VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; shop and premises; Williams (VO) v Scottish and Newcastle Retail Ltd and Allied Domecq Retailing Ltd [2001] EWCA Civ185; [2001] RA41; *the panel found the appeal property should be valued as a 'shop and premises'; lack of facilities; appeal allowed in part.*

APPEAL NUMBER: CHG101104637

RE: Ground Floor, 1-7 Dundas Street, Middlesbrough TS1 1JA (the "appeal property")

BETWEEN: Contract Experts Ltd — Appellant

and

Amanda Hitchings BA (Hons) MRICS (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: Friday 25 October 2024

BEFORE: Ms R Sharma (Presiding Senior Member)
Ms C Y Jones (Senior Member)

CLERK: Miss K Hendry IRRV(Hons)

APPEARANCES: Mr J Bell of Bell & Bell Rating Surveyors (Appellant's Representative)
Mr R Fuller (Respondent's Representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed in part.

2. The panel confirmed the rateable value (RV) £52,000 with effect from 14 February 2022.

Introduction

3. This appeal has been brought in respect of the appeal property which was amended in the 2017 rating list as "Shop and premises" at RV of £62,500 effective from 14 February 2022.

4. The challenge proposal was submitted by Bell & Bell Rating Surveyors on behalf of the appellant which was received by the Valuation Officer (VO) on 3 August 2023. The reason for the proposal was because the appellant's representative disputed an alteration to the RV made by the VO. A revised RV of £7,900 was proposed with effect from 14 February 2022.

5. The VO issued a challenge case decision notice on 30 November 2023 in which it considered the rating list entry was unreasonable based on the evidence presented, but not to the extent sought by Mr Bell. The VO produced a revised RV of £52,000 with effect from 14 February 2022. This was to add a 5% allowance for no water supply and 5% for lack of toilet facilities.

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 RV is unreasonable with Mr Bell referring to the following:

   a) The existing assessment is excessive, unfair, illegal and incorrect
   b) The assessment should have regard to the value of the property and values in the locality.
   c) The assessment should have regard to the tone of the Rating List which, in turn, reflects the location, quality and layout of the comparable properties.
   d) The assessment should have regard to the use and occupation of the property, together with the principle of 'rebus sic stantibus'.
   e) The VOA has not reflected changes in circumstances which occurred between 1 April 2017 and the Material day of 14 February 2022.
   f) The property is unlettable as 'Shop and Premises' as proposed by the VOA

7. The appeal was lodged by the appellant's representative and received by the Tribunal on 1 April 2024.

8. As Mr Bell 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).

9. Mr Bell 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, regardless of whether the evidence supported the client's case.

10. Prior to the hearing, on 24 October the clerk advised the parties that she would be referring the panel to the case of *Williams (VO) v Scottish and Newcastle Retail Ltd and Allied Domecq Retailing Ltd [2001] EWCA Civ185; [2001] RA41*

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

Background

12. The property entered the rating list on 1 April 2017 as B and M Bargains, Dundas Street with a RV of £70,000 having regard to the rent on the property of £70,000 per annum with effect from 29 September 2015, based on a new lease with a term of five years on a full repairing and insuring basis. The rent of £70,000 also included the car park which had been rated separately with an RV of £6,100.

13. The lease for B and M Bargains ran from 29 September 2015 to 28 September 2020. Following the expiration of the lease, the landlord, Contract Experts Limited agreed for B and M to remain in occupation on the basis;

    a) During a lease from 29 September 2020 to 20 August 2021 no rent was payable.

       A payment of £2,000 towards service charge and rent was payable between 29 September and 2020 and 31 March 2021

    b) During the lease from 21 August 2021 to 14 January 2022 no rent or other payments were made.

14. Despite not having to make any payments B and M exercised the option to terminate their occupation from 14 January 2022.

15. The property returned to Contract Experts Ltd who then let the upper part of the property on 14 February 2022 to a new tenant. As a result, the existing entry in the 2017 list was split as follows:

    a) Ground Floor, 1-7 Dundas Street (the appeal property) with a RV of £62,500, amended to £52,000 as a result of the challenge.

    b) Putter Chaos, Dundas Street.

16. The appeal property was let to a new tenant with effect from 15 April 2022 and was used for the storage and distribution of goods up until 7 January 2024.

Relevant Law

17. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which 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.

18. 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).

19. The material day (the date by which physical factors have to be taken into account) 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 appeal, the material day is 14 February 2022.

Discussion

20. Mr Bell firstly argued that when the VO split the assessment no regard had been given to the locality that had occurred between the commencement of the list on 1 April 2017 and 14 February 2022. It was not simply correct to continue with the same basis of assessment and valuation approach that had previously been adopted, it was not just a matter of removing the value of the first floor.

21. Mr Bell argued that the changes in locality that needed to be reflected as of 14 February 2014 were as follows;

    a) The closure of W Boyes and Co Limited at 27-33 Dundas Street with effect from 12 October 2018. This was one of two major anchor stores within Dundas Centre extending to 842.72m^2 of space, comprising 20% of the total area.

    b) The closure of Fulton's Foods at 25 Dundas Street with effect from 8 May 2021. This being 10% of the retail space within the Dundas Centre.

    c) The closure of Homefair Blinds at 38 Dundas Street with effect from 13 February 2022.

22. This meant that as of 14 February 2022, 67% of the floor space within the Dundas Centre was vacant. This was coupled with further closures of;

    a) 49A Wilson Street, with effect from 30 September 2019
    b) Ground Floor, 47 Wilson Street, with effect from 20 July 2020
    c) 5th and 8th Floors Dundas House (situated above the Dundas Centre) with effect from 29 March 2019.

23. Mr Bell stated that B and M Bargain was the principal anchor tenant within the Dundas Centre, followed by W Boyes and Co Ltd followed by Fulton Foods. The loss of these three occupiers has been detrimental to the Dundas Centre. The impact of these changes was evidenced by way of reduced footfall, with a pedestrian count falling from an average of 70,000 per week in 2016/18 to 13,000 in 2021/23.

24. Mr Bell stated that the appeal property must be valued as it stood ('rebus sic stantibus'). The appeal property did not benefit from any toilet or water facilities. The facilities that were previously there before the property was split was located on the first floor. As a result, any potential tenant would have to have regard to the Workplace (Health, Safety and Welfare) Regulations 1992 which stipulated the number of toilets and washbasins per the number of

employees. Mr Bell argued that the VO had contended that the provision of toilets and water facilities can be regarded as ‘a relatively minor change which any reasonable person would make in order to unlock additional value’ was not accepted as it would contravene the principle of ‘rebus sic stantibus’. The lack of toilets and water facilities meant that the appeal property could not operate as a retail facility and its only use was that of storage purposes, as it was last occupied. Not only that, but there was no value as a retail area which was evidenced by the fact B and M Bargains vacated the property despite not paying any rent and being financed by the landlord by way of the service charge.

25. Mr Bell referred to a letter provided by Dodds Brown who were surveyors on behalf of the shopping centre. They confirmed to have been marketing the former unit at £75,000 per annum since B and M Bargains vacated in March 2021 but considered the ground floor to be incapable of being relet in its current form without toilets and water facilities.

26. Mr Bell stated that since the unit has been vacant, it had always been the intention to sub-divide the unit into smaller single lets. However, this had been delayed as there had been a potential for the unit to be let as a whole from a gym operator which the interest is currently being discussed / investigated. He stated that there was also no rush to split the unit due to experiencing difficulties in letting other units in the Dundas Centre which are in more favourable locations.

27. Mr Bell sought for the panel to confirm the mode of category for the appeal property to be changed from ‘Shop and Premises’ to ‘Storage and Premises’ with a RV of £7,900 with effect from 14 February 2022 based on two comparable properties.

28. In response, the VO did not comment on Mr Bell’s argument regarding the changes in the locality when the assessment was split as he stated that the proposal was not on the grounds of a material change of circumstances.

29. The VO argued that the disabilities, lack of toilet and water facilities did not preclude the unit from being used as a shop albeit with disadvantages. The VO argued that the rating assessment contains numerous shop assessments which suffer from both disabilities and yet operate as a retail business and provided comparable properties to support his contention. He referred to the principle under ‘Rebus’ and considered the changes to be minor. He did not accept that the appeal property would only be worth £7,900 due to the lack of facilities, but with the facilities, the property is then worth ten times that amount, supporting that the changes were minor.

30. As a result, the VO had given a 5% end allowance for lack of toilets and 5% end allowance for lack of water, resulting in a revised RV of £52,000.

31. The VO also argued that the unit was being advertised to let at a rent of £75,000 per annum, which did not support a reduction in RV given that he was asking for the panel to confirm a RV of £52,000. The VO also argued that when the property was briefly let for storage, the tenant continued to pay the rates in the list as a ‘shop and premises’.

32. The panel had to have regard to the appeal property ‘vacant and to let’ and consider the mode or category of occupation as at the material date of 14 February 2022. When determining the issue of mode or category of occupation, the panel had to consider the appeal property physically as it stood, or *rebus sic stantibus*.

33. The panel was aware there were two limbs to the *rebus sic stantibus* or reality principle as set out in the *Williams* judgments, namely, that the physical state of the property had to be regarded as at the material day and that the only alterations permitted were minor alterations of a non-structural nature. The second limb being the use to which the property was put (mode or category of occupation).

34. The panel accepted that at the material day, 14 February 2022 the appeal property was vacant and being marketed to let as a ‘good secondary retail unit’ with an asking rent of £75,000 per annum. Vacant and to let the panel held that the instillation of water facilities and toilets would be minor, and no evidence had been provided by the appellant’s representative to support that such works would be significant. The panel did not accept that the unit would only be worth £7,900 as storage due to the lack of such facilities. Especially as it had been let after the material date without the facilities and the tenant accepted the RV as a shop and premises.

35. The appellant’s representative had argued that due to Workplace (Health, Safety and Welfare) Regulations 1992 it was not possible for the unit to be occupied as a shop without the said facilities. The panel accepted the VO’s contention that other properties were in the rating list with such disabilities, but did not place too much weight on his comparable properties as they appeared to be kiosk type properties or smaller.

36. The panel did accept that allowances should be applied to reflect the disabilities and accepted the VO’s revised valuation of 5% for toilet and 5% for lack of water.

37. The panel turned to Mr Bell’s argument regarding the VO having failed to consider the locality when he split the assessment. The panel accepted Mr Bell’s argument that the VO had just merely split the assessment in two, and no regard had been given to the locality, and it was clear from the vast amount of evidence presented by Mr Bell that the locality had changed since the 1 April 2017 to the material date.

38. However, the panel found that Mr Bell had failed to evidence that the RV would have fallen below £52,000 at the material date. The panel approached the evidence with caution as it was possible some of the impact in the locality could have been due to covid, especially the reduced numbers of footfall. The panel had regard to the Dodds Brown advertisement which had advertised the appeal property since B and M Bargains vacated the unit in March 2021. It stated that the footfall was 70,000 per week and was asking for a rent of £75,000 per annum, with a potential tenant in discussions.

39. Having regard to the above, the panel were not persuaded that the appeal property should be valued as storage. The panel adopted the end allowances to reflect the disabilities at the appeal property and allowed the appeal in part. Therefore the panel confirmed a revised RV of £52,000 with effect from 14 February 2022.

Order

40. As a consequence of the above, the VO is ordered to amend the 2017 rating list entry for the appeal property, to £52,000 RV with effect from 14 February 2022, within two weeks of the date of this Order.

Refund of fees

41. 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 issued to parties: 13 November 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.