THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Amusement Arcade and Premises; Alteration to the Rateable Value; Dispute of Tone; Appeal dismissed

RE: 147-157 Promenade, Blackpool FY1 5BE

APPEAL NUMBER: CHG100796010

BETWEEN:	Silcock Leisure Group Ltd	Appellant
	and	
	Ms Amanda Hitchings (Valuation Officer)	Respondent

PANEL: Miss L Moses, Presiding Senior Member
Mrs N Salh, Senior Member

CLERK: Ms R Muller

HEARING: Remote Hearing No. 1 on 12 May 2023

APPEARANCES: Mr R Batty, representative for the Appellant
Mr A Martland, representative for the Respondent

Summary of decision

1. Appeal was dismissed. No change was made to the Rateable Value (RV) of the subject property.

Introduction

2. Mr Batty was appearing on behalf of the Appellant in a dual role capacity as expert witness and advocate. As Mr Batty was appearing as expert witness, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

3. Mr Batty confirmed that he was instructed on a conditional fee basis. He also 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 his client's case.

4. 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.

5. Mr Martland, the representative for the Respondent also appeared in a dual role capacity as an expert witness as well as advocate.

6. This appeal had been brought in respect of 147-157 Promenade, Blackpool FY1 5BE (the subject property) which could be accessed from Foxhall Road. It was close to the junction with Chapel Street and the central pier. The subject property had originally been entered with an RV of £74,500 with effect from 1 April 2017. It was a two storey end terrace property in use as an amusement arcade. It had an area of 867.62 m² and was of steel frame construction with brick work to the side and rear elevations. The front elevation was mainly metal frame with metal cladding to the upper elevations. Originally, the subject property had been nine individual units before becoming a single unit.

7. A 2017 Rating List appeal had already been submitted and heard by a previous Tribunal panel at a hearing on 20 October 2021, where the issues determined by the panel consisted of:

   a. The inferior position of the appeal property compared with other properties north of Chapel Street.
   b. No natural light whatsoever on the first floor.
   c. Poor lighting in the centre of the ground floor.
   d. No car parking facilities.
   e. Non-use of the escalator on left hand side of building.
   f. Stanchions throughout the building which needed to be reflected in the valuation.
   g. Allowance for triple unit needed to be reflected in the valuation.
   h. The price per square metre in the valuation should be reduced from £115/m2 to £90/m2 to reflect the property's position.

8. The panel dismissed the appeal on all counts. However, during the hearing it was found that part of the subject property had been valued incorrectly on a zone basis. Therefore, the Valuation Officer (VO) amended this error, and the subject property was re-valued using the overall method. However, this had resulted in an increase in RV to £83,500 with an effective date of 29 November 2021.

9. The Appellant's Challenge to the VO was made on 14 April 2022 against the Notice of Alteration. The appeal to this Tribunal was made on 28 October 2022.

10. 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 was 29 November 2021, the date the List had been amended.

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

Issue

12. The correct assessment for the appeal property, with effect from 29 November 2021.

Evidence and submissions

13. The panel had been provided with a bundle of evidence, which comprised the Challenge submission, VO Decision Notice with supporting documents; and the agents submission.

14. Mr Martland stated that the comparable property quoted by Mr Batty of 125-141 Promenade, Blackpool FY1 5BE was twice the size than the subject property at 1,430.23 m² and that the lower base rate of £100 per m² was to reflect quantum. Therefore, he contended that this comparable property did not support a reduction in RV.

15. In support of his contention that the tone had been set, Mr Martland referred to the following rents that had been achieved around the AVD of 1 April 2015.

    I. 25-43 Promenade was a lease renewal from March 2015 at £200,000 per annum. This property had an actual area of 2,031.40 m². The adopted value for this property was £140 per m².

    II. 181-191 Promenade was a new letting from September 2013 at £40,000 per annum. This property had an actual area of 241.08 m². The adopted value was £156 per m².

    III. 67-73 Promenade was a new letting from January 2013 at £120,000 per annum under a three-year stepped rent. This property had an actual area of 1,224.06 m². The adopted value on this property was £150 per m².

16. Mr. Batty stated that the assessment of the subject property was excessive. The current unit price per metre was £115, which he contended was too high and requested a reduction to £100 per m². This was based on the neighbouring property of 125-141 Promenade, Blackpool FY1 5BE where the price per metre had been agreed at £110. Mr Batty stated that this property was located next door to the subject property.

17. Mr Batty stated that the subject property and the comparable property of 125-141 Promenade were within the same scheme of 385305. He argued that there was no discussions within the scheme about quantum and that the tone was set due to location. Therefore, he was of the opinion that the subject property should be valued the same as 125-141 Promenade at £100 per m².

Decision and reasons

18. The panel turned to the definition of rateable value as contained in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988, as amended by The Rating Valuation Act 1999, which in brief, explained that the rateable assessment of a property should be equal to the rent that the property would be expected to achieve on the open market as at the antecedent valuation date, which for the 2017 Rating List was 1 April 2015. It would also assume that the hereditament would be in a reasonable state of repair, excluding from this any repairs that a reasonable landlord would consider uneconomic and that the tenant would undertake to pay all usual tenant's rates and taxes, to bear the cost of the repairs and insurance.

19. The panel noted that although the RV had been increased as a result of the subject property having been assessed totally on an overall basis, the base rate of £115 per m² for the subject property was not considered to be excessive when compared to the rental figures of the comparable properties provide by the VO.

20. However, to confirm its decision, the panel considered the comparable property provided by Mr Batty of 125-141 Promenade. This property was located next door to the subject property and had a lower base rate of £100 per m². The panel noted that Mr Martland stated that this was due to quantum, whilst Mr Batty stated that there was not quantum allowances discussed within the scheme this comparable or the subject property had been placed in.

21. The panel was disappointed that the scheme had not been provided within the evidence. It was noted that Mr Batty had the scheme to hand, therefore, the panel asked Mr Batty to forward a copy of the scheme to the clerk so it could view the document which would assist it when making its decision.

22. The panel referred to the first page:

    Prices in this Scheme

    a. *Properties in this scheme have a base rate price range from £20.00 to £156.000 per square metre or unit.*

    b. *The VOA may adjust a base rate to individual properties in this scheme. This is the per square metre for the main floor area in the property.*

    c. *The VOA may adjust the base rate to take into account what an individual property is like.*

23. The panel noted that although the scheme did not mention specifically any allowances that dealt with quantum, it did at (c) above mention that the VO may adjust the base rate dependent upon the circumstances of the property. The panel agreed with Mr Martland that the VO had taken into account the size of 125-141 Promenade and had adjusted the base rate to allow for its size, whether it was considered quantum or not.

24. The panel was of the opinion that Mr Batty had not proven his case that the base rate applied to the subject property was excessive and therefore, dismissed the appeal.

Date: 26 May 2023

Appeal number: CHG100796010

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.