THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeals – concession on rent given by landlord – Covid19 restrictions – price per m² to be adopted – rental evidence – were hereditaments within a secondary locality due to being on upper floors – restrictions on opening hours – weighting of evidence – appeals dismissed

Re: 1st Flr Unit 2.09 Buck Street Market, 198 Camden High Street, London, NW1 8QP; 2nd Flr Unit 3.18-3.21 Buck Street Market, 198 Camden High Street, London, NW1 8QP; 2nd Flr Unit 3.17 Buck Street Market, 198 Camden High Street, London, NW1 8QP; 1st Flr Unit 2.11 Buck Street Market, 198 Camden High Street, London, NW1 8QP; 1st Flr Unit 2.22 Buck Street Market, 198 Camden High Street, London, NW1 8QP; 1st Flr Unit 2.05 Buck Street Market, 198 Camden High Street, London, NW1 8QP; 1st Floor Unit 2.06 Buck Street Market, 198 Camden High Street, London, NW1 8QP; 1st Flr Unit 2.15 Buck Street Market, 198 Camden High Street, London, NW1 8QP.

APPEAL NUMBER: CHG101053638; CHG101055447; CHG101055404; CHG101053642; CHG101055384; CHG101053624; CHG101055366 and CHG101055376

BETWEEN:	Aleksander Stefanov; The Spirited Camden Ltd; Conquer Hospitality Ltd; Rico Burrito; SP & Shaan Ltd; Elia – Pure Greek Food Ltd; Toko Bali Ltd and Glass Food and Drink Ltd	Appellants
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Miss L Dubow (Presiding Senior Member)
Mrs N Yang (Senior Member)

CLERK: Mr A Jolly

REMOTE HEARING: Wednesday 20 December 2023

APPEARANCES: Mr P Phillips of Appeal My Rates UK Ltd representing the appellants
Miss S Biring representing the respondent

Summary of decision

1. Appeals dismissed. The current Rateable Values (RV) entered in the 2017 Rating List are confirmed as per schedule attached.

Introduction

2. These appeals have been brought in respect of the following: Appeals were lodged by Appeal My Rates UK Ltd on behalf of the occupiers on 29 September 2023 against the valuation officer's challenge decision notices of 27 June 2023 following challenges made on either 20 April 2023 or 25 April 2023.

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

4. With the agreement of the parties all eight appeals were heard together.

5. Mr Phillips appeared on behalf of the appellants 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 Phillip's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

6. Mr Phillips 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.

7. 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).

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

9. A number of attachments from the valuation officer's challenge decision notice had not transferred over when the appeal was submitted. During the hearing it was agreed between the parties that the respondent emails the documents to the clerk and copying the appellant's representative into the email.

10. Prior to the hearing the clerk provided the parties with the Valuation Tribunal for England decision of *Vistra International Expansion Ltd and others* v *Ms Dawn Bunyan (Valuation Officer)* which concerns the issue of the impact of Covid19. Both parties were aware of the decision.

Issues

11. The issue before the panel concerned the price per m² adopted.

12. The material date is 1 April 2017 and antecedent valuation date (AVD) is 1 April 2015.

Evidence and submissions

13. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the valuation officer's case decision notice, assessment summaries and the appellant's challenge submission.

14. The appellant considered that the price per m² adopted was not reasonable when considered with other hereditaments within secondary locations. He had also considered that a concession given to the occupiers by the landlord in 2022 but backdated to 1 March 2020 illustrated that the price per m² adopted was incorrect. However, at the hearing he conceded that it could not be proven either way whether the concession was Covid19 related or not and therefore was no longer fully pursuing that part of the appeals.

15. The respondent considered that the rental evidence from the immediate locality supported the price per m² adopted. Also, it was considered that the concession from the landlord was Covid19 based and therefore should be ignored as per the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021.

Decision and reasons

16. Mr Phillips stated that the appeal hereditaments were former shipping containers arranged over three floors within the development which opened in March 2020. He accepted that rental evidence normally formed the basis of valuation and that the starting point was normally the rent on the appeal hereditaments. He stated that whilst rents had been agreed none of the tenants had actually paid the headline rent. He also considered the respondent had not taken account of the locality, nor the differences in values between floors with less footfall on the upper floors.

17. Mr Phillips considered whether the rents were reliable as while they appeared high Covid19 had interrupted the natural settlement of rents and a concession had been provided by the landlord backdated to 1 March 2020 and still in place meant that it could not be proved whether or not Covid19 restrictions had a bearing on the concession.

18. Mr Phillips stated that there was no other indoor market like Buck Street Market with hereditaments on upper floors within the locality. He considered the rents provided by the respondent were not like for like as they were ground floor premises in a prime locality which were larger and with facilities. He stated that a hypothetical tenant would pay less in a location with less footfall and that the 1st and 2nd floors would not benefit from the same footfall as a retail unit on the ground floor and therefore he considered it was sensible to compare evidence from secondary locations.

19. Mr Phillips believed that the original rents on the appeal hereditament were utilised to set the price per m² but these rents were not tested and that rental levels adjust over time to find its level.

20. In support for a reduction to £1,000 per m² from £2,700 per m² he provided the rental details of a number of properties including 208 Camden High Street; 69 Camden High Street; 9-11 James Town Road and 279 Camden High Street together with many others. He also stated that Unit 2.06, which was a unit of 12.6 m² had originally been leased at £2,700 per m² but the rent was reduced by the concession to a peppercorn rent and that recent renewals had been based on a percentage of the turnover. He provided rental evidence from close to the AVD and around the time of the lettings of the appeal hereditaments to show the movement of the market during this time so as to adjust the rents from Buck Steet Market back to 2015.

21. Mr Phillip also stated that the units could only operate under restricted hours whereas his and the respondent's comparable hereditaments did not have restricted hours. In answer to a question Mr Phillips believed the market was open at either 9.30 am or 10 am and closed at 10 pm.

22. Miss Biring considered Buck Street Market was unique and was a destination location with small independent traders with flexible usage. She considered there were 44 units in all and that there was no difference in the original rents between each floor and no evidence had been submitted that their values would be lower on the 1st and 2nd floors as compared with those on the ground floor.

23. Miss Biring stated that rent suspensions due to the Government lockdown continued to impact rents and that new leases were more flexible than before. She considered that the best evidence was rents from the locality prior to the impact of the restrictions. She considered rental evidence five years after the AVD were not compelling and too remote from the AVD.

24. In support of her contention that £2,700 per m² was correct for the appeal hereditament, she provided rental evidence for the periods 2014 to 2015 and 2019 to 2020 from Camden High Street showing the differences between the two periods. Rental evidence from 2014 to 2015 analysed to values between £1,360.07 per m2 and £3,022.97 per m². Rental evidence between 2019 and 2020 analysed to values between £1,360.07 per m² to £2,796.41 per m².

25. The panel noted the concession provided to the tenants from the landlord, however, the appellant's representative accepted that there was no evidence either way that these were not related, even in part, to the restriction of Covid19. Any concessions etc put in place due to Covid19 were to be ignored as per The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021. The panel therefore did not have regard to the concessions put in place by the landlord and considered the rental evidence submitted.

26. The panel firstly considered the issue of the units being on the 1st and 2nd floor and if this would effect the rental level. From the evidence submitted there was no differential in the original rents for each unit and no compelling evidence submitted to support that the upper floor values would be lower in this instance. The panel therefore considered all the rental evidence and weighted it accordingly.

27. With regards to the restricted opening hours, the panel considered that no compelling evidence had been presented that these hours would affect rental levels when compared with neighbouring properties and therefore gave minimal weight to this issue.

28. The appellant's representative provided details of leases and the rent payable from close to the AVD and also from 2019 onwards. The panel considered the later rental evidence was too remote from the AVD and were during or following the Government Covid19 restrictions and therefore gave minimal weight to this evidence. It also considered that the later rents did not assist in adjusting the rental evidence from Buck Street Market from around March 2020 back to 2015 values as the rental information on other properties were during and after Covid19 restrictions when movement in the rental market may have been impacted to a greater degree with more flexible leases.

29. It considered the rental evidence submitted by the appellants' representative close to the AVD. Whilst areas leased had been quoted the rents had not been analysed per m² and therefore were of limited assistance to compare with the analysed price per m² of the respondent's rental evidence and the price per m² to be adopted. The panel therefore gave less weight to this evidence.

30. The panel considered that rental evidence from the immediate locality from close to the AVD provided the best evidence. The respondent also provided rental evidence from 2014/15 and 2019/20. Again, the panel did not consider the rental evidence from 2019/20 was of assistance as it was too remote from the AVD. The panel also did not consider the later rental evidence of assistance in adjusting values back to AVD for the appeal hereditaments.

31. The panel considered the best evidence to be the rental evidence submitted by the respondent from 2014-15. Whilst these rents were not from a secondary location no compelling supporting evidence had been submitted that the appeal hereditaments were in a secondary location and therefore the panel considered the rents close to the appeal hereditaments could be considered. These rents had been analysed and ranged from £1,360.07 per m² to £3,022.97. The panel considered that this rental evidence supported the price adopted by the respondent of £2,700 per m².

32. The panel having considered the evidence placed its greatest weight on the rents within the immediate locality. It had not been persuaded by the appellant's representative that the appeal hereditaments were in a secondary location and that the restrictive opening hours would have a significant effect on the value. Therefore, the panel was satisfied that £2,700 per m² was reasonable, it confirmed the RV's (as per schedule below) and dismissed the appeals.

Date: Friday 19 January 2024

Appeal numbers: CHG101053638; CHG101055447; CHG101055404; CHG101053642; CHG101055384; CHG101053624; CHG101055366 and CHG101055376

Schedule

CHG101053638 1st Flr Unit 2.09 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £16,250 with effect 1 July 2021

CHG101055447 2nd Flr Unit 3.18- 3.21 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £70,000 with effect from 11 August 2020

CHG101055404 2nd flr Unit 3.17 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £69,000 with effect from 4 January 2021

CHG101053642 1st Flr Unit 2.11 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £16,250 with effect from 3 March 2021

CHG101055384 1st Flr Unit 2.22 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £33,500 with effect from 13 May 2021

CHG101053624 1st Flr Unit 2.05 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £34,000 with effect from 02 March 2021

CHG101055366 1st Flr Unit 2.06 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £34,000 with effect from 12 April 2021

CHG101055376 1st Flr Unit 2.15 Buck Street Market, 198 Camden High Street, London, NW1 8QP
RV £16,250 with effect from 02 March 2021

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.