THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; Local Government Finance Act 1988; Mode or category; Williams (VO) v Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd [2001] EWCA Civ 185; Appeal dismissed.

RE: The Salusbury, 50 – 52 Salusbury Road, London NW6 6NN

APPEAL NUMBER: CHG100734486

BETWEEN:	Mr Robert Claassen	Appellant
	and	
	Mr Andrew Ricketts (Valuation Officer)	Respondent

BEFORE:	Mrs Farhana Rahman-Cook	(Chair and Senior Member)
	Mrs Maxine Cole	(Senior Member)

CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 2:	30 June 2023	
PARTIES PRESENT:	Mr Paul Tribe of Conneely Tribe Ltd	Appellant's representative
	Mr Rajnish Das	Respondent's representative

Summary of decision

1. Appeal dismissed. The Rateable Value (RV) of the appeal property was confirmed as £125,000 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the non-domestic rates payer of the appeal property at The Salusbury, 50 – 52 Salusbury Road, London NW6 6NN.

3. The appeal property was a ground floor Public House and premises and had an RV of £125,000.

4. Through the Check, Challenge, Appeal (CCA) process the appellant's representative proposed that the property be valued as a Restaurant Bar using a retail zoned valuation instead of as a public house with reference to the fair maintainable trade.

5. He proposed a zone A rate of £800/m^2 and an end allowance of 5% for it being a double unit with poor communication between the two parts.

6. The challenge was completed 20 September 2022 and the valuation officer (VO) determined that the proposal was not well-founded. The appellant appealed to the Valuation Tribunal.

7. The appeal property was actually two properties where the dividing wall to the rear had been removed. Each of the two properties was separately owned and on a separate lease with its own rent, terms and conditions.

8. Mr Paul Tribe appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. He 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.

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

10. This is not intended to be an exhaustive record of the proceedings. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

11. The RV of the appeal property.

Evidence and submissions

12. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.

13. The appellant's representative had submitted three restaurants located on the same road as the appeal property as comparable and proposed that the appeal property be valued in the same way.

Decision and reasons

14. The panel was aware that, in respect of an appeal against an entry in the 2017 rating list, the material day was 1 April 2017 and the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015.

15. The panel referred to the Local Government Finance Act 1988 Schedule 6 in respect of certain matters that are to be taken as they are assumed to be on the material day as set out in para 2(7):

    (a) matters affecting the physical state or physical enjoyment of the hereditament,

    (b) the mode or category of occupation of the hereditament,

16. The panel was aware that when assessing the RV of any property the property must be assumed to be vacant and to let for a use within the same mode or category of occupation as the actual use, for example a shop must be valued vacant and to let as a shop but not any particular kind of shop.

17. The panel made reference to the Court of Appeal case of *Williams (VO) v. Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd* [2001] EWCA Civ 185 where the application of these principles was considered.

18. The panel referred to the first rule of Rebus sic Stantibus in respect of the physical state of a property that had to be regarded as at the material day. The panel was not presented with any evidence in respect of any major physical changes to the appeal property that had taken place and therefore found that there had been no change of use.

19. The panel then referred to the second limb of Rebus sic Stantibus in that a property could only be occupied for a purpose within the same mode or category of purpose as that for which it was occupied on the material day. The panel therefore looked at the appeal property's actual use on the material day.

20. The panel noted the following:

    - Planning documents state that the property was a public house and its licence was a pub licence
    - It has been valued as a public house since 2001
    - It was marketed as a pub and the panel made reference to a photograph of the outside of the pub stating "Pub and Dining Room The Salusbury"
    - The owner had referred to the appeal property as a pub on google reviews
    - For the financial years 2012/13, 2013/14 and 2014/15 the appeal property trade was 70% wet goods to 30% dry goods. It offered a large range of alcoholic drinks including 13 draft beers.

21. None of these facts or statements were disputed by the appellants' representative and the panel found that they were clearly statements of fact that supported that the appeal property was indeed a public house.

22. The appellants' representative had also stated that the business now caters for more food sales and most of the space in the building is given over to food. Further, that whilst his client calls it a pub it was more akin to a restaurant. He had also stated that the VO's own rating manual allows for such premises to be valued on a retail zoned approach.

23. However, the panel was not presented with any evidence in respect of the appellant's representatives' statements and therefore could only attach little weight to that evidence.

24. The appellants' representative had presented three properties as comparable to the appeal property that were valued on a retail zoned approach. They were all in the immediate vicinity of the appeal property:

    Mr Fish, a fish and chip shop.
    Bob's café
    Alice House

25. The panel noted that they were all entered on the non-domestic rating list as "Restaurant and premises" however, the panel found that it was clear from the submitted photographs that Bob's café, signed as an "All day neighbourhood café and restaurant" and Mr Fish were not comparable to the appeal property.

26. The panel noted some similarities between Alice House and the appeal property but did not find that this altered their decision that the appeal property was a public house. No evidence was presented to the panel, say in respect of the wet and dry trading turnover of Alice House, that may have suggested otherwise.

27. The panel found that the appellants' contention for a 5% end allowance for poor communication between the two separate parts of the appeal property was not evidenced and accepted the respondent representatives' statement that any such allowance is suitably reflected in the fair maintainable trade and therefore not appropriate as a separate item.

28. In cases of this nature the onus is on the appellant to prove that the valuation of the appeal property was excessive and offer evidence supporting such a contention. The panel found that such evidence had not been provided and confirmed an RV of £125,000 with effect from 1 April 2017.

29. The appeal was dismissed.

Date: 14 July 2023

Appeal numbers: CHG100734486

Rights of appeal

Any party who is aggrieved by the Tribunal's decision 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.