VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; entertainment centre and premises; mode or category; comparable assessments; tonal evidence: appeal allowed in part.

APPEAL NUMBER:	CHG101145937	
RE:	Unit 6 at 11, Bretonside, Plymouth, PL4 0FE (the "subject property")	
BETWEEN:	AGD Seven Ltd	Appellant
	and	
	Lucy Formela-Osbourne (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	25 March 2025	
BEFORE:	Mr A Ramsay, Presiding Senior Member Mr SC Kamalan, Senior Member	
CLERK:	Miss N Shepherd IRRV (Hons)	
APPEARANCES:	Mr T Holt, on behalf of the appellant Mr P Opara, on behalf of the Valuation Officer	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined that the main space rate at the subject property should be reduced to £325/m^2. The resultant rateable value (RV) was £182,000 from 22 September 2022.

Introduction

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal has been made to this Tribunal on the grounds that the rateable value (RV) for the appeal property was not reasonable.

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

Background

5. The subject property was a ground floor unit built in 2019. The building was located in Plymouth as part of the "Barcode" which is a drive to development with 420 on-site parking spaces. It measured $562m^2$. It had been entered into the valuation list as "restaurant and premises".

6, The Ratable Value (RV) for the subject property was with effect from 22 September 2022, £196,000, based on an unadjusted rate of £350/m^2.

7. The appellant's representative was seeking a reduction to £26,500 RV for the subject property based on an unadjusted rate of £47.50/m^2.

8. The evidence submission before the panel comprised all the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, and comparable assessment evidence. Prior to the hearing, both parties requested that further evidence be admitted. Neither party had any objection to their inclusion.

9. Mr Holt, as representative for the appellant, appeared in a dual role of advocate and expert witness. He stated that he was being paid on a contingency fee basis but was aware that in giving expert evidence his responsibility was to the Tribunal.

10. The dual role is allowable in this Tribunal's proceedings having regard to the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009) (regulation 3 (Discharge of VTE functions – general) and rules regarding admissibility of evidence (regulation 17(2)(a)). However, it was necessary to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue.

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

Relevant Law

12. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis 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 the 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.

13. 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).

14. 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 22 September 2022.

Discussion

15. The panel had regard to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The panel was aware that this was a leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. The remaining propositions required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

16. Mr Holt referred to the rent at the subject property and that weight should be attached to this. The subject property had been let out on a 15-year lease which had commenced on 17 June 2022, out at £70,000 per annum with a 12-month rent free period, followed by half rent of £35,000 per annum, until the rent review of 20 June 2027, after which the full rent of £70,000 commenced. Mr Holt contended that the average rent over the first five years of the lease equated to £28,000 per annum, which was substantially less than the current RV and supported the proposed reduction to £26,500. The panel considered that the date of commencement of the lease was over seven years from the AVD and as such was too far removed from the reliably reflect the rental value that could have been achieved by the subject property at that point and as such attached no weight to this evidence.

17. Mr Holt contended that the subject property had incorrectly been valued as a restaurant and premises as opposed to an entertainment centre and premises. He submitted that the subject property had been let out and fitted out based upon it being an entertainment centre and premises. The works carried out in converting it equated to £600,000, therefore it would need substantial alterations in order to be used as any other premises than an entertainment centre and premises. Whilst there was a kitchen, bar and seating area at which to eat, there was also

axe throwing, karaoke, snooker and darts. He submitted that only 5% of profits came from food, whereas 45% came from the entertainment provided and the remainder from alcohol.

18. The panel noted that in the descriptor within the rating list the subject property was described as a restaurant and premises, however this had now been changed to entertainment centre and premises. Mr Opara submitted that the descriptor within the rating list was to assist in the identification of units as opposed to a determination as to the correct method of valuation. Furthermore, he submitted that the costs referred to would not have all related to rateable fit, with some pertaining to staff costs and professional fees. Furthermore, the subject property had been let on a shell basis, so it was not unreasonable for the fit out costs to be of a high level when taking this into account.

19. Mr Opara referred to other settled assessments at Breton Place which were within the same valuation scheme as the subject property, which was applicable to drive-to and drive-thru restaurants in the Southwest. Units 3, 5, 7, 8 and 9 all had been agreed at £350/$m^{2,}$ and Unit 4 had been agreed at £375/m^2 due to the prominence of its location. All were restaurant and premises. Mr Opara submitted that these settlements established a tone for properties comparable to the subject property within the development and supported the current RV. The panel noted that the subject property was the largest of these units with the others ranging in size between 311m^2 and 405m^2.

20. Mr Holt submitted that these assessments were not comparable to the subject property due to being restaurants and premises and the subject property should not be included within the same scheme as these properties. Instead, he contended that Units 13 & 14 at 11 Bretonside and 17 Bretonside were better comparators. Units 13 & 14 were a Golf Adventure and Premises and 17 Bretonside was an Escape Room and Premises. Units 13 & 14 had an unadjusted rate of £47.50/m^2 which gave an RV of £22,500 and 17 Bretonside a base rate of £150/m^2 which gave an RV of £47,500. Mr Holt contended that Units 13 & 14 Bretonside in particular supported the proposed main space rate, as this was also a socialising experience where food and drink was available.

21. Mr Opara submitted that 17 Bretonside was not comparable, this was an escape room which did not have a bar or food available and differed from the subject property. With regards to Units 13 & 14 Bretonside he submitted these were located to the rear of the development, in a far inferior position to the subject property, and were valued as an industrial premises which was of a different mode or category to the subject property and would not be applicable. Furthermore, the assessment had been increased in the 2023 list to £160,000 RV as it had been found to have been undervalued significantly. As the 2017 List was closed, no amendments were able to be made to this assessment.

22. The panel was aware that Valuation Officers should not impugn the list entries. If the existing entries are incorrect, the Valuation Officer has a statutory duty to correct it, unless the law prevents him from doing so. However, the panel had regard to the Upper Tribunal judgment of the *Dog & Gun Ltd (Oxenhope) v Howarth (VO)* [2015] in which it was determined that an exception to this is when the list is closed to further Valuation Officer alterations and information has since come to light, which the panel considered to be similar to this case.

23. Both parties also referred to other comparable assessments situated throughout England and Scotland. Whilst the panel noted that these assessments referred to other Entertainment Centre and Premises, it considered they were not within the same locality as the subject property. As such, it did not consider these properties to be comparable as they would have

been valued based upon their own individual circumstances, including location. Therefore, the panel attached no weight to these assessments.

24. The panel firstly addressed the method of valuation at the subject property. The panel had regard too *Williams (VO) v Scottish & Newcastle* [2001] in which the Court of Appeal decided that a licensed premises/pub located in a retail unit in a shopping centre was in a different mode or category to the shops. This was mainly due to the fact that the physical changes required to convert the pub back to the shop went beyond minor alterations and therefore could not be assumed to be in the mind of the hypothetical tenant.

25. Taking this judgment into consideration and in applying the rebus sic stanibus rule, the panel found that although alterations would need to be undertaken in converting the subject property into a restaurant and premises, it did not consider that these went beyond minor, as demonstrated by the fact that a kitchen was already in existence, as well as seating areas for eating. Whilst the panel had regard to the costs incurred at fitting out the subject property it considered that it had been let on a shell basis an there was no evidence provided as to a breakdown of those costs. Based upon this, the panel concluded that it had not been persuaded that the subject property had been valued incorrectly.

26. The panel then had consideration as to the overall main space rate to be applied at the subject property. Whilst the panel found the assessment of Units 13 &14 referred to by Mr Holt to be useful it ultimately attached most weight to the tonal evidence presented by Mr Opara. The panel considered that this demonstrated that there was an established tone for the properties within the immediate locality of the subject property in the same valuation scheme. However, it considered that the subject property was substantially larger than any of the assessments referred to by Mr Opara. Based upon this and taking into account the difference in size the panel considered the current unadjusted rate of £350/m^2 at the subject property to be excessive. Instead, it determined an unadjusted rate of £325/m^2 to be reasonable, to reflect the larger size of the subject property.

27. In consideration of the evidence presented, the panel determined the assessment below, based upon an unadjusted rate of £325/m^2.

COMPONENT PARTS OF PROPERTY					
Ref	**Floor**	**Description**	**Area m2/unit**	£ per m2 unit	Value (£)
1.1	Ground	All Main Areas	562.00	325.00	182,650
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION					
		Air Conditioning System	562.00	0.00	0
				Valuation sub-total	182,650

Say £182,000 RV with effect from 22 September 2022.

Disposal

28. In view of the above findings and conclusions the panel therefore allowed the appeal in part.

29. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, that the Valuation Officer, within two

weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of the subject property to an RV of £182,000 with effect from 22 September 2022.

Date issued to parties: 24 April 2025

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.
