar area, kitchen, storage room and toilets.

7. The subject property was situated off Fishergate in close proximity to the Preston Post Office.

8. The subject property had an area of 110.8 m^2 and had been valued on an overall basis at a main space rate of £140/m^2. There was a rent passing on the subject property of £18,500 per annum, with effect from 19 May 2015.

9. Mr Batty was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain 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).

10. Mr Batty explained that he was representing the appellant in this appeal on a conditional fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

11. I accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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). I therefore considered the "expert" evidence and attached such weight to it as it 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 myself when coming to the 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. There were three issues in dispute, namely:

i) the correct main space rate to be applied to the subject property's assessment;
ii) the correct relativities to be applied to various parts of the assessment; and

iii) whether or not an end allowance was warranted to reflect poor layout?

Evidence and submissions

14. I had been provided with a bundle of evidence, which comprised the challenge submission, VO Decision notice and the representative's appeal submission.

15. Having regard to the comparable assessments he had cited, Mr Batty sought a reduced main space rate of £120/m^2. He also sought reduced relativities to various parts of the left-hand side of the premises to reflect their cramped nature. Mr Batty referred to the layout disabilities associated with the subject property, in particular the poor interconnection between the bar area and the main restaurant for which he sought a 10% end allowance. Accordingly, this resulted in his proposed assessment of £10,500 RV, with effect from 1 April 2017.

16. Having regard to the comparable assessments he had provided, Mr Corless contended that the current main space rate of £140/m^2 was not excessive and he contended that the current relativities that had been applied to the assessment were correct. Having regard to the rent passing on the subject property, Mr Corless did not consider that an end allowance was warranted to reflect layout issues or poor interconnection. Accordingly, he sought dismissal of the appeal.

Decision and reasons

17. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

18. Firstly, I addressed the correct main space rate to be applied to the subject property's assessment. Mr Corless contended that the current main space rate of £140/m^2 was fair and reasonable, whereas Mr Batty sought a reduction to £120/m^2.

19. In support of his proposed lower main space rate, Mr Batty had referred me to several comparable properties, of which I made particular note:

i) 16-18 Lancaster Road had been valued at the lower rate of £120/m^2. However, I placed little weight on this comparable as it was a basement café and had been valued in line with other such premises that had no ground floor element. I accepted that a basement café, with limited visibility, would be valued at a lower rate than ground floor accommodation.

ii) 15-16 St Wilfrid Street had been valued at the lower rate of £125/m^2. This property was situated within a back street location opposite a rough surfaced car park. I agreed with Mr Corless that the subject property being situated two doors away from a main shopping parade was better located than 15-16 St Wilfrid Street and had more visibility. As such, I determine that it was reasonable for the subject property to be valued at a higher main space rate than this comparable property.

iii) Angelo's, Avenham Street was valued at £120/m^2. I placed less weight on this comparable as it was much larger at 1,458.4 m^2 and appeared to be located in an inferior location.

20. In support of the current main space rate of £140/m^2, Mr Corless had provided a schedule of rental evidence that detailed four restaurant and premises in Preston town centre. Those properties had rents set between November 2012 and August 2014, which analysed between £123.76/m^2 and £170.96/m^2 and they had been valued at main space rates ranging between £120/m^2 to £175/m^2. Also provided was a schedule of comparable assessments which listed 14 properties that had been valued at main space rates ranging between £90/m^2 and £175/m^2. As such, at £140/m^2, I found the subject property to be valued in the mid-range of the values for similar properties in the locality.

21. Having regard to the evidence presented, I was not convinced that the current main space rate of £140/m^2 was excessive. I found those properties valued at lower rates had less visibility or were situated within inferior locations. Accordingly, I confirm that the current main space rate of £140/m^2 was fair and reasonable for the subject property.

22. I then went on to address whether or not the left-hand side of the property should be valued at a reduced relativity, plus whether or not an end allowance was warranted for poor layout.

23. Mr Batty referred me to the layout plan he had provided and highlighted the various disabilities associated with the layout of the premises. He also turned to the layout plan provided by the VO and explained that it was incorrect. Mr Batty highlighted that on the VO's layout plan, the doorway was incorrectly positioned and the left-hand side of the premises had been incorrectly laid out. Mr Corless accepted that the plan he had provided was incorrect with the one provided by Mr Batty being more up to date.

24. After the hearing had finished, Mr Corless emailed the clerk stating that the plan he had provided had been correct as at the date of the inspection on 30 July 2015, when the two former properties had been merged. That email was forwarded to Mr Batty for comment. Following discussions with the appellant, Mr Batty clarified that the bar area was originally located as shown on the VO's plan. However, around January 2017, the premises were altered as shown on the layout plan as he had provided. The email correspondence from both parties was subsequently forwarded to me for consideration.

25. I find the issue unusual as Mr Corless had stated that he had visited the premises. If that had been a recent visit, he should have been made aware that the plan he had provided was no longer correct. I placed greater weight on the layout plan as provided by Mr Batty, which was more current and showed the position of the premises as at the material date of 1 April 2017, which was the date when regard had to be had to the physical state of the premises.

26. After having regard to the layout plan and the photographs provided, I accept Mr Batty's concerns regarding the cramped nature of the left-hand side of the premises. I note that there was no direct access from the kitchen to the restaurant. As such, when food was being delivered to the restaurant, it had to be taken from the kitchen through the bar area. This led customers that were congregating in the bar area to be frequently required to move in order to allow staff access from the kitchen to the restaurant.

27. Other layout disabilities included the whole of the left-hand side of the premises were very cramped, the narrow passage that led from the bar area to the kitchen, steps were present in the kitchen/preparation area, there was a ramp from the bar area to the restaurant and the toilets were located very close to the dining area. To reflect all the associated layout disabilities, Mr Batty had sought a 10% end allowance, plus he had valued the left-hand side

of the premises at 50% of the main space rate. Mr Corless contended that no allowance was warranted and that the left-hand side of the premises should be valued at the full main space rate, with the exception of the kitchen, which he had valued at 70%, the ladies' toilets and the internal storage at 50% and the staff toilets at nil.

28. I accept all the points raised by Mr Batty and find that the subject property suffered from numerous layout disabilities, which in the main were caused from the premises being a merger of two former units rather than a purpose built restaurant and premises. However, I was of the opinion that an end allowance was not warranted automatically in all situations, rather one had to have regard to the specific characteristics of the property in question and consider if the hypothetical landlord would accept a reduced rental bid from the hypothetical tenant to reflect those disabilities.

29. In this appeal, I note that the passing rent was £18,500, with effect from 19 May 2015. When contrasting the passing rent of £18,500 to the current assessment of £14,750, it did not suggest that the current assessment was excessive. The layout issues would have been apparent to the appellant when the rent was agreed and as such any issues would have been reflected in the rent set. Subsequent layout changes had been carried out by the appellant to their individual requirement.

30. Furthermore, I noted that 15-16 St Wilfrid Street had suffered from disabilities associated with a similar restricted ground floor layout and no allowance had been applied to its assessment. Therefore, on the evidence presented, in particular the rent passing on the subject property, I found that no end allowance was justified for to reflect poor layout. I also determined that that the current assessment incorporated the correct relativities to left-hand side; I found no reason to reduce the relativities further.

31. Accordingly, I determined that the current assessment of £14,750 was not unreasonable. The appeal was therefore dismissed.

Date: 7 April 2022
Appeal Number: CHG100547630