VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Dance School and Premises; mode and category of occupation; comparable evidence; the appeal property was incorrectly valued on a retail basis and should be valued in line with its mode or category of occupation at the material day; appeal allowed.

RE: Hebden School Of Dancing, Unit 18 To 19, Peterborough Garden Park, Eye, Peterborough PE1 4YZ

APPEAL NUMBER: CHG100845807

BETWEEN	The Hebden School of Dancing Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Ms B Knight (Presiding Senior Member)
Mr K Everett (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 22 April 2024

APPEARANCES: Mr R Howes of Bird and Howes on behalf of the appellant as advocate and expert witness.
Mrs K Cockhill on behalf of the respondent as both advocate and expert witness

---

DECISION AND STATEMENT OF REASONS

---

1 Appeal allowed.

2 The appeal property's assessment was reduced to £24,500 rateable value (RV), with effect from 20 September 2020.

Introduction

3 This is a 2017 rating list appeal that has been brought in respect of Hebden School Of Dancing, Unit 18 To 19, Eye PE1 4YZ, (the 'appeal property'). The appeal property had been entered into the rating list as 'Retail Warehouse and Premises' at £43,750 RV with effect from 1 April 2017. The mode and category of use for the valuation of this property was

altered to reflect usage as a dance school, from 20 September 2020 at which time it was valued as a 'Dance School and Premises' with an RV of £43,750.

4 The challenge proposal was submitted by the appellant and was received by the Valuation Officer on 24 August 2022. It had been made on the grounds that the RV shown in the rating list on 21 September 2020 was wrong. A revised assessment of £24,500 RV was proposed with effect from 20 September 2020, to reflect the mode and category of the appeal property's occupation.

5 The Valuation Officer issued a challenge case decision notice on 19 October 2023, which stated that based upon the evidence and information available, the current rating list entry was fair and reasonable as the appeal property should be valued in line with neighbouring retail units.

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 was not reasonable. The appeal was received by the Tribunal on 1 December 2023.

7 The appeal property was originally constructed as a glass fronted modern retail warehouse unit. It had previously occupied as a shop, which has been altered with effect of a having a partial sprung wooden dance floor installed and changing rooms put in place with stud walls to enable it to be used as a dance school. The property had an area in terms of main space (ITMS) of 196.08m^2. Planning permission was granted for its use as a dance school on 15 October 2020. It is located on Peterborough One Retail Park on the outskirts of Peterborough. The retail shopping park was built in 2010 and includes gardening, home, fashion, and leisure retailers.

8 Mr Howes appeared on behalf of the appellant as 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 Howes's declaration of truth included a statement that he was instructed on a contingency fee basis. 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.

9 The panel 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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

Preliminary issue

11 Mrs Cockhill raised a preliminary issue as she believed this appeal was based on an unlawful Challenge which she brought to the panel's attention. Mrs Cockhill submitted that the disputed subject had already been raised at Challenge and the matter disagreed, with no appeal lodged. Both Challenge documents had been provided for the consideration of the panel. The panel noted that the Challenge decision before it at this hearing was against the

Valuation Officer's alteration to the list in May 2022 with effect from 20 Sep 2020; this Challenge had been made on 24 August 2022. The previous Challenge decision was made on the grounds that 'IP disputes RV because of a Material Change of Circumstances' as the grounds for the Challenge were different the panel found that this appeal had been lawfully made and the appeal could be heard.

Issue

12 The issue is whether the appeal property should be valued in line with its mode or category of occupation at the material day (20 September 2020). The rating representative sought an assessment of £24,500 RV based upon an unadjusted price of £122/m^2 to reflect its workshop/studio use. The Valuation Officer considered the current entry of £43,750 RV, reflecting an unadjusted price of £220/m^2 on an office basis was reasonable.

Evidence and submissions

13 The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with the rating representative's expert witness report. The bundle included: the challenge document and supporting evidence; the Valuation Officer's initial response; rental and assessment evidence for comparable properties; photographs of the appeal property and properties cited as comparable; the rating representative's revised valuation; the definition of rateable value, and the Valuation Officer's challenge case decision notice.

14 Mr Howes gave a background to the case and explained that the appeal property's description had been changed by the Valuation Officer to 'Dance School and Premises' following the Challenge proposal; however, as it remained valued on a retail warehouse basis it had not been valued in line with its mode or category of occupation in accordance with the findings of the Lands Tribunal in *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* RA-480-1993 (LT) and the subsequent Court of Appeal decision in *Williams (VO) v Scottish & Newcastle Retail Ltd and another* [2001] EWCA Civ 85.

15 Mr Howes confirmed that at the material day, the appeal property had been adapted for use as, and was in use as a dance studio; photographs were provided showing the internal area of the appeal property and its attributes as at the material day. To facilitate its use as a dance studio, the property had sprung flooring and changing rooms.

16 The property was held on a leasehold basis and the rent agreed in September 2020, was £24,000 per annum (pa) on a retail outlet basis. Notwithstanding this agreement, the appeal property was not occupied as shop but as a dance studio; Mr Howes argued that consequently, the rent, together with the evidence for shops as provided by the Valuation Officer, did not represent the most reliable evidence. Mr Howes submitted details of assessments for other dance studios and considered the appeal property should be valued in line with these. He also submitted that at the AVD rents on Peterborough Garden Park were in decline and there was a lack of demand for the units.

17 On behalf of the Valuation Officer, Mrs Cockhill argued that the description of the appeal property had been changed to 'Dance School and Premises' following the Challenge proposal; however, she considered that the rent of the subject property, agreed in September 2014 at £44,000 on a retail basis, and the rental evidence of comparable shop

assessments within the locality supported the appeal property's current assessment of £220/m^2. She argued that, when viewed vacant and to let, the appeal property could be occupied as a retail outlet with only a minimal amount of works. She therefore sought dismissal of the appeal.

Decision and reasons

18 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, 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.

19 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).

20 The material day (the date by which physical factors have to be taken into account as set out in Schedule 6 to the Local Government Finance 1988) 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, the May 2022 alteration to the list was made to reflect the change in the mode and category of use with effect from 20 September 2020. Accordingly, the material day for this appeal falls to be the 20 September 2020, this being the day on which the circumstances giving rise to the alteration occurred, as per regulation 3(7)(b)(ii)(aa) of the Material Day Regulations.

21 The description of the appeal property had been amended to 'Dance School and Premises' to reflect the use to which it was put at the material day. However, the panel accepted that the description ascribed to a property was not determinative of the value to be applied in its assessment.

22 In determining the mode or category of occupation the appeal property was in at the material day, the panel had to consider the appeal property physically as it stood, or *rebus sic stantibus*. As outlined in the Lands Tribunal and Court of Appeal decisions in the *Williams* cases, there were two strands to the *rebus sic stantibus* or reality principle, namely, the use to which a property was put, in effect, its mode or category of occupation and that its physical state was the same as at the material day. It was also determined that only the possibility of minor alterations should be allowed for on the occasion of its hypothetical letting, furthermore the cost of alterations was not a factor. Within the *Williams* decisions reference was also made to *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960] R&IT 389, in which it was indicated that only two assumptions were permitted namely, that the hereditament was vacant and to let and its mode or category of occupation by the hypothetical tenant must be conceived as the same mode and category as that of the actual occupier.

23 The panel concluded that the appeal property's mode and category of occupation at the material day, was as a 'Dance School and Premises' however it considered it inappropriate to value the appeal property as a dance studio. The Court of Appeal in the *Williams* case had referred to the criterion of 'minor alterations' only being contemplated when considering a property's use. In the panel's opinion, having regard to the photographs of the property it appeared that only minor alterations would be necessary to facilitate a return to use for retail purposes, ie, the removal of the partial sprung floor and the stud partition change rooms; vacant and to let the unit was essentially a retail warehouse/shop. Therefore, the panel decided that the appeal property should be valued in accordance with its rent and the assessments of other retail properties in the locality. Whilst the property was in a different mode or category of occupation at the material day, to facilitate retail use would require only minor alterations.

24 The panel went on to consider the rental evidence. In accordance with the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, the starting point was the actual rent. In this case, Mr Howes argued that whilst the Valuation Officer had referred to the appeal property's rent, as having been set at £44,000 in September 2014 when the property had been occupied by Bon Marche; this rent had been renegotiated by Bon Marche and the landlord in December 2015 and agreed at £12,996 which he stated analyses to £62.84/m^2. Whilst Mrs Cockhill raised a question mark over this renegotiation as she believed it to be somewhat unusual, the panel was satisfied that there was clearly a lack of demand for units on Peterborough Garden Park, and rents were in decline at the AVD. The panel found this to be good evidence and it attached some weight to it.

25 The Valuation Officer had referred to rental evidence for other shops on Peterborough One Retail Park and in particular Units 2 and 7 which she argued supported a rate of £220/m^2 for the appeal property:

- Unit 2, Peterborough Garden Park, was of 110.58m^2 ITMS, it had been let for an adjusted rent of £27,745 pa on 2 February 2012 and for £19,800pa on 1 June 2020. This unit was valued as a shop and premises at a rate of around £220/m^2 with an RV of £24,250.
- Unit 7, Peterborough Garden Park, was of 123.50m^2 ITMS, it had been let for an adjusted rent of £35,272 pa on 17 March 2012 and for £19,999 pa on 1 March 2017. This unit was valued as a shop and premises on an overall basis at a rate of around £220/m^2 with an RV of £27,500.

26 The panel noted that the fall in rents on these two units showed that rental values were in decline at the AVD it also noted that these two properties were significantly smaller than the appeal property so would be expected to be valued at a higher rate per m^2.

27 Mr Howes referred to evidence of eighteen other dance studios which ranged in value from £20/m^2 to £100/m^2. The panel found these properties to be of little help as they were situated in different localities and of differing property structure.

28 Having regard to the basket of evidence before it, and the clear decline in the rental market, the panel found Mr Howes argument to be the more persuasive, it found Mr Howes proposed RV of £24,500 with effect from 20 September 2020 based on a rate of £122 per m^2 to be fair and reasonable.

Floor	Description	Area (m2)	Price (£/m2)	Total Value (£)
Ground	Retail area	196.08	122.00	23,921.76
Ground	Air conditioning	170.00	4.00	680.00
			Total	24,601.76

Say £24,500 RV with effect from 20 September 2020

Order

29 As a consequence of the above decision, the Valuation Officer is ordered to reduce the appeal property's 2017 Rating List entry to £24,500 RV with effect from 20 September 2020, within two weeks of the date of this Order.

Refund of fees

30 A refund of the paid fee will now be arranged in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 3 May 2024

Appeal Number: CHG100845807

Appeal rights:

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.