THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; restaurant and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: 10 The Links, The Concord Centre, Shepherds Bush Green, London W14 0DJ

APPEAL NUMBER:	CHG100669447	
BETWEEN:	Pizza Express (Restaurants) Limited	Appellant
	and	
	Mr A Ricketts, Valuation Officer	Respondent
PANEL:	Mr S P Wood (Presiding Senior Member) Mrs H Newman-Newing (Senior Member)	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Monday 18 September 2023	
APPEARANCES:	Mr D Price from Gerald Eve LLP, representing the appellant Mr C Cates representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel confirmed the rateable value (RV) of the appeal property at £28,250 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. 10 The Links, The Concord Centre, Shepherds Bush Green, London W14 0DJ, (the ‘appeal property’), had been entered in the 2017 rating list as ‘restaurant and premises’ at a RV of £28,250 with effect from 1 April 2017.

3 The challenge proposal was submitted by Gerald Eve LLP on behalf of Pizza Express (Restaurants) Limited and was received by the Valuation Officer on

22 March 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £20,000 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 20 July 2021, which stated that based upon the evidence and information available, the rating list entry was reasonable and there would be no change to the list entry of £28,250 RV.

5 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 19 November 2021.

6 Mr Price 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) he confirmed that he was instructed under a conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

7 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).

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

9 The appeal property was a restaurant located on the ground floor of West 12, a 1970's shopping centre in Shepherds Bush. The present assessment of £28,250 RV is based upon an area of 237.20m^2 in terns of main space (ITMS) at an unadjusted price of £120 per m^2.

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

Issue

11 The issue in dispute is the price per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: appellant's challenge submission, initial

response to the challenge and the Valuation Officer’s challenge case decision notice.

13 On behalf of the appellant, Mr Price stated that rental values had fallen significantly following the opening of Westfield Shopping Centre in 2008. He contended that the appeal property should be assessed at £84.32 per m^2, based upon the analysis of the subject rent.

14 On behalf of the Valuation Officer, Mr Cates submitted that the subject rent should be treated with caution. It was two years post AVD and, in the absence of the lease, it was not possible to establish the terms and circumstances agreed. In consideration of the basket of evidence, Mr Cates contended that the current assessment, based upon £120 per m^2 was reasonable.

Decision and reasons

15 In accordance with paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, the appeal property must be viewed vacant and to let and 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. The date of the hypothetical rent is 1 April 2015, the AVD for the 2017 rating list.

16 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 1 April 2017.

17 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

18 The case for the appellant was that the subject rent was the key piece of evidence. Mr Price stated that the appellant had signed a 12 year lease with effect from 19 September 2010 at a rent of £20,000 per annum; previously the rent was £60,000. This was a lease renewal, subject to an upwards only rent review effective from 1 April 2017. The previous lease was subject to a rent of £60,000 which, Mr Price considered, demonstrated that rental values had been decimated following the opening of Westfield Shopping Centre in October 2008.

19 In the Valuation Officer’s challenge decision notice, it was stated that, according to forms of return, the subject property was occupied by the appellant in late 1990 at the earliest, on a 20 year lease that expired in September 2010. While Mr Price had referred to a lease renewal in April 2017 at a rent of £20,000 per annum, Mr Cates confirmed that he had not seen the

lease, and that in a form of return completed by Gerald Eve on 11 November 2019, the 2017 rent review remained outstanding at the time of completion. The terms on which the 2010 renewal or 2017 review were based on were therefore unknown, and therefore Mr Cates asked the panel to treat the rent with a great degree of caution.

20 Mr Cates further suggested that the review pattern was unusual and that the lease may have had a turnover element. Mr Price responded that a 12 year lease with the first review at year 7 was not uncommon and he disputed that there was a turnover element.

21 It was clear to the panel that there was some uncertainty regarding the terms and conditions of the subject lease which could have been resolved by the parties prior to the hearing if a full copy of the lease had been made available or requested. While the panel accepted that the 2017 rent review had held the rent at £20,000, in the absence of further information, for example the amount of rateable fit out, it did not on its own support a reduction in the price per m^2. In accordance with *Lotus and Delta*, the subject rent was the starting point, however, the other propositions also required consideration.

22 There was limited relevant rental comparable evidence available, as the appeal property was the only ground floor restaurant within West 12. Aroma Unit B was similar in size to the subject at 249.55m^2 (ITMS), but situated on the first floor. A rent of £150,000 effective from 1 April 2012 analysed at £282.14 per m^2.

23 Mr Price contended that Aroma Unit B was different in nature to the appeal property and had the benefit of being above the main entrance and next to the cinema. He contrasted the location of the appeal property, which he described as being tucked away from the main entrance at the back of the centre where footfall was extremely poor. Mr Cates questioned the lack of footfall at the appeal property, as it was located at street level at a secondary entrance, compared with Aroma Unit B, which was situated on the first floor, next to the "outdated" Vue cinema (there was a new Vue cinema in Westfield).

24 The panel was mindful of the differences in location between the appeal property and Aroma Unit B. The most striking point, however, was the difference in the prices adopted. At £500 per m^2, and a RV of £128,000, Aroma Unit B was assessed significantly higher. This led the panel to consider that at £120 per m^2, the valuation of the appeal property was not unreasonable.

25 It was also noted by the panel that the values adopted for the subject property, Aroma Unit B and the shops within West 12 had remained the same for the 2010 and 2017 rating lists. As at the date of the notice, there had been no challenges made to their rating list entries.

26 As the basis of the appellant's case was that the RV was excessive when compared with the subject rent, the appeal could not succeed on that basis.

The panel concluded that the appellant's representative had failed to demonstrate that the valuation of the hereditament was unreasonable, and therefore the appeal was dismissed.

Date: 16 October 2023

Appeal number: CHG100669447

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.