THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; shop and premises; basis of valuation; Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO) RA-480-[1993] (LT); Williams (VO) v Scottish & Newcastle Retail Ltd and another [2001] EWCA Civ 85; the panel found the appeal property should be valued on an office basis: appeal allowed in part.

RE: Oliver Rayns Ltd, 106 Queens Road, Leicester, LE2 3FL (the ‘appeal property’)

APPEAL NUMBER: CHG100867828

BETWEEN	Oliver Rayns	Appellant
	and	
	Mrs J Moore (valuation officer)	Respondent

BEFORE: Mr A N Backway (Presiding Senior Member)
Mrs T Watson (Senior Member)

CLERK: Mrs A Keohane

REMOTE HEARING 3: Wednesday 7 February 2024

APPEARANCES: Mr I Mitchell of FHP, on behalf of the appellant as advocate and expert witness
Mr O Rayns, the appellant, as expert witness
Mr L Hayes on behalf of the valuation officer, as advocate and expert witness

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Summary of decision

1 Appeal allowed in part. The appeal property’s assessment was reduced to £15,250 rateable value (RV) with effect from 1 September 2021, on an office basis at an unadjusted rate of £100/m^2.

Introduction

2 This is a 2017 rating list appeal. The appeal property was entered in the 2017 rating list as ‘Shop and Premises’ at £16,750 RV, effective from 1 September 2021.

3 The challenge proposal was submitted to the valuation officer (VO) on 17 October 2022. The VO issued a challenge case decision notice on 4 May 2023, which declined

to amend the assessment in accordance with the proposal. An appeal was received by this Tribunal against the decision notice on 9 August 2023 on the grounds that the valuation for the hereditament was not reasonable.

4 As Mr Mitchell appeared on behalf of the appellant as both advocate and expert witness, he was asked to clarify whether 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).

5 Mr Mitchell declared he was not instructed on a success related fee. He understood 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 the evidence supported the client's case.

6 The appeal property is a converted residential property, constructed pre-1900, that has been extended to the front and first floor. It is of a traditional construction of brick and block. At the time of the 2005 rating list it was occupied as a café, and then a restaurant during the 2010 rating list. The appellant converted the property from a restaurant to offices in 2021.

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

Issues

8 The challenge was solely concerned with the basis on which the appeal property should be assessed. Mr Mitchell argued for an assessment of £11,750 RV based on a rate of £75/m^2, on an office basis. Mr Hayes sought confirmation of the current assessment of £16,750 RV based on a zone A rate of £235/m^2.

Evidence and submissions

9 The bundle of evidence submitted comprised the documents exchanged between the parties as part of the check and challenge process. Reference was also made to *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* RA-480-[1993] (LT) and *Williams (VO) v Scottish & Newcastle Retail Ltd and another* [2001] EWCA Civ 85.

10 In his evidence and oral presentation, Mr Mitchell argued that the appeal property should be valued to reflect its mode or category of occupation as an office, in line with the findings in the *Williams* decisions. He submitted that the appeal property had never been occupied as a shop and its particular position on Queens Road, just after Clarendon Park Road, was where the area changed to mixed-use, and shops were not predominant.

11 Mr Mitchell did not consider the appeal property's rent was relevant, as it was set six years after the antecedent valuation date (AVD). Both the lease and planning approval referred to a 'shop front' and Mr Mitchell understood the valuation officer to have taken this to mean they were in respect of a shop. He argued that reference to a shop front

was loosely applied and just general terminology, and photographs showed that the appeal property did not have a traditional shop frontage.

12 After the appellant had taken the lease, the appeal property was subject to works to convert it from a restaurant to offices. The valuation officer had agreed to delete the assessment from the rating list during this period. The property was then entered in the rating list as a new hereditament with effect from 1 September 2021, valued as a shop.

13 Mr Mitchell provided details of properties he considered to be comparable, given they were offices that had been converted from buildings originally constructed for a different purpose, and were valued as such. These properties, situated on Queens Road, Clarendon Park Road, Knighton Road, London Road, and Portland Road, had assessments based on unadjusted rates of between £75/m^2 and £80/m^2.

14 Mr Mitchell referred to a check submission he had made in 2018 following works to convert a building from offices to a bakery. This submission was successful, and the valuation was revised to reflect the building's actual use. He pointed out that case law existed to support the contention that premises should be valued '*rebus sic stantibus'* in their actual mode or category of use.

15 In his evidence and oral presentation, Mr Hayes submitted that the appeal property's present assessment was correct. The lease set out the details of the appeal property's rent, effective from 1 May 2021, and referred to a shop front which he considered confirmed it related to a shop. In addition, the planning approval for the conversion of the property also referred to alterations to a shop front, and that it was a class E property which covered a broad range of uses, including retail and office use.

16 Mr Hayes submitted that the appeal property was located near the crossroads of Clarendon Park Road and Queens Road and was within a row of shops, although they were not necessarily occupied as shops. Its rent had been set six years post the AVD and analysed to £441.31/m^2, substantially higher than the current zone A rate applied. However, due to the distance of this rent from the AVD, rents of properties with similar characteristics had also been considered. These included 108, 139, 110 and 104 Queens Road, which had rents set between 2013 and 2021 that analysed to between £219.50/m^2 and £490.80/m^2. Also the rents set for 110 Queens Road, prior to and post AVD, showed there had been rental growth in the area.

17 Mr Hayes considered that the appeal property had been marketed as a restaurant and the competing bids would reflect this, hence the higher rent achieved. The appellant had paid a retail/restaurant level of rent, which a reasonable landlord would expect to achieve, given it was the most profitable use. Mr Hayes also argued that little work would be needed to the appeal property to allow it to be occupied as a shop.

Decision and reasons

18 The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015

(AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 September 2021 (material day) for this appeal.

19 The panel found that both the lease and planning approval made reference to a shop front in relation to the appeal property, however, in the panel's opinion, this was not determinative of the mode or category of occupation the appeal property was in. The photographs clearly showed the appeal property did not have a traditional shop frontage.

20 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.

21 In this appeal, the panel found Mr Mitchell's evidence to be persuasive and concluded that the appeal property's mode or category of occupation was that of an office and its valuation should reflect this. It considered it inappropriate to value the appeal property as a shop for the following reasons:

(a) The legislation required consideration of the actual mode or category of occupation at the material day. At this time, the appeal property had been converted, and was put to office use.
(b) The *Williams* cases 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 internal photographs of the property and the fact that the conversion work had been substantial enough for the property to be removed from the rating list, it appeared that more than minor alterations would be necessary to facilitate its use as a shop.
(c) Whilst the appeal property's lease allowed the landlord to receive a retail level of rent, this was not determinative of the property's mode or category of occupation, given that the appellant had been able to occupy the property as an office.

22 Having determined the mode or category of use, the panel then considered the value of the appeal property to the occupier. 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 Mitchell argued that the appeal property's rent should not be the deciding factor. The panel concurred as it considered a rent set in 2021 was too far removed from the AVD to provide reliable evidence. The rents provided by the valuation officer for properties within the same area, related to properties that were smaller in terms of main space (ITMS) and as the rents had been set in 2013, 2018, 2020, 2021, were also remote from the AVD.

23 Mr Hayes contended that 110 Queens Road provided good comparison as it was part of a neighbouring property, converted to retail use, and was currently occupied as a café but valued as a shop. The panel found this property had the external appearance of a shop and a traditional shop frontage, which the appeal property did not.

24 On balance, the panel decided the appeal property should not be valued in accordance with its rent, or by the zoning method of valuation as a shop. The property was in a different mode or category of occupation, and this should be reflected in its valuation. The panel therefore had regard to the assessments of the comparable properties valued as offices and provided by Mr Mitchell.

25 Number 199 Clarendon Park Road, 28 Knighton Road, 259 and 279 London Road still retained the appearance of residential properties, whereas, in the main, the appeal property did not. They were valued on rates of between £70/m^2 and £80/m^2. 139A Queens Road was closest to the appeal property and had been valued as an office at a rate of £80/m^2.

26 The panel considered the location of the appeal property was superior to that of the comparable properties that were largely in residential areas on main roads or local arterial roads. The closest comparable property was 139A Queens Road, assessed at £80/m^2, however, this was located behind 139 Queens Road and therefore in a less favourable position. Having regard to the value applicable to 139A Queens Road and accepting the appeal property was in a better location than all the other comparable properties, the panel concluded that it should be assessed as an office, based on an unadjusted rate of £100/m^2 and its description in the rating list should reflect this.

27 The following assessment was therefore determined, based on £100/m^2 and applying the relativities within the rating representative's proposal valuation:

Description	**Area m^2**	**£/m^2**	**Value £**
Ground Office	65.54	100.00	6,554
Ground kitchen	12.75	100.00	1,275
Ground Internal Storage	13.24	70.00	927
First Office	56.53	100.00	5,653
First Internal Storage	1.98	70.00	139
First staff toilets	0	0	0
		Subtotal	14,548
Additional Items			
Air conditioning system	121.8	7.00	852
		Total	15,400

Say £15,250 RV with effect from 1 September 2021.

Order

28 As a consequence of the above, the VO is ordered to amend the 2017 rating list entry for Oliver Rayns Ltd, 106 Queens Road, Leicester, LE2 3FL, to office and premises at £15,250 RV with effect from 1 September 2021, within two weeks of the date of this Order.

Refund of fees

29 The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal's

administrative office as soon as possible, provided no review of the decision takes place.

Date: 5 March 2024
Appeal Number: CHG100867828

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.