THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; Zone A price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: 88A Borough High Street, London SE1 1LL

APPEAL NUMBER: CHG100742044

BETWEEN:	The Whisky Experience Ltd (represented by Altus Group)	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mr Kevin Sutch (Presiding Senior Member)
Mrs A E Fielder (Senior Member)

CLERK: Ms S Hodgson

ON: 15 August 2023

REMOTE HEARING

APPEARANCES: Mr M Morrison for the appellant
Ms D Castle for the respondent

Summary of decision

1. Appeal allowed in part. The panel determined a revised rateable value (RV) of £101,000 with effect from 23 January 2020, based upon a Zone A price of £1,500 per square metre (psm).

Introduction

2. This is a 2017 rating list appeal. 88A Borough High Street, London SE1 1LL (the 'appeal property') had been entered in the 2017 rating list as 'shop and premises' at a RV of £117,000 with effect from 23 January 2020.

3. The challenge proposal was submitted by Altus Group on behalf of The Whisky Experience Ltd and was received by the Valuation Officer on 28 October 2021. It had been made on the grounds that the RV shown in the rating list was inaccurate. A revised RV of £67,500 was proposed with effect from 23 January 2020.

4. The Valuation Officer issued a challenge case decision notice on 10 January 2023 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

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 22 March 2023.

6. The appeal property is a ground and basement floor retail unit with a glass frontage facing Borough High Street. The present valuation of £117,000 RV is based upon a total area of 207.62m^2, at a Zone A price of £1,750 psm.

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

Issue

8. The issue in dispute was the Zone A price per m^2 to be adopted in the valuation.

Evidence and submissions

9. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, VO's challenge case decision notice, and appellant's challenge submission.

10. Mr Morrison 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 contingency fee. 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.

11. 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).

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

Decision and reasons

13. In arriving at a decision, the panel is 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—

    (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.

14. 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).

15. 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 23 January 2020.
16. The appeal property was subject to a 20-year lease with effect from 23 July 2019 at £100,000 per annum with 1 year rent free and a review after 5 years. Mr Morrison adjusted the rent to £82,900 per annum which allowed for the rent-free period and a 3-month fit out. He accepted that the rent was four years post-AVD, however he contended it still held some weight as it was a new, open market letting, and the adjusted rent was below the current RV.

17. Evidence of four additional rents from the locality had been put forward by the VO. The neighbouring property at 92-94 Borough High Street was also a ground floor and basement unit. The rent was a rent review from December 2015 for £141,000 per annum, which the VO had analysed to £1,796 psm for Zone A.

18. Mr Morrison argued that the use of 92-94 Borough High Street was A2 (financial) compared to the appeal property which was A1 (shops) and was therefore not comparable. He contended that while A1 use was permitted to change to A2 use with planning permission, the appeal property, in his opinion, did not have the characteristics to be let on the open market with A2 use. It was his view that 92-94 Borough High Street would have been let at a premium due to its character and use.

19. Ms Castle argued that 92-94 Borough High Street was the best evidence as the rent was agreed close to the AVD. In regard to the A1 or A2 use, she stated that the unadjusted rates were similar for both in the locality.

20. The three other rents put forward were agreed in 2012 and 2017 and the VO had analysed them between £593 psm and £1,158 psm. These included a new letting in 2012 with the rent review in 2017 on the same property. The panel found these rents were not as relevant as the rent of 92-94 Borough High Street due to its proximity to the AVD.

21. The panel heard from the parties that 92-94 Borough High Street was located on a corner and had a double glass frontage. Mr Morrison argued it was in a more premium position than the appeal property.

22. The panel reviewed the basket of evidence available to it. There were a number of properties put forward from Borough High Street as tone comparables, and including the rental evidence, the range of values in the rating list ranged from £450 psm to £1,750 psm. The panel noted that Borough High Street was quite long and therefore some of the comparable properties were located some distance from the appeal property.

23. It was the panel's opinion that the best evidence was the rent on the neighbouring property, 92-94 Borough High Street, as the rent was close to the AVD, it was in the immediate locality, and the property was located over the ground and basement floors as was the appeal property.

24. The panel was not persuaded by the argument based on the A1 or A2 use of the property, however it was of the view that with the double frontage, the unit was superior to the appeal property, and this would have been accounted for in the rent that was agreed.

25. The panel noted that of all the evidence put forward, only the appeal property and 92-94 Borough High Street were valued at £1,750 psm, and that the VO had analysed the rent of the latter to £1,796 psm and the rent of the appeal property to £1,500. Whilst the panel acknowledged that the rent on the appeal property was too far removed from the AVD to carry weight, it was of the opinion that the value of the appeal property was less than 92-94 Borough High Street at the AVD.

26. In further consideration of the Zone A prices adopted for properties in the area, the panel determined that a revised Zone A price of £1,500 psm was fair and reasonable.

27. The appeal was therefore allowed in part and a revised RV of £101,000 determined as follows:

Description	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Retail Zone A	26.61	1,500.00	39,915
Retail Zone B	22.13	750.00	16,598
Remaining retail zone	28.19	375.00	10,571
Remaining retail zone	82.34	356.25	29,334
Store	48.35	75.00	3,626
Air conditioning system	159.00	7.00	1,113
		Total	**101,157**

Rounded down to £101,000.

Order

28. 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 alter the entry in the rating list to rateable value £101,000 with effect from 23 January 2020.

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

30. A refund of the paid fee will now be arranged provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 13 September 2023

Appeal number: CHG100742044

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.