THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 3 June 2019; shop and premises; end allowances; appeal dismissed.

RE: Ena Mill Ltd, The Courtyard, Preston PR4 6UP

APPEAL NUMBER: CHG101068613

BETWEEN:	Ena Mill Tarleton Ltd	Appellant
	and	
	Ms A Hitchings (Valuation Officer)	Respondent

PANEL: Mr M Smith (Senior Member)
Miss R Punia

CLERK: Mrs H Beresford

REMOTE HEARING ON: 3 April 2024

APPEARANCES: Mr K Batty (Appellant's representative)
Miss A Benn (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £15,750 with effect from 3 June 2019.

Introduction

2. This appeal has been brought in respect of Ena Mill Ltd, The Courtyard, Preston PR4 6UP (the 'appeal property'), which was entered in the 2017 rating list as 'shop and premises', at rateable value (RV) £15,750, effective from 3 June 2019.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Batty made an appeal to the Valuation Tribunal for England (VTE) on behalf of Ena Mill Tarleton Ltd. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, Mr Batty sought a reduction to £14,250 RV.

4. The appeal property is situated in a retail location on the main shopping street in the village of Tarleton. It is within an established mixed use location and is well served by car parking and other facilities. The property comprises a two storey retail premises, attached to a larger retail property and close to other similarly aged retail premises. The accommodation comprises predominantly sales space on the ground floor together with ancillary stores and further offices, and staff accommodation on the first floor. Tarleton is a village situated in a rural location, it has good road links, being close to the A59 Preston to Southport road.

5. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

6. 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

7. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

8. At the hearing the clerk was having technical difficulties and had to turn her camera off in order to maintain a good connection to the hearing. The parties confirmed that they were happy to proceed in this manner and the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

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

Preliminary issue

10. During the hearing and in his evidence submission pack Mr Batty referred to plans of the appeal dwelling. The plans were not in the pack and had not been sent to the Tribunal with the initial appeal documents. As Miss Benn confirmed that plans had been submitted with the original challenge documents and she had no objection to them being placed before the panel, Mr Batty was able to email the plans to the clerk who, in turn emailed them to the panel.

Issues

11. The issues were as follows:

    i. Whether an end allowance of 15% should be applied to the retail area to reflect masonry obstructions, uneven floor levels and general layout.
    ii. Whether an end allowance of 2.5% should be applied to the whole assessment to reflect shared access.

Evidence and submissions

12. The evidence before the panel comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

Decision and reasons

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

14. 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;
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> 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"

15. The Lands Tribunal judgment in *Lotus and Delta v Culverwell* (VO) [1976] RA 141 provides 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, the closer that rent is set to the statutory definition, the more weight it should attract. Where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

16. The panel noted that there was a rent on the appeal property for £16,640 per annum which had been agreed on 9 September 2015 which was very close to the AVD. Miss Benn argued that this was compelling evidence which supported an RV of £15,750 for the appeal property and took account of the disadvantages for which Mr Batty had sought end allowances. She explained that she was aware that on the Form of Return it was stated that the rent was inclusive of business rates, water charges and service charges but no details had been given as to what these charges amounted to. In analysing the rent the Valuation Officer had adopted a nominal figure of £1 for each due to lack of information and Miss Benn had analysed the rent to £179.90/m^2 which she contended supported the agreed base rate for the retail area of £160/m^2.

17. Mr Batty argued that as the rent was inclusive of rates, water charges and service charges the analysed rent was flawed. However, no details of the charges had been provided and there was no alternative rental analysis. The panel found the rent to be good evidence to which it attached significant weight.

18. Regarding issue (i), whether an end allowance of 15% should be applied to the retail area to reflect masonry obstructions, uneven floor levels and general layout. Mr Batty argued that in a previous Valuation Tribunal decision the panel had inspected the appeal property and an end allowance of 15% had been ordered by the Tribunal. He stated that this was an appeal for the 2005 rating list and that he was not aware of why the allowance was no longer adopted. The panel was aware that the 2005 rating list was a separate entity and that in this appeal it had to consider the 2017 rating list de novo, the rent agreed in 2015 and any other evidence placed before it. The hand drawn plan provided by Mr Batty did not appear to have been to scale and therefore the panel could attach only moderate weight to it. Mr Batty had not provided any photographic evidence to support his case and there was no evidence of similar properties to which an end allowance had been applied.

19. Regarding issue (ii), whether an end allowance of 2.5% should be applied to the whole assessment to reflect shared access. At the hearing Mr Batty argued that there was access to an adjoining building at the back of the shop which was used by visitors to access that property (known as the Courtyard) which was also a retail outlet occupied by a different unconnected party. He argued that this was a disadvantage as people were walking through the shop to access the adjoining building. In his evidence pack he also argued that an allowance should be granted for shared access with the Courtyard (the adjoining property). The panel found that no compelling evidence had been provided of comparable properties with an end allowance for similar circumstances or photographs to show the extent of the problem.

20. In appeals of this nature the burden of proof is with the appellant's representative to show that the appeal property's rateable value is unreasonable. After full consideration of the evidence before it, the panel found that the appellant's representative had not discharged the evidential burden of proof and, therefore, had not persuaded the panel that the appeal property's rateable value should be reduced. The appeal was therefore dismissed.

Date: 26 April 2024

Appeal number: CHG101068613

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.