VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating; Betting shop and premises; tone of value of Zone A; comparable assessments; appeal allowed in part.

APPEAL NUMBER: CHG100781964

RE: Betfred, 44 Towngate, Keighley, West Yorkshire BD21 3QE
(the "appeal property")

BETWEEN:	Done Brothers (Cash Betting) Ltd	Appellant
	and	
	(Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Tuesday 20 August 2024

BEFORE: Mr SP Wood (Presiding Senior Member)
Mr A Ramsay (Senior Member)

CLERK: Miss K Hendry IRRV(Tech)

APPEARANCES: Mr J Hart of Hart Commercial Surveyors Ltd (Appellant's Representative)
Mr H Hussain (Respondent's Representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The panel confirmed the rateable value (RV) £37,250 with effect from 1 April 2017.

Introduction

3. This appeal has been brought in respect of the following: Betfred, 44 Towngate, Keighley, West Yorkshire BD21 3QE which was entered in the 2017 rating list as "Betting shop and premises" at rateable value £39,250 effective from 1 April 2017.

4. The challenge proposal was submitted by Hart Commercial Surveyors Ltd on behalf of Done Brothers (Cash Betting) Limited and was received by the Valuation Officer (VO) on 4 March 2022. It had been made on the grounds that the RV shown in the rating list was inaccurate. A revised RV of £34,000 was proposed with effect from 1 April seeking;

   a) A reduction in the zone A price from £375psm to £350psm
   b) A 5% end allow to be applied for quantum being the equivalent size of a double unit.

5. The VO issued a challenge case decision notice on 12 April 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.

6. 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 lodged by the appellant's representative and received by the Tribunal on 7 August 2023.

7. Prior to the hearing the VO emailed to advise that the 5% allowance for quantum had been conceded and he sought to defend a revised RV of £37,250. This was still based on a zone A rate of £375psm.

8. In response, Mr Hart amended his valuation and sought a revised RV of £33,250 based on a zone A price of £335psm.

9. Mr Hart 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), his declaration of truth included a statement that he was not instructed under any conditional fee arrangement. 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.

10. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

11. The issue for the panel to determine was the correct rateable value to be attributed to the appeal property in the 2017 Rating List.

12. The appeal property is a retail property located in the Airedale Shopping Centre in Keighley town centre. The centre comprises of 72 units with adjacent multi-storey car park of 460 spaces. It was located next to the bus station.

Relevant Law

13. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which 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 1 April 2017.

Discussion

16. Mr Hart originally sought for the zone A rate for the appeal property to be reduced from £375psm to £350psm. However, based on some late key rental evidence he was now seeking a reduction to £335psm.

17. The appeal property was a new letting held on a 10 year lease from the 28 April 2016 at a rent of £45,000 per annum (pa). There was also a tenants only break clause and a rent free period of 18 months in years one and two. The rent free periods were granted as a rental incentive and not in lieu of any works. As a result of the break clause that was triggered a new five year lease was agreed from the 22 April 2022 with a rent of £19,000 with six months rent free. Mr Hart stated that this analysed to £292psm which included the return frontage at 2.5%, including the 5% end allowance adjusts to £306psm.

18. Mr Hart stated that the best comparable evidence was of other shops located in Towngate and not on Bow Street as the VO had referred to. 52-56 Towngate had a rent of £57,500pa which analysed to £374psm on 1 October 2014. 70-72 Towngate had a rent of £45,000pa which was a lease renewal analysing to £378psm on 24 October 2014. Mr Hart considered the best evidence to be 60-62 Towngate was a lease renewal with a rent reduction from £47,750pa to £30,500pa at the 25 March 2015. It had a tenant only break in March 2018 with six months rent free. This analysed to £332psm. Finally, he referred to rental evidence on the appeal property, which analysed to £306psm.

19. In response Mr Hussain stated that in his opinion, Bow Street was similar to Towngate and had been valued on the same value of £375psm.

20. Mr Hart stated that there was some slight different in the parties valuations and how they had been adjusted to cover the rent free periods. He stated that the VO would ignore three months due to fit out rather than count the full period as a rental incentive. However, in his opinion he stated that the period for the actual fit out should be applied, so for 44 Towngate,

the fit out was only six weeks. This meant that he had analysed the appeal property to £306psm compared to the VO that analysed at £316psm.

21. Mr Hart in his opinion believed that the rental trend demonstrated that rents were declining, and that a reduction to £335psm did not look unreasonable.

22. The VO had argued that there had been no other challenges on the Towngate parade meaning that there was an established tone as in the case of *O'Brien v Harwood (VO) LT [2003] RA 244*. In response Mr Hart referred to *Stock Auto Breakers v Sykes (VO) (2020) UKUT 52 (LC)* in which the judge stated "There is no time pressure on a ratepayer to check and challenge and assessment, and the importance of making early proposals in previous lists, and thus the earlier establishment of a tone, does not exist."

23. In support of £375psm, Mr Hussain argued that little weight should be given to the rental evidence. He stated that the decision notice from the challenge was issued on 12 April 2023, which was after the 2017 rating list had closed. As the rating list had ended, the more pertinent evidence was to consider comparable assessments evidence of either challenged or unchallenged assessments to determine if the tone had been set. Mr Hussain referred to 15 comparable assessments which were situated on Towngate and Bow Street, all of which are valued at an unadjusted rate of £375psm and had not been challenged prior to the closing of the 2017 rating list. Mr Hart's best comparable evidence of 60-62 Towngate which had analysed at £332psm had been valued at £375psm.

24. Having regard to all the evidence before it, the panel determined that the rate of £375psm was fair. The panel applied little weight to the new letting of the appeal property which occurred in April 2016 as this was too far removed from the AVD. Whilst 60-62 Towngate did have a lease renewal rent on 25 March 2015 which analysed to £332psm, the panel considered it was important to have regard to the basket of evidence rather than just one piece of evidence alone. The two 2014 rents of 52-56 and 70-72 Towngate supported the value of £375psm. Looking at the comparable properties provided by the VO, 15 properties which were located on both Bow Street and Towngate and all had been valued at £375psm, including 60-62 Towngate and there had been no challenges.

25. Therefore, based on the evidence before it, the panel held that £375psm was not unreasonable.

Disposal

26. In view of the above findings, as the VO had conceded on the 5% allowance, the panel confirmed the revised RV from £39,250 to £37,250. The appeal was allowed in part.

27. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £37,250 RV with effect from 1 April 2017. The respondent must comply with this order within two weeks of its making.

28. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date issued to parties: 16 September 2024

Right of further appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.
