THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List – Price per m² to be adopted when compared with others in locality – should end allowance be given due to unusual shape of property – relativities to the upper floor not currently in use – appeal allowed in part.

Re: La Cava, 174 Wigan Road, Hindley, Wigan, Lancashire WN2 3BU

APPEAL NUMBER: CHG100658574

BETWEEN:	La Cava Restaurant Ltd	Appellant
	and	
	The Valuation Officer	Respondent
PANEL:	Mr G Coombes (Senior Member)	
	Mrs C Parkes	
CLERK:	Mr A Jolly	
REMOTE HEARING:	Monday 7 February 2022	
APPEARANCES:	Mr K Batty of Ken Batty Ltd representing La Cava Restaurant (appellant)	
	Mr D Turner representing the Valuation Officer (respondent)	

Summary of decision

1. Appeal allowed in part. Rateable Value (RV) £20,250 determined with effect from 1 April 2017.

Introduction

2. An appeal received on 16 September 2021 against the Valuation Officer's Challenge Case Decision Notice dated 22 March 2021. The appeal sought the reduction in the price per m² from £130 per m² to £110 per m², the reduction of the relativity for the 1st floor from 70% of the price per m² to 50% of the price per m² and an end allowance of 10% for the awkward and fragmented shape. An RV of £16,250 was being sought and the Valuation Officer was defending the RV £23,000. The panel was aware that when the property entered the 2017 Rating List it was at RV £24,000 based on a price of £140 per m² but following the initial challenge the RV was reduced to £23,000 based on the price of £130 per m². The Antecedent Valuation Date for the 2017 Rating List was 1 April 2015 and the material date for this appeal was 1 April 2017.

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 Batty 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 Batty's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Batty 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 issues before the panel concerned the price per m² to be adopted, the percentage reduction for the first floor and whether or not an end allowance should be applied for the awkward shape and fragmented layout of the premises.

9. The appeal property was built in the 1890s and was a former public house on the outskirts of the town centre of Hindley, Wigan located on the main A577. The property was converted into a restaurant around 2006. The premises occupied two floors although the first floor was currently not in use and the property benefited from six parking spaces. The rent passing at the AVD commenced in August 2013 at £25,000 per annum.

Evidence and submissions

10. Mr Batty stated that he considered the price per m² adopted for the appeal hereditament was out of line with others in the locality which he was of the opinion were either superior properties or were in superior locations. He stated that the appeal property had been valued at £130 per m² whereas other restaurants within the locality were valued at between £80 per m² and £135 per m². He stated those with the higher price per m² were located within superior town locations whereas the appeal property was on the outskirts of the town centre by approximately one mile and therefore was not as an attractive proposition and should attract a lower price per m². Having regards to the price per m² adopted on others in the locality he considered £110 per m² was more appropriate.

11. Mr Batty considered the relativities for the first floor of the appeal hereditament. It had been valued at 70% of the price per m² but, due to the layout etc,it was not viable and was not currently in use. He considered that it should be valued at 50% of the price per m².

12. Mr Batty then referred to the shape of the appeal hereditament and provided a floor plan to illustrate the awkward and fragmented area. He considered that the property was disadvantaged by the shape and layout and believed an end allowance of 10% should be applied.

13. In answer to a question, Mr Batty confirmed that the rent had recently been agreed at £23,000 per annum.

14. Mr Batty sought a reduction to RV £16,250 with effect 1 April 2017.

15. Mr Turner stated that he considered that the price per m² of £130 was fully supported by the rent passing on the appeal property, which he had devalued at £140.25 per m², and the price per m² adopted for other similar properties in the locality. He provided a number of properties within the locality, many shared with Mr Batty, to support his contention that £130 per m² was correct.

16. Mr Turner stated that the relativity of 70% of the price per m² for the first floor of a restaurant was the standard practice and should be applied in this instance. He accepted that the current occupier chose not to utilise the area but it was ready and available for use if required.

17. Mr Turner then turned his attention to whether or not an end allowance should be applied. He considered that the majority of the comparable properties were restaurants that had been converted from other types of premises such as public houses and churches. He was of the opinion that they also suffered layout issues such as pillars and posts but no allowances had been awarded. Also the rent would have reflected any advantages and disadvantages so would have already accounted for the shape of the property. He considered that the appeal hereditament therefore should not be awarded an end allowance.

18. He requested the panel to dismiss the appeal.

Decision and reasons

19. The panel had been informed that the rent passing, from August 2013, was £25,000 per annum which devalued to £140.25 per m². However, this was the only rent provided and whilst a starting point the panel had to consider the basket of evidence which would include the price per m² adopted on other similar hereditaments in the locality i.e. the tone of the list.

20. The panel had been provided with a number of properties in the wider locality of Hindley including properties in the actual town centre whereas the appeal property was located approximately one mile from the town centre. It considered that those in the town centre would have a higher price per m² adopted than a property on the outskirts whereas, in this instance, the appeal property appeared to have a price per m² toward the upper range of values equivalent to and higher than those in the town centre. The panel therefore considered £130 per m² was too high and should be lower.

21. In considering the evidence the panel noted values ranged from £70 per m² to £135 per m². Whilst Mr Batty was seeking a reduction to £110 per m² the panel believed the property was similar to Toscane (formerly Dilbars) and Beijing House which were both valued at £120 per m². The panel therefore considered that £120 per m² should be applied to the appeal hereditament.

22. Mr Batty had sought a reduction to 50% of the ground floor price per m² for the upper floor due to the fact that the current occupier was not utilising the space whereas the respondent had applied a relativity of 70% which was the usual practice. The panel had not been persuaded that a reduction in the relativity should be applied as it was the current occupiers choice not to use the 1st floor of the building and that another occupier could use that floor without any works required.

23. The panel then considered the issue of the shape and fragmentation of the appeal hereditament. The appellant's representative had provided the panel with a survey plan of the appeal property which showed an unusual shape. Whilst the respondent had stated that many of the other comparable properties had been converted from other types of buildings there was no evidence that the shape of the buildings were similar to the appeal hereditament. It also noted that Mr Batty had sought a 10% end allowance not just for the awkward shape but also due to the fragmented layout. The panel was not persuaded that the layout was fragmented and therefore considered that an end allowance of 5% should be awarded to reflect the awkward shape of the property only.

24. The panel therefore considered RV £23,000 to be incorrect and that an RV £20,250 was correct. The panel accordingly allows 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 £20,250 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: Friday 4 March 2022

Appeal number: CHG100658574