VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; should hereditament be described as shop and premises or as restaurant and premises; method of valuing; zoning method or overall method; appeal allowed

APPEAL NUMBER:	CHG100822536	
RE:	45-51 Clayton Street & 42 Newgate Street, Newcastle Upon Tyne, NE1 5PW (the “subject property”)	
BETWEEN:	BKUK Group Limited	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Wednesday 9 October 2024 at 12:45 pm	
BEFORE:	Mr A Sheth (Presiding Senior Member) Mrs AE Fielder (Senior Member)	
CLERK:	Mr A Jolly	
APPEARANCES:	Mr C O’Carroll of Gerald Eve representing the appellant Ms C Jones representing the respondent	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed. The panel found that the subject property had undergone significant works, including structural, that it was now a restaurant and premises and that the subject property should be valued on the overall basis. The panel therefore confirm the rateable value RV as £77,000 with effect from 5 April 2019.

Introduction

2. This appeal has been brought in respect of the following: an appeal was lodged by Gerald Eve on behalf of the occupier BKUK on 21 December 2022 against the Valuation Officer’s Decision of 26 September 2022.

3. The subject property first entered into the 2017 rating list on 1 April 2017 at RV £147,000 as a shop and premises. Following a split with effect from 5 April 2019 the subject property was entered into the 2017 rating list at £121,000. The second and third floor and part of the basement no longer form part of the hereditament.

4. Mr O'Carroll 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), Mr O'Carroll's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr O'Carroll 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.

5. Ms Jones appeared as both advocate and expert witness.

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

Issues

7. The issue before the panel concerned the description of the subject property and the method of valuing the property. The subject property was currently described as a shop and premises and valued to the zoning method whereas the appellant's representative considered it should be described as a restaurant and premises and valued on the overall basis.

Decision and reasons

8. Mr O'Carroll stated that the prior to Burger King letting the subject property it had been a furniture store and therefore had been assessed as such and valued on the zoning method. However, he considered sufficient significant works had taken place at the property for the mode of category to change to restaurant and premises and he considered it should also be valued on the overall basis. He stated that in order for Burger King to occupy the property they had to obtain a change of use through the planning system and as the building was listed they had to obtain consent to change the interior which included the installation of customer toilets, kitchen, and cold stores and freezers.

9. In support of change of description he referred to case law including *Glasgow City Assessor* v *Monti Marino (Glasgow) Ltd* [2012] CSIH 55; *Willaims (VO)* v *Scottish and Newcastle Retail Ltd and Anor* [2001] EWCA Civ 195 and *Fir Mill Ltd* v *Royston Urban District Council and Jones (VO)* (1960) 53 R & IT 389 which concern the mode of category of a hereditament and Valuation Tribunal decisions 451025967982/539N10 relating to 2c Eldon Way, Newcastle upon Tyne and CHG100082314 relating to 3 The Clarendon Centre, Oxford where the panels confirmed that the hereditaments should be valued to the overall basis.

10. Mr O'Carroll referred to the respondent's view of a restaurant which he considered was limited and that Burger King refer to their premises as restaurants and that in this particular premises there were 130 covers, and that the majority of customers did eat within the premises.

11. Mr O'Carroll referred to the respondent's comparable hereditaments and highlighted a number of errors in the information such as the occupier, the use of the premises and also RV's being applied.

12. In support of valuing the subject property on the overall basis Mr O'Carroll provided details of restaurants within the locality where 156 were valued by the overall basis and only 11 were zoned. He stated that prime locations within the city had been valued at £550 per m² and as a secondary locality the value per m² would be lower. He narrowed down the price per m² by referring to 92-98 Newgate Street, which was valued at £225 per m², but this was slightly superior locality than the subject property and therefore would be slightly higher price per m². He also referred to four properties on Clayton Street were values were £200 per m² which were in a slightly inferior location to the subject property and therefore considered that £210 per m² seemed reasonable for the subject property.

13. Ms Jones considered that the subject property was located within the retail core of Newcastle close to Eldon Square, Nunn Street, Grey Street and the Quayside which had suffered a gradual downturn since the closure of Woolworths in 2015. It was also close to approximately 10,000 car parking spaces. The subject property was a decorating store but was now a Burger King in 2015 which was a takeaway/eat in venue with no reserved seating and open between 9 am and 11 pm. Ms Jones did not consider the hereditament to be a restaurant in the sense that it was a fast food takeaway and not a venue where you made a reservations, had cutlery etc on the table and ordered from a menu. From her own experience she considered that most people ordered food and ate the food outside of the premises and not inside.

14. Ms Jones considered that the works completed on the subject property were not sufficient to warrant a change in description or method of valuing. She considered that as the subject property was previously a shop it remained a shop. Also, she considered that the location of the subject property in a mainly retail locality meant it should remain a shop. The 156 comparable hereditaments cited by the appellant's representative as being valued to the overall method were mainly situated within areas where there was a concentration of restaurants.

15. Ms Jones referred to her comparable hereditaments and accepted that the occupiers may be different, but the RVs were correct when she referred to them but may have been subject to alterations. All her comparable hereditaments, including McDonalds were zoned and not valued on the overall method. She stated that 92-98 Newgate Street was located closer to the restaurants and that 2c Eldon Way was an unusual shape and therefore difficult to zone.

16. The panel first considered the issue of the description. The panel noted that the subject property previously was a decorating/furniture store but following Burger King taking the lease the hereditament had changed with a number of floors removed from the assessment and that the premises itself undergoing works to change from a shop to operate as a Burger King. The panel noted that works included creating customer toilets, kitchens and installation of a cold store and freezer had been undertaken. It also noted that the premises had 130 covers.

17. The panel noted that the respondent considered that due to its location and that it did not have reserved seating and was a takeaway it did not constitute a restaurant.

18. The panel did not consider the location within a retail area dictated the hereditament type. It considered that whilst previously a shop the subject property had altered with Burger King taking less of the premises and that significant works had been undertaken that changed the mode of category. It also considered that the fact that it had 130 covers, albeit not reserved seating, also indicated that the premises were in use as a restaurant. The panel therefore considered that the subject property should be described as restaurant and premises.

19. The panel then considered the method of valuing the subject property. The appellant's representative sought for the subject property to be valued on an overall basis as with the majority of restaurants within Newcastle but the respondent considered due to it being within a mainly retail area it should be valued on a zoning method.

20. The panel noted that whilst situated in a mainly retail area there were hereditaments within close proximity that were value to the overall basis including 92-98 Newgate Street. The panel had not been satisfied that the fact of its location meant that the subject property should remain valued to the zoning method. It noted that 156 restaurants in the wider locality were valued to the overall basis and only 11 restaurants valued on the zoning method. The panel therefore considers the subject property should be valued to the overall basis.

21. The panel noted the appellant's representative's consideration of price per m² ranging from £550 for the main locations and for £200 per m² for poorer locations within the same street as the subject property. It had not been persuaded by the respondent's evidence of value which appeared to contain errors and considered that as the subject property was in a slightly more prominent position within Clayton Street the appellant's representative price of £210 per m² to be reasonable.

22. The panel had been persuaded by the appellant's representative that the description, method of valuing and the RV appearing in the 2017 rating list was not reasonable. The panel allows the appeal and confirms RV £77,000 with effect from 5 April 2019.

Order

23. Under the provisions of Regulation 38(4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the Rating List within two weeks of the date of the order to show with effect from 5 April 2019 an RV of £77,000 for 45-51 Clayton Street & 42 Newgate Street, Newcastle Upon Tyne, NE1 5PW

Refund of appeal fee

24. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Valuation

Floor	**Description**	**area m²**	**factor**	**price per m²**	**total**
Ground	restaurant	279.37	1	£ 210.00	£ 58,667.70
Ground	Office	5.16	0.7	£ 147.00	£ 758.52
Ground	dry store	5.05	0.5	£ 105.00	£ 530.25

Ground	kitchen	59.76	0.7	£ 147.00	£ 8,784.72
Ground	cold/chill store	13.31	0.5	£ 105.00	£ 1,397.55
Ground	bin store	9.05	0.5	£ 105.00	£ 950.25
Ground	public toilets	25.17	0.5	£ 105.00	£ 2,642.85
basement	internal storage	11.57	0.25	£ 52.50	£ 607.43
basement	mess/staff room	4.35	0.25	£ 52.50	£ 228.38
basement	mess/staff room	13.92	0.25	£ 52.50	£ 730.80
		426.71			
	sub total				£ 75,298.44
	air con	290		£ 7.00	£ 2,030.00
	total				£ 77,328.44
	say RV				£77,000

Date issued to parties: 30 October 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.