VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; end allowances for masking and frontage depth; appeal dismissed.

APPEAL NUMBER: CHG101104946

RE: Flamingo Fashions, 67 Liverpool Road, Penwortham PR1 9XD
("the subject hereditament")

BETWEEN: Flamingo — Appellant

and

Amanda Hitchings (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 18 November 2024

BEFORE: Mrs A Fielder (Presiding Senior Member)
Ms J Hopkinson (Senior Member)

CLERK: Mr S Fletcher

APPEARANCES: Mr K Batty of Ken Batty Chartered Surveyors (Appellant's representative)
Ms J Willis (Respondent's representative)

DECISION and STATEMENT OF REASONS

Decision

1. The appeal was dismissed. The panel confirmed the rateable value (RV) of the subject hereditament at £20,750 with effect from 1 April 2017.

Introduction

2. The appeal process began with a proposal made by Mr Batty on 3 August 2023 in in respect of the Valuation Officer's (VO) compiled list entry of the subject hereditament at £20,750 RV

with effect from 1 April 2017. Mr Batty proposed a revised list entry of £17,250, based on a reduced tone of value for main space and various end allowances.

3. The respondent issued a challenge case decision notice on 21 February 2024 which stated that, based on the evidence available, the existing rating list entry was reasonable. Mr Batty appealed that decision to this Tribunal on 21 December 2023 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was a shop and premises built pre 1900 and refurbished in 2009. It was situated on the main shopping street in Penwortham, Preston.

5. Mr Batty 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), the representative confirmed that he was instructed under a conditional fee arrangement. He 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.

6. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

7. Prior to the hearing, Mr Batty advised that he no longer sought to challenge the tone of value for main space. He stated that the only two outstanding issues of contention were end allowances for masking and the frontage depth of the store.

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

Issue

9. The panel was required to determine the correct RV to be attributed to the subject hereditament in the 2017 rating list. The issues in dispute concerned end allowances for masking and the frontage depth of the store.

Evidence and submissions

10. Arguments and factual evidence from both the appellant's representative and the respondent was provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission and the respondent's challenge decision notice.

Discussion

11. The subject 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 be let from year to year on a

number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

12. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

13. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 1 April 2017.

14. Mr Batty submitted a revised RV sought of £19,250 given the existing tone of value for main space of £275 per m^2 and allowances for masking and frontage depth of the store. Mr Batty sought for a 10% allowance to reflect the frontage to depth ratio of the shop in relation to its frontage on the ground floor. He contended that the 6% survey adjustment made for that disadvantage by the respondent was unsubstantiated, and that 10% was typical in agreements that he had previously made for the same issue in other assessments. He also sought for a reduced zone rate for an area behind the stairs which he argued was clearly masked, and any normal display would not be able to be seen.

15. Ms Willis stated that she fully inspected and measured the subject hereditament on 25 January 2024. She stated the respondent had given a 6% allowance to the tone of value of main space to reflect the frontage depth of the store, which was also present in the 2010 list following a previous appeal after extensions to the property. She contended that there had been no changes to the property since that appeal, and that Mr Batty had not provided any evidence to warrant an increase to the reduction of 10%. Ms Willis argued that no allowance should be given for masking behind the staircase as the staircase was far back in the store and therefore not visible from the front, and it was surrounded by glass around the stairwell. She contended that there was good visibility through the zones in the store and that no hypothetical tenant would lower their rental bid due to the area behind the staircase.

16. The panel upheld the determinations of the respondent and confirmed the subject hereditament's entry in the rating list at £20,750 with effect from 1 April 2017. The panel found that an allowance of 6% had been given on a previous list and nothing had changed at the property in terms of the reasons for that allowance since. Although the previous list had no bearing on the current list, the panel found the level of allowance reasonable given the large size of the store in relation to its neighbouring assessments in the locality. Furthermore, Mr Batty had not provided any tangible evidence to warrant 10% aside from his own verbal contention based on other assessments which were not specifically referred to in this appeal.

17. The panel found there was no evidence which warranted an allowance for masking behind the staircase. The staircase was towards the back of the shop where the visibility from the front would either be non-existent or extremely limited whether the staircase was present or not. The staircase was surrounded by a glass panel meaning it was possible to see-through it, therefore the only masked area was behind the stairs itself which was a relatively small area. The panel found that the lower zone of the area behind the staircase was already justified due to its less prominent location in the store.

Disposal

18. In view of the foregoing, the appeal was allowed dismissed.

Date: 16 December 2024

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.
