THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Local Government Finance Act 1988; shop and premises; zone B measurement; non-structural wall; vacant and to let; appeal allowed in part.

RE: 11 Union Street, Birmingham, B2 4SH

APPEAL NUMBER: CHG100696395

BETWEEN:	Warren James (Jewellers) Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL:	Mr SP Wood (Senior Member)
	Mrs N Crawshaw
CLERK:	Ms N Shepherd
REMOTE HEARING 1:	Tuesday 14 February 2023
APPEARANCES:	Mr J Crowley of GL Hearn on behalf of the Appellant as advocate and expert witness
	Ms M Akhtar on behalf of the Respondent

Summary of decision

1. Appeal allowed in part. The appeal property’s assessment was reduced to £65,500 rateable value (RV), with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal brought in respect of the appeal property, which had been entered into the rating list as ‘Shop and Premises’ at £79,500 RV with effect from 1 April 2017, based on a zone A rate of £1,250/m^2.

3. The challenge proposal was submitted by Mr Crowley of GL Hearn on behalf of the Appellant and was received by the Valuation Officer (VO) on 25 May 2021. It had been made on the grounds that the RV shown in the rating list was wrong and that no allowances had been included in the assessment to reflect certain factors. A revised assessment of £50,250 RV was proposed, based on a zone A rate of £775/m^2.

4. The VO issued a challenge case decision notice on 18 May 2022, which stated that, based upon the evidence and information available, the current rating assessment was considered to be reasonable.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal, received on 27 July 2022, was made on the grounds that the valuation for the hereditament was not reasonable.

6. The appeal property is a shop and premises situated on Union Street in Birmingham city centre. It has a net internal area of 85.45m^2.

7. As Mr Crowley appeared on behalf of the appellant as both advocate and expert witness and 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 aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was not instructed under a conditional fee arrangement or any other success related fee.

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

Preliminary issue

9. At the commencement of the hearing, the Clerk to the Tribunal invited the Tribunal Panel to correct the name of the Appellant to the appeal. The Clerk explained that the appeal had on registration with the Tribunal, been incorrectly recorded as being brought by Mr Guy Lightowler, an employee of Warren James (Jewellers) Ltd.

10. Given that Mr Guy Lightowler was employed by Warren James (Jewellers) Ltd, the Tribunal Panel was satisfied that there was no prejudice to the Appellant or Respondent in this mistake.

11. Accordingly, pursuant to Regulation 11(1)(a) of the Tribunal Procedure Regulations, the Tribunal Panel directs that the Appellant, Mr Guy Lightowler,

is formally substituted as the Appellant to the appeal by Warren James (Jewellers) Ltd.

Issue

12. The issue for the panel to determine was the rateable value of the appeal property from 1 April 2017.

Evidence and submissions

13. The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with the rating representative's Supporting Evidence Statement. The bundle included: a copy of the challenge submission; the Valuation Officer's initial response to the challenge; the appeal property's current valuation; the rating representative's revised valuation and the Valuation Officer's Decision.

14. The amount for air conditioning was agreed at £7/m^2.

Decision and reasons

15. In arriving at its decision, the panel was 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, provided that:

    "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.

16. In respect of an appeal against an entry in the 2017 rating list, the rental levels were 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).

17. 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 1 April 2017.

18. Originally, the zone A rate to be adopted to value the subject hereditament had been in dispute, however during the hearing Mr Crowley submitted that this had now been agreed at £975/m^2.

19. Ms Akhtar stated that as no evidence of fit out costs had been provided the zone A rate agreed was £995/m^2. Mr Crowley agreed to accept £995/m^2 as the zone A rate, stating he was unable to obtain any evidence of the fit-out costs. He stated that he was also aware that the fit-out costs for the property would not have a significant impact on the assessment.

20. As the zone A rate had been agreed between the parties, the unresolved issue in contention was as to the treatment of the area located at the back of the property. Mr Crowley submitted that this area should not be included within the measurement of zone B and should be valued to reflect its actual use. The respondent maintained that this area was in zone B and whilst not currently being utilised as a sales area this was through the choice of the Appellant .

21. Mr Crowley explained that within the assessment the zone B area measured 40.43m^2 and included a separate raised area at the back of the property which measured 27.15m^2. A step had been put in by the current occupiers to reach the raised area, which was currently in use as an ancillary office. This was partitioned from the remainder of the property by a studded wall. Mr Crowley contended that the raised area created a number of disadvantages. It was neither practical nor convenient and could be viewed as a trip hazard. Mr Crowley also disputed its classification as a sales area as it was partitioned from the main shop and not accessible to any customers.

22. Due to the disadvantages afforded to the raised area, Mr Crowley considered that it's measurement should not be treated as zone B. His assertion was that 13.28m^2 of the current zone B area should remain as such, with the remainder, this being the raised area, then being half the zone B value. Therefore, based upon the zone A rate of £995/m^2 and including the air conditioning he asserted that the RV should be £58,753.

23. In determining this appeal, the panel had to view the appeal property vacant and to let in accordance with the rating hypothesis. It appeared that Mr Crowley had approached this case from the perspective of the occupiers and the ways the different areas of the property had been utilised by them. Whilst he considered that the raised area could not be utilised as part of the sales area, the panel understood that this may not be perceived to be a problem by another occupier.

24. The panel found this to be further supported by the fact that the partitioning wall separating the raised area from the rest of the property was a studded wall, and therefore non-structural. In the absence of any evidence to demonstrate that the raised area was less valuable than the remainder of

zone B the panel was not persuaded that a difference in treatment of the area was warranted.

25. In consideration of the evidence presented, the panel determined the assessment below, based upon a zone A rate of £995/m^2.

	m^2	£/m^2	£ RV
Zone A	45.02	995	44,795
Zone B	40.43	497.50	20,114
Air con	85.45	7.00	598
	Subtotal		65,507
	Rateable Value say		£65,500

Order

26. 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 amend the entry in the rating list as follows:

    To rateable value £65,500 with effect from 1 April 2017.

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

Refund of appeal fees

28. The appellant is entitled to a refund of the appeal fees paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 20 March 2023

Appeal Number: CHG100696395

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.