VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; nightclub and premises; nightclub no longer in use; mode or category; hereditament test; panel found the hereditament was capable of beneficial occupation; were repairs economic to undertake: appeal dismissed.

APPEAL NUMBER: CHG100821140

RE: Moka Nightclub,Station Way,Crawley,RH10 1JA
(the "subject property")

BETWEEN: Rainier Developments (Crawley) Limited — Appellant

and

(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 30 October 2024

BEFORE: Mrs AE Fielder, Presiding Senior Member
Ms SE Gargaro, Senior Member

CLERK: Ms N Shepherd IRRV (Hons)

APPEARANCES: Mr R Proctor, on behalf of the appellant
Mr E Genchev, on behalf of the Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed the Rateable Value (RV) of £137,000 of the subject property with effect from 4 May 2020.

Introduction

3. The appeal process began with a challenge made by the appellant's representative on 23 June 2022 in respect of the Valuation Officer's rating list entry of the subject property at £137,000 RV with effect from 1 April 2017. The appellant's representative proposed a revised assessment of £1 RV from 4 May 2020 on the grounds that there had been a material change in the physical state of the subject property from that date.

4. The respondent issued a challenge case decision notice on 29 June 2023, which found that the proposal was not well founded, and the current rating list entry was reasonable based on the information and evidence available. The appellant's representative appealed that decision to this Tribunal on 26 September 2023 on the grounds that the valuation for the subject hereditament remained unreasonable.

5. The subject property was a nightclub and premises located within Crawley town centre. It had a Gross Internal Area (GIA) of approximately 1,650m^2, over three storeys.

6. The material date was 22 April 2022. The effective date, if the appeal was successful, was 20 May 2020. The antecedent valuation date (AVD) was 1 April 2015.

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

Relevant Law

8. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (the "1988 Act") (as amended):

   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.

9. As the proposal was made on the grounds of a material change in the physical state or enjoyment of the hereditament and the mode and category of occupation, regard had to be made to paragraphs 2(6) and 2(7) of Schedule 6 to the 1988 Act;

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are—

(a) matters affecting the physical state or physical enjoyment of the hereditament,
(b) the mode or category of occupation of the hereditament,
(c) the quantity of minerals or other substances in or extracted from the hereditament,
(cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,
(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
(e) the use or occupation of other premises situated in the locality of the hereditament.

Discussion

10. In the case under consideration, Mr Proctor was seeking a reduction to £1RV on the basis that the subject property was not and could not be in use. The panel was aware of the four essential ingredients of rateable occupation derived from the court of appeal judgment, *John Lang & Son v Kingswood Assessment Committee* [1949] CA All ER 224. The four ingredients of rateable occupation are actual occupation, exclusive occupation, beneficial occupation, and the occupation must not be too transient. When referring to occupation, the hereditament only has to be capable of occupation and not necessarily physically occupied.

11. Mr Proctor argued that the four tests were not met as the appeal property was not capable of beneficial occupation. No issues or arguments were raised regarding anyone else being in rateable occupation but rather that the property was not in use.

12. The main points of contention were the existence of planning permission in respect of the site of the subject property to be redeveloped for residential purposes and that at the material date the subject property was not in a state of reasonable repair.

13. Mr Proctor argued that following being on the market as a development site that at the proposed effective date planning permission had then been granted. This planning consent had then subsequently affected the granting of a licence, meaning the subject property could not be used legally as a nightclub. Mr Proctor submitted that the subject property should be valued in accordance with the use in which it is being put, and, as the property could not be used, he requested nominal RV prior to its demolition or redevelopment.

14. Mr Genchev submitted that at the material date the planning permission had not been actioned by the commencement of any works, with it being confirmed by Mr Proctor that no works had begun until 1 April 2023. At the material date the planning consent was for use as a club and therefore for valuation purposes the hereditament remained a club, despite being unoccupied. In regard to the issue of the planning permission at the subject property Mr Genchev referred to the judgment of *Dawkins (VO) v Ash Brothers and Heaton Ltd* [1969] 2 AC 336, which differentiated between matters that were accidental to the hereditament, such as plans by the current owner and those that were essential to it, such as physical characteristics or statutory orders to be applied to the hereditament. Mr Genchev

contended that in this case the intention to demolish the subject property in the future was one that may have been different with another owner and was therefore irrelevant as the hypothetical owner needed to be considered.

15. Mr Genchev also referred the panel to the Lands Tribunal's judgment in *Schofield (VO) v RBNB* [2008] RA 121. In that case, the loss of a licence to sell alcohol was not deemed to be sufficient to alter the mode and category of the hereditament. He compared that to the current case and the loss of licence meaning the subject property could not be used as a nightclub. He further stated that the loss of licence was not because one could not be obtained but because one had not been reapplied for by the current owner.

16. Taking *Schofield (VO) v RBNB* and *Dawkins (VO) v Ash Brothers and Heaton Ltd* into consideration the panel found that the planning permission and loss of licence did not affect the mode or category of the subject property at the material date and that, as it stood at that time, it was a nightclub, albeit one that was unoccupied. Had there been commencement of works in preparation of the demolition then the outcome may have been different.

17. The panel then addressed the issue of reasonable repair. Within the statutory assumptions the relevant assumption in the subject appeal is part (b). Essentially, if it can be shown that the cost of the repairs are uneconomic to undertake, then a property is not assumed to be in a reasonable state of repair, and can be valued accordingly.

18. The statutory repair assumption had been the subject of a leading judgment in the case of *Newbigin (VO) v Monk* [2015] EWCA Civ 78, and more recently in *Jackson (VO) v Canary Wharf Limited* [2019] UKUT 136 (LC); both cases had been cited by Mr Genchev in support of the Valuation Officer's case. In *Newbigin v Monk*, the Supreme Court decided that the application of the repairing assumption was not appropriate for a building undergoing reconstruction, and which was consequently incapable of beneficial occupation.

19. In the subject appeal, the panel held that there was no evidence of a scheme of reconstruction or any ongoing significant refurbishment at the material day. Rather, the appeal property was in a state of disrepair, and therefore the issue for determination is whether the repairs were economic to undertake.

20. The panel had regard to interior photographs which had been submitted. It appeared that as at the material day, the bars were still in situ, as were the toilets. The panel next considered Mr Proctor's contention that the subject property was in a shell state and that a full refurbishment would need to be undertaken in order to make it capable of beneficial occupation. He stated that the subject property had been neglected and vandalised since it had become unoccupied and there had been a lack of investment and substantial damage there. He submitted that full costings had not been done, due to the site being redeveloped, but that he had used a bar fittings website and based upon this he estimated the cost of repairs to equate to over £1.4 million, which were uneconomic when compared with the current RV of £137,000.

21. Mr Genchev submitted that he did not dispute that the condition of the subject property was poor, due to years of neglect, however he considered it to be capable of beneficial occupation and not in a shell state. He contended that evidenced by the photographs provided much of the disrepair appeared to be in respect of the fixtures and fittings and that even had the property been occupied, due to wear and tear these things would need replacing over time. He submitted that whilst investment was clearly needed there had been no physical changes to the subject property evidenced by the bars remaining in situ. Mr Genchev also disputed the

accuracy of Mr Proctor’s estimation regarding the overall cost of repairs at the subject property submitting that the costs provided did not seem to be a properly researched or a calculated schedule of works.

22. The panel noted that no itemised details had been provided as to what the £1.4 million estimate for repair consisted of and there was no evidence to show whether this was a true representation of the amount required to put the appeal property into a state of reasonable repair. The panel was only required to consider repair to a standard expected for its age, character, locality and the type of tenant likely to occupy it. Furthermore, repair means fixing any parts of the property that are in disrepair and can include an element of renewal, but not improvement. As no evidence as to what the estimated costs comprised of had been provided, the panel was unable to distinguish within this figure as to what constituted repair and what constituted improvement.

23. The panel ultimately concluded that at the material day, there was no compelling evidence to support the contention that the repairs required were uneconomic, and therefore the appeal property was assumed to be in a state of reasonable repair, in accordance with Schedule 6 to the Local Government Finance Act 1988.

Disposal

24. In view of the above findings and conclusions, the panel dismissed the appeal and confirmed the RV of £137,000 with effect from 4 May 2020.

Date issued to parties: 29 November 2024

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.
