THE VALUATION TRIBUNAL FOR ENGLAND

*Non-Domestic Rating Appeal; Williams (VO)* v *Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd [1993] RA 480; Site office; Appeal dismissed.*

RE: Unit 1 Athene Place, 66 Shoe Lane, London EC4A 3BQ

APPEAL NUMBER: CHG100800498

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| BETWEEN: | Aztec Financial Services | Appellant |
| | and | |
| | Mr A Ricketts (Valuation Officer) | Respondent |

PANEL: Mrs N Crawshaw (Presiding Senior Member)
Mrs T Watson (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 3 on 15 November 2023

APPEARANCES: Mr T Warren from Colliers (Appellant's representative)
Mr W Mak (Valuation Officer's representative)

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## Summary of decision


1. Appeal was dismissed. The panel concluded that there should be no change to the rateable value.


## Introduction

2. The appellant had made a challenge against the rateable value on the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 25 April 2023. The grounds of the proposal was that there had been a material change in circumstances. The reasons for the material change was that Mr Warren considered that the appeal property should have a nil rateable value effective from 10 January 2020 as it should be valued as a site office, which have no value.

3. Mr Warren declared that he was representing the appellant on this appeal as both advocate and expert witness. He was instructed under a conditional fee arrangement. He confirmed 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.

4. The panel had accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

5. The panel hearing the evidence will thus consider the "expert" evidence and assess what weight, if any, it shall give to it in the context of the matters in issue before it.

6. This document is not and does not purport to be a full verbatim record of proceedings.

**Issue**

7. The issue for determination is the rateable value of the appeal property. The appellant sought a nil rateable value as he considered that it was a site office which had no value.

**Evidence and submissions**

8. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included: his statement of case, a copy of the challenge proposal, the Valuation Office Agency's decision notice, copies of correspondence that had passed between the parties, photographs of the appeal property, the programme of building works for the refurbishment and his revised valuation.

**Decision and reasons**

9. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

10. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended) (LGFA 1988):

"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".

11. The appeal property had previously been a restaurant but the lease ended on 9 January 2020. It comprised accommodation on the basement and ground floor levels. When the lease for the restaurant ended, the appeal property was subsequently used by the contractor as a site office for the refurbishment of the floors above. The refurbishment works started on 18 March 2019, which was at a time when the accommodation was still being used as a restaurant.

12. During questioning, Mr Warren confirmed that no overt act had been done to prevent the appeal property being used as a restaurant and by his own admission, which was supported by the photographs provided, all that had been done was to install plastic sheeting in the restaurant area to form the site office.

13. He also confirmed that when the refurbishment works were completed, the appeal property would be relet.

14. Mr Warren argued that by not valuing the appeal property as a site office, this offended the "*Rebus Sic Stantibus*" principle. In effect, the appeal property had to be valued as it stood on the material date, which was a site office. The Latin expression for applying this principle of reality was known in rating circles as *rebus sic stantibus.* There were two strands to this. The first rule being that the physical state of the property had to be regarded as at the material day 20 April 2022. The only alterations permitted were minor alterations of a non-structural character. The second rule being that the appeal property had to be valued vacant and to let, having regard to its mode or category of use as at the material date and it was the value of that use to the occupier that had to be determined. The leading authority was *Scottish & Newcastle Retails v Williams (VO)* [2001] EWCA Civ 185.

15. He submitted that as the appeal property was a site office, it had no value as a building company would not charge a contractor rent, as that would then increase the cost of the building works for the contractor. He was therefore seeking a nil rateable value.

16. The VO had agreed to change the mode and category to a site office effective from 10 January 2020. However, there had not been any physical changes to the appeal property and Mr Mak contended that the appeal property would still attract the value of a restaurant. It could still be let as a restaurant and therefore it should still be valued in accordance with the tone of value for restaurants within the locality; however, the VO provided no evidence of value.

17. The panel acknowledged that the VO had agreed that as at the material date, of 20 April 2022, the mode or category of occupation of the appeal property had changed from a restaurant to that of a site office.

18. The panel was aware that the property had to be valued ‘vacant and to let’ and it agreed with the VO that the change in mode or category of occupation would not automatically result in a change in value. The photographs provided by the appellant showed that the appeal property was fitted out as a restaurant and therefore the panel concluded that it should be valued as a restaurant. In effect, it would only require the plastic sheeting and the office equipment to be removed from the appeal property for it to be used as a restaurant.

19. Mr Warren had argued that a site office had no value and to support this argument he submitted that the assessment in relation to 72 Duke Street was deleted from the rating list whilst it was being used as a site office. However, the panel applied less weight to this argument as the VO had contended that the entire property was also undergoing a scheme of works and 72 Duke Street had not been capable of beneficial occupation whilst the works were ongoing. This differed from the appeal property’s case, which was not part of the redevelopment scheme.

20. Mr Warren also referred to 12-14 Marsh Wall which was similar in size to the appeal property. This property when used as a site office had been given a value of £85.50/m$^2$. Therefore, he argued that if the panel did not consider the appeal property should have a nil value, it should be valued in line with 12-14 Marsh Wall. However, the panel applied less weight to this property as it noted that the entire building was undergoing building works and the contractor had designated a part of the area as a site office. The panel therefore considered that 12-14 Marsh Wall was not comparable to the appeal property as the appeal property was a fully fitted restaurant and separate from the building works. This was supported by the fact that the building works had started before the restaurant had been used as a site office. Furthermore, in the appeal property’s case, the site office was not undergoing a scheme of works.

21. Given the above, whilst it was accepted that as at the material date, the appeal property’s mode or category of occupation had changed to that of a site office, the panel was not convinced that it should attract a nil value as requested by Mr Warren. The panel drew differences from the comparable properties presented by Mr Warren to that of the appeal property. On the evidence presented, the panel was satisfied that vacant and to let the appeal property could be relet as a restaurant as no overt act or structural alterations had been undertaken to prevent such use. As such, the panel concluded that the unadjusted rate of £400/m² and the resultant rateable value of £92,500 was not excessive. The panel dismissed the appeal.

**Date:** 28 November 2023

**Appeal number:** CHG100800498

**Right of further 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.