THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Club and Premises; mode and category of occupation; comparable evidence; the appeal property was incorrectly valued on an office basis and should be valued in line with its mode or category of occupation at the material day; appeal dismissed.

RE: Compton House Club, First Floor Office, Stanmore HA7 4AR

APPEAL NUMBER: CHG100697625

BETWEEN: Mr MSG Levene — Appellant

and

Mr A Ricketts (Valuation Officer) — Respondent

PANEL: Dr J Johnson (Senior Member)
Mr A Wheeler

CLERK: Mrs H Beresford

REMOTE HEARING ON: 6 December 2022

APPEARANCES: Mr J Levene, appellant's son and representative
Mr O Ogbesoyen on behalf of the respondent as both advocate and expert witness

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Summary of decision

1 Appeal dismissed. The appeal property's assessment was confirmed at £28,250 rateable value (RV), with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal that has been brought in respect of Compton House Club, First Floor Office, Stanmore HA7 4AR, (the 'appeal property'). The appeal property had been entered into the rating list as 'Offices and Premises' at £28,250 RV with effect from 1 April 2017. The description of the assessment changed from 'Offices & Premises' to 'Club House and Premises' following a Valuation Tribunal on 12th January 2022. At that hearing Mr Levene had raised the issue of the RV of the property, but the Valuation Officer contended no valuation matters could be discussed as it was outside the scope of the proposal (Challenge Ref CHG100458564), and in any event there was another proposal outstanding awaiting a Challenge decision from the VOA regarding the contesting of the rateable value.

3 The challenge proposal was submitted by Mr J Levene on behalf of the appellant and was received by the Valuation Officer on 21 May 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was unreasonable. A revised assessment of £7,438 RV was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 22 June 2022, which stated that based upon the evidence and information available, the current rating list entry would be amended to show the appeal property as ‘Club house and Premises’ with the assessment remaining at £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 was not reasonable. The appeal was received by the Tribunal on 5 June 2022.

6 The subject property is situated on the first floor of a three storey mixed use building built between 1940-1970. The ground floor is occupied as retail and premises and the second floor is occupied as office and premises. The total area of the assessment is 209.95m^2 and it benefits from central heating and a suspended ceiling.

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

Issue

8 The issue is whether the appeal property should be valued in line with its mode and category of occupation at the material day (1 April 2017). The appellant’s representative sought an assessment of £7,438 RV based upon an unadjusted price of £35/m^2 to reflect its use as a social club. The Valuation Officer considered the current entry of £28,250 RV, reflecting an unadjusted price of £135/m^2 was reasonable.

Evidence and submissions

9 The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process. The bundle included: the Valuation Officer’s initial response; rental and assessment evidence for comparable properties; photographs of the appeal property and a property cited as comparable; the definition of rateable value, and the Valuation Officer’s challenge case decision notice.

10 Mr Ogbesoyen gave a background to the case and explained that the appeal property’s description had been changed by the Valuation Officer to ‘Club and Premises’ following the previous appeal. However, he argued that the Valuation Officer had to value all properties ‘vacant and to let’, he considered that the rent of the subject property, agreed in September 2015 on an office basis, and the rental evidence of comparable office assessments within the locality supported the appeal property’s current assessment. He argued that, when viewed vacant and to let, the appeal property could be occupied as an office.

11 Mr Ogbesoyen also referred to the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) & Leicester City Council*, [1976] RA 141, in observing that actual rent should be the starting point if a property is let, when considering rateable value. Furthermore, he contended that in the case *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F*

Williams (VO) RA-480-1993 (LT) the Lands Tribunal found that rents from other mode or categories could be used to value a hereditament where it was clear the evidence points to a correct valuation of the hereditament.

12 Finally, he argued that under the rating hypothesis the objective of a rating valuation is to determine the rent that would be payable for the subject property in accordance with the statutory definition. He submitted that it has to be assumed that the property is owned by a hypothetical landlord who wishes to let it and that there is a hypothetical tenant who is willing to pay a rent in order to occupy it. In this case he argued that the valuation of the property with a rateable value of £28,250 was not unreasonable based on the evidence provided. He therefore sought dismissal of the appeal.

13 The appellant argued that the appeal property was occupied as a social club and he believed the RV should be reduced in line with another social club in the locality, this was known as Stanmore Institute Club, 25 The Broadway, Stanmore HA7 4DA and had an RV of £5,800. He submitted that the Valuation Officer had valued the appeal property based on 'what it could be' not 'what it is licensed to be'. He referred to the authority of *Regent Lion Properties Ltd v Westminster City Council* [1990] EWCA, a case regarding rating of unoccupied property/planning permission along with paragraphs 2(a) and 2(b) of Schedule 1 and section 20 2(a) of the General Rate Act 1967, to support his contention that the appeal property was only licensed for use as a social club and could not legally be used as an office. Mr Levene asked the panel to reduce the RV in line with the Stanmore Institute Club.

14 The appellant submitted that the previous occupiers had also used the appeal property as a social club but had agreed the lease on an upwards only office rent which the appellant had inherited when he took occupation of the property, he submitted that the rent could never go down in value. He argued that as a social club the rent of the property at £28,250 would be unachievable.

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, provides that:

> 2(1) 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;
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> (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 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).

17 The material day (the date by which physical factors have to be taken into account as set out in Schedule 6 to the Local Government Finance 1988) 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, as this was a compiled list appeal, the material day is 1 April 2017. One of the factors to be given consideration under Schedule 6 para 2(7), was the mode or category of occupation of the subject property.

18 The description of the appeal property had been amended to 'Club and Premises' to reflect the use to which it was put at the material day. However, the panel accepted that the description ascribed to a property was not determinative of the value to be applied in its assessment.

19 The panel was aware that as outlined in the Lands Tribunal and Court of Appeal decisions in the *Williams* cases, there were two strands to the *rebus sic stantibus* or reality principle, namely, the use to which a property was put, in effect, its mode or category of occupation, and its physical state at the material day. It noted that only minor alterations should be allowed for, on the occasion of its hypothetical letting, furthermore the cost of alterations was not a factor.

20 In this case no evidence had been provided by the appellant to show that there had been any changes to the physical state of the appeal property at the material day, or the extent of any alterations. It therefore concluded that the property would be returned to office use with only minor alterations.

21 The appellant had referred to *Regent Lion Properties Ltd v Westminster City Council* [1990] EWCA, a case regarding planning permission/rating of unoccupied property along with paragraphs 2(a) and 2(b) of Schedule 1 and section 20 2(a) of the General Rate Act 1967, and he contended that the property was only licensed for use as a social club and could not legally be used for any other purpose. However, the panel was aware that it had to base its decision on the relevant legislation and case law, and it did not find this evidence useful.

22 In accordance with the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, the starting point for determining the RV was the actual rent. In this case, the appellant had argued that the appeal property's rent should not be the deciding factor as it was arguable whether another occupier, in the same mode or category of occupation, would pay this level of rent for a social club in the locality. However, the panel was aware that in the case *Scottish & Newcastle Retail & Williams* the Lands Tribunal found that rents from other mode or categories could be used to value a hereditament where it was clear the evidence points to a correct valuation of the hereditament.

23 The appellant had referred to one comparable property to support his argument that the appeal property's RV should be reduced to £7,438, Stanmore Institute Club, 25 The Broadway, Stanmore HA7 4DA, but had provided no further details about the property to support his case. The panel noted that the Valuation Officer had provided a photograph of this comparator which showed it to be an older property, the inside of which appeared to be akin to a church hall. Mr Leven had stated in his oral submission that this club did not have an alcohol licence. Mr Ogbesoyen confirmed that this property had an RV of £5,800 and had

been valued in line with scout halls and village halls. Unfortunately for Mr Levene, he had not compared like with like.

24 The panel found the evidence provided by the Valuation Officer to be the more compelling. He had referred to several rental agreements made on the appeal property, in particular the panel found the rental agreement for the appeal property of £30,240 effective from 23 December 2015 to be reliable evidence and it attached weight to it.

25 The Valuation Officer had also referred to several comparable properties which he submitted supported his case. In particular, the panel noted that 2nd Floor Compton House, which is an office and premises, the rent analysed to £188/m^2 with a unit value of £135/m^2 and supported the valuation of the subject property. The basket of evidence of other similar properties also supported the valuation of the appeal property.

26 After due consideration, the panel decided that the appeal property should be valued in accordance with its rent and the assessments of other office properties in the locality. The property was in a different mode or category of occupation at the material day, but there was no evidence to suggest to the panel that to facilitate office use would require anything more than minor alterations.

27 In appeals of this nature the burden of proof is with the appellant to show that the appeal property's RV is unreasonable. After full consideration of the basket of evidence before it, the relevant legislation and case law, the panel found that the appellant had not discharged the evidential burden of proof and, therefore, had not persuaded the panel that the RV should be reduced. In light of this the appeal was dismissed.

Date: 16 December 2022

Appeal Number: CHG100697625

Appeal Rights: 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.