THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; shop and premises; Zone A price in dispute; rental evidence; comparable assessments; break in parade; appeal allowed in part.

RE: Bst & Gnd Fl, 233 Kensington High Street, London W8 6SF

APPEAL NUMBER: CHG100774379

BETWEEN: Banham Patent Locks Limited — Appellant

and

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Mrs L Long (Presiding Senior Member)
Mr W Read (Senior Member)

CLERK: Ms S Hodgson

ON: 6 December 2023

REMOTE HEARING

APPEARANCES: Mr S Carter for the appellant
Mr M Parvin expert witness for the appellant
Mr C Cates for the respondent

Summary of decision

1. Appeal allowed in part. The panel determined a revised rateable value (RV) of £96,500 with effect from 1 April 2017, based upon an unadjusted base rate of £1,200 in terms of Zone A (ITZA).

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £104,000 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017.

The challenge stage was completed on 24 April 2023. The challenge sought a reduction in RV to £88,500 by way of a reduction in the unadjusted base rate to £1,100 ITZA.

3. The appeal hereditament was a shop and premises which was located in Kensington, London. It was one of two properties which were located either side of a church entrance way and it measured 179.11m^2 over the ground and basement levels and was valued using an unadjusted base rate of £1,300 ITZA.

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

Issue

5. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

6. 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.

7. Mr Carter for the appellant and Mr Cates for the respondent were both acting as advocate only.

8. Mr Parvin appeared on behalf of the appellant as 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.

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).

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

Decision and reasons

11. 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.

12. 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).

13. 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.

14. The panel heard from Mr Parvin and Mr Cates that the rateable values fall as the shops get further away from the shopping area, running from east to west. Evidence was produced to show at the top end of the street and closest to the Kensington High Street underground station, the Zone A rate was £1,650 psm and this reduced to £1,100 psm where the parade ended at 237 Kensington High Street.

15. Mr Cates stated that there were four shops on this particular parade and that three, including the subject, were valued at £1,300 ITZA. He referred to a new letting at 227 Kensington High Street which was effective from 25 December 2014 for a term of 10 years with a 5-year rent review. This was analysed to £1,340 psm.

16. During the hearing, the parties agreed to introduce a Google Streetview image to show the parade as a whole. This showed 223 Kensington High Street which was valued at £1,650 ITZA and was located on the other side of Abingdon Road and closer to the underground station. Number 225 was on the opposite corner of Abingdon Road. It was a new letting with a passing rent of £100,000 per annum with effect from October 2017 and was valued at £1,300 ITZA. Number 227, as above, was valued at £1,300 ITZA. There was then a Nando's which incorporated 1-2 units and then the subject property at number 233, valued at £1,300 ITZA. An open walkway entrance to the church was between the subject property and number 237, which was valued at £1,300 ITZA.

17. Mr Cates stated that the values reduced where there were breaks in parades. In this situation it was his argument that Abingdon Road was a break and values reduced from £1,650 to £1,300. He considered the next break to be the church entranceway where values reduced from £1,300 to £1,000.

18. The panel heard from Mr Parvin that 225 was a superior unit with a return frontage and that 227 had retail space in the basement and on the ground floor which made it a more attractive unit. The subject property and 237 had retail space on the ground floor and storage in the basement.

19. The panel considered all of the evidence before it, and while it accepted that the rent on 227 had been agreed close to the AVD, it did not consider the unit to be truly comparable to the subject property. It was the panel's opinion that 237 was the most comparable to the subject property with the same layout and both on either side of the church entrance, however the panel accepted that the entrance was a clear break in the parade.

20. When reviewing the image from Google Streetview, the panel was of the view that the Nando's, flanked on either side by an entrance to a hotel and a fire exit door for offices above, also acted as a natural break in the parade. On this basis, the panel found that the value of the subject property should be lower than that of the units at 225 and 227 Kensington High Street which the panel found to have advantages that the subject property did not. Due to the break of the church entranceway, the panel found that the value of the subject property should not be reduced to £1,100 ITZA.

21. In conclusion, the panel found that the RV of the subject property should be reduced to £96,500 by way of a Zone A rate of £1,200 psm.

Description	**Area (m^2)**	**Price (psm)**	**Total**
Retail Zone A	55.36	£1,200	£66,432
Retail Zone B	41.46	£600	£24,876
Internal storage	82.29	£60	£4,937
Total			**£96,245**
Air conditioning system	96.82	£7.00	£678
TOTAL			**£96,923**

22. The appeal was allowed in part.

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

Order

24. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of Bst & Gnd Flr, 233 Kensington High Street, London W8 6SF within two weeks, to £96,500 RV with effect from 1 April 2017.

Date: 4 January 2024

Appeal number: CHG100774379

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.