VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: café and premises; shop and premises; Local Government Finance Act 1988; rental evidence; unadjusted rate in dispute; appeal dismissed.

APPEAL NUMBERS:	CHG100910105, CHG100929630, CHG100929564 and CHG101068479
RE:	Pumpkin Cafe, Station Road, Peterborough, PE1 1QL (Appeal 1) Pumpkin between Platform 4 and 5, Station Road, Peterborough, PE1 1QL (Appeal 2) WHSmith,Ticket Hall at Peterborough Station, Peterborough PE1 1QL (Appeal 3) Unit 1A, Norwich Railway Station, Norwich, NR1 1EG (Appeal 4) (the "subject properties")

BETWEEN:	Select Service Partner Limited	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	11 November 2024
BEFORE:	Mr SC Kamalan (Presiding Senior Member) Mr G McGill (Senior Member)
CLERK:	Mrs J Smith IRRV(Tech)
APPEARANCES:	Mr J Massey of Tanner Rose (on behalf of the Appellant) Mr J Wallace (Respondent's representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals were dismissed.

2. The panel confirmed rateable values for the subject properties with effect from 1 April 2017 as follows:

i) Appeal 1 - RV £95,500
ii) Appeal 2 – RV £65,500
iii) Appeal 3 – RV £64,500
iv) Appeal 4 – RV £77,500

Introduction

3. These are appeals against the entries in the 2017 rating list.

4. Since three of the appeal properties were in the same locality and for all the appeals the appellant’s evidence was similar, with the agreement of the parties, the panel decided to hear all four cases together.

5. These appeals have been brought in respect of the following:

i) (Appeal 1) Pumpkin Cafe, Station Road, Peterborough.30, PE1 1QL; cafe and premises. The challenge proposal was submitted by Tanner Rose on behalf of the appellant. It had been made on the grounds that the RV shown in the rating list was inaccurate. A revised RV of £86,000 was proposed with effect from 1 April 2017. The Valuation Officer issued a challenge case decision notice on 21 February 2024 which confirmed the RV of £95,500 with effect from 1 April 2017.

ii) (Appeal 2) Pumpkin between Platform 4 and 5, Station Road, Peterborough, PE1 1QL; cafe and premises. The challenge proposal was submitted by Tanner Rose on behalf of the appellant. It had been made on the grounds that the RV shown in the rating list was inaccurate. A revised RV of £60,250 was proposed with effect from 1 April 2017. The Valuation Officer issued a challenge case decision notice on 21 February 2024 which confirmed the RV of £65,500 with effect from 1 April 2017.

iii) (Appeal 3) WHSmith, Ticket Hall at Peterborough Station, Peterborough PE1 1QL; shop and premises. The challenge proposal was submitted by Tanner Rose on behalf of the appellant. It had been made on the grounds that the RV shown in the rating list was inaccurate. A revised RV of £59,000 was proposed with effect from 1 April 2017. The Valuation Officer issued a challenge case decision notice on 14 March 2024 which confirmed the RV of £64,500 with effect from 1 April 2017.

iv) (Appeal 4) Unit 1A, Norwich Railway Station, Norwich, NR1 1EG; shop and premises. The challenge proposal was submitted by Tanner Rose on behalf of the appellant. It had been made on the grounds that the RV shown in the rating list was inaccurate. A revised RV of £72,500 was proposed with effect from 1 April 2017. The Valuation Officer issued a challenge case decision notice on 21 February 2024 which confirmed the RV of £77,500 with effect from 1 April 2017.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuation for the hereditaments is not reasonable.

7. 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).

8. Mr Massey of Tanner Rose, 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 Massey confirmed that he was instructed under a fixed fee basis and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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 was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was 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).

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

11. Mr Wallace appeared as advocate and expert witness.

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

Relevant Law

13. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (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".

Discussion

14. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD, 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

15. The Lands Tribunal judgment in Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

16. The subject properties (appeals 1,2 & 3) were retail units situated at Peterborough railway station. Unit 1A (appeal 4) was situated at Norwich railway station. Both parties had agreed that there was no consistent tone for the retail/café units within railway stations. They were valued having regard to their individual rents. It was highlighted that two units located very close to each other could have significantly differing rents due to footfall, pedestrian flow and prominence.

17. It was common practice for such units to have two elements to their leases, a Minimum Guaranteed Rent (MGR), together with a supplementary top-up. The supplementary top-up element came into effect if that particular occupant's trade exceeded the limit specified within their lease.

18. Mr Massey had argued that the rents on the retail units were based on an open market tendering process and that the MGR's were therefore indicative of the open market value. The turnover top-ups were specific to the occupying tenant and represented 'excessive performance'. Any hypothetical tenant 'fresh to the scene' could not know what their expected turnover would be and would have to make a bid at market level to secure the tenancy.

19. In Mr Wallace's view, no tenant would agree to pay a MGR which equated to the full open market value in the knowledge he would also be expect to pay a profits-based top up amount. He stated that the calculations for the top up element were written into the leases and therefore formed part of the rental agreement and not due to over trading as suggested by Mr Massey.

20. Mr Massey had submitted details of the tenancy agreements and actual rents paid for each appeal property as detailed below:

(Appeal 1) – Lease commenced 17 June 2012 for a period of 6 years at rent of £86,600pa. Tenant has been holding over and the rent has remained at £86,000. Actual rent paid (including top-up):

2013/2014	£104,968
2014/2015	£109,016
2015/2016	£111,438

(Appeal 2) – Lease commenced 25 September 2012 for a period of 6 years at rent of £60,025pa. The rent was reviewed 26 September 2015 and remained at £60,025. Actual rent paid (including top-up):

2013/2014	£80,253
2014/2015	£79,704
2015/2016	£83,318

(Appeal 3) – Lease commenced June 2012 for a period of 6 years at rent of £58,750pa. Rent was reviewed in 2015 and remained at £58,750. Actual rent paid (including top-up):

2013/2014	£62,098
2014/2015	£59,920
2015/2016	£55,641

(Appeal 4) – Lease commenced 2 May 2005 at rent of £72,500pa. The lease expired 3 January 2015 with the landlord holding over at £72,500. Actual rent paid (including top-up):

2013/2014	£75,188
2014/2015	£80,141
2015/2016	£81,974

21. In his submission, Mr Massey had referred to previous decisions of the Valuation Tribunal CHG100339899, CHG100140083, CHG100140079 and CHG100151377. However, the panel noted that these decisions related to retail units at mainline stations in Central London and was aware that they were not binding on these appeals. It was for the panel to consider all the evidence presented by both parties and apply such weight as the panel saw fit.

22. In reaching a decision, the panel took the view that the top-up element would be taken into account in any rental bid made by a prospective tenant. With the exception of the 2015/2016 rent paid on WHSmith at Peterborough station, the amount paid for all four properties around the AVD was in excess of the MGR, which suggested to the panel that the actual rent

passing on the appeal properties was more analogous to the statutory definition of ratable value than the MGR alone.

23. Ultimately the burden of proof is on the appellant to persuade the Tribunal that the RVs were unreasonable, and, in these cases, the panel was not persuaded by the arguments put forward by Mr Massey.

Disposal

24. In view of the above findings and conclusions, the Tribunal Panel confirmed that the appeal properties had been correctly valued with effect from 1 April 2017, and therefore the appeals were dismissed.

Date issued to parties: 5 December 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.
