THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates, shop, zoning, rental evidence, late evidence submitted by Respondent, late evidence not admissible, appeal dismissed as admissible evidence supported the rateable value.

Re: 84 High Street, Rickmansworth, Herts, WD3 1AQ

APPEAL NO: CHG000000022

BETWEEN: *Leisurefare Ltd* Appellant

and

Mr David Jackson Respondent

(Valuation Officer)

BEFORE: Mr G Garland (President of the Tribunal)

SITTING AT: The Tribunal Offices, 2nd Floor, 120 Leman Street, London, E1 8EU

ON: 13 March 2018

APPEARANCES:

The Appellant was represented by Mr Jeremy Scott, a Director of the company.

The Respondent Valuation Officer was represented by Mr Chris Robinson of the Valuation Office Agency as advocate and expert witness.

Summary of Decision

1. The appeal is dismissed as the rental evidence from the appeal and surrounding properties supports the Rateable Value.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value of the appeal hereditament was £15,250 from 1 April 2017. This was a compiled list appeal so the material day was also 1 April 2017. The appeal was made on 15 December 2017, following the Valuation Officer's Decision Notice of 21 November 2017 in respect of the appeal property (hereditament).

3. According to the VOA web site the breakdown of the valuation was as follows:

Floor	Description	Area m²/unit	Price per m²/unit	Value
Ground	Retail Zone A	18.3	£575.00	£10,523
Ground	Retail Zone B	11	£287.50	£3,163
Ground	Office	10	£57.50	£575
First	Office	21.9	£28.75	£630
First	Staff Toilets	0	£0.00	£0
First	Kitchen	4.2	£28.75	£121
Second	Store	15.8	£23.00	£363

Total value: £15,375 Rounded down to £15,250

4. On 23 January 2018 the Respondent Valuation Officer (VO) made an out of time application to include evidence within the appeal documentation. I found that the VO was allowed to include this evidence. The Appellant's objection was made on the basis of the weight that I should apportion to the evidence provided, not that it wasn't provided at the appropriate time. This was further supported by the details of when the VO stated the evidence was exchanged, which would appear to be within the 'challenge' process and complied with regulation 9 of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended).

5. The appeal hereditament was a shop. I was advised at the hearing by Mr Robinson that Rickmansworth High Street's main shopping area comprised of one main street extending from the crossroads at Northway to the east, to Station Road to the west. There was a 150 space free car park accessed via Solomon's Hill (close to the appeal hereditament) and the railway and underground station were just a short distance up Station Road. Mr Robinson had inspected the locality on 6 February 2018.

6. According to the challenge (dated 7 June 2017) the appeal property was leased at a rent of £18,000 from 1 February 2016 with a three month rent free period. The Appellant was seeking a reduction in rateable value (RV) to £10,695 from 1 April 2017. The Appellant challenged the assessment on the basis of the RV's of other similar shops in the vicinity:

> *'The High Street in Rickmansworth has a wide variation of base rates. For an unknown, and in my opinion unjustifiable reason, we attract the highest base rates. Units opposite us are lower and others in much better footfall areas such as opposite supermarkets, next to Post Offices and bus stops attract a lower rate.*
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> *One property opposite us in the same business has a lower base. My understanding is the first 6 metre of the shop is zoned A and then halved going back. The most appeal to a shop keeper is frontage. Our shop is very narrow and whilst I know that the area cost is the same as wider shop is far more desirable.*
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> *I challenge the logic of the specific base mark used of £575 where the other retailers in better location range from £400 - £500 and they were a lot less pre 1st April 17'.*

7. The VO considered the challenge and advised on 18 August 2017 that properties in the immediate vicinity between 80 and 90 High Street Rickmansworth had rental agreements that supported the 2017 Rating List basis of £575m^2 zone A (the zone A value used for the appeal property). He considered it would not be unusual for the price per m^2 to vary considerably

within a primary shopping area, particularly a High Street. Variances between £400m^2 and £650m^2 were supported by rental evidence at the antecedent valuation date of 1st April 2015.

8. The VO considered the passing rent of the property at £18,000 per annum from 1st February 2016 supported the RV, even accounting for the three month rent free period. Properties either side of the shop also had rents that supported £575m^2 zone A. The property opposite, 141 High Street, was valued at £480m^2 which was accepted to be a considerable difference. However, this was on a basis which had remained unaltered between the Rating Lists, the basis for 84 High Street was reduced from £585m^2 to £575m^2 between the Rating Lists. The differences in zone A base price were therefore historic and had been considered on appeals in the 2010 Rating List. The new 2017 values had been calculated after analysing rental evidence. The property was subject to a 2010 rating appeal on the same basis (the comparable zone A basis) that was subsequently withdrawn after discussion and evidence provided by the VOA to support the different values adopted in High Street Rickmansworth. The rental evidence for the 2017 Rating List was as follows:

High St	Description	Area ITZA m^2	Rent Date	Adjusted Rent £ pa	Value ITZA £ per m^2
90A	Shop & Premises	42.8	8/3/13	23,117	540.75
80A	Shop & Premises	45.7	24/6/16	32,500	710.69
80	Café & Premises	87.5	29/1/16	50,789	580.71
82	Bank & Premises	52	21/2/15	38,000	700.54

9. On 2 September the Appellant responded that he could not accept that the rates of the same trade (travel agent) exactly opposite him with a much better size/shape (number 141) could be rated less and that it hadn't been addressed in the VO response.

10. He also considered that the cheaper RV shops also had higher footfall. There was very little footfall after Lloyd's (next door neighbour) as there were no major stores between him and M&S as opposed to the other direction where there was Holland & Barrett, Post Office, Boots, WH Smith, Iceland, Superdrug, Weatherspoon's, Coral's and Boots Opticians.

11. In conclusion the Appellant considered that the rateable values that were assigned to Rickmansworth were completely out of step with those used in other local shopping areas such as Pinner and Amersham which had more trade than Rickmansworth.

12. In response the VO explained the definition of the RV and why agreements may produce different values. A specific response in respect of the property opposite was as follows:

    '141 High Street, Rickmansworth

    Our initial response did make reference to 141 High Street Rickmansworth, in regard of the fact that the differences in Zone A price between the parade and opposite side of the road are historic. These differences have been considered in the previous Rating List including a 2010 Rating Proposal on 84 High Street, Rickmansworth, where the differences in the basis were discussed. These differences were supported by rental evidence in the previous list and accepted. The passing rent for 141 High Street was on a relatively long lease with a nil increase which supported a lower figure. I am seeking to confirm the current details with regard to that properties current rental agreement, but it is conceivable that this assessment requires further examination.'

13. The VO also addressed the issue of footfall and other locations.

14. The decision notice of 21 November 2017 initially confirmed the VO's view that he was content with the differences in zone A values between the appeal hereditament and 141 High Street. However, later on within the Decision Notice he expressed his view that it was conceivable that the rent on 141 High Street required further consideration.

15. An appeal was made to the Tribunal and the appeal listed for hearing on 22 January 2018 with a hearing date of 13 March 2018.

16. On 12 February 2018 the VO wrote to the Appellant to advise that he had reviewed the evidence on number 141 and the surrounding Parade and concluded that no.135 to 145-147 should be valued at the same zone A price as the Appellant's property. The Rating list would, therefore, be altered within two weeks.

17. At that time no application was made to the Tribunal to include the evidence at the hearing in accordance with the legislation or the Tribunal's Directions. I decided this point as a preliminary matter at the hearing.

Preliminary Issue

18. Before deciding whether or not the late evidence would be allowed as part of the Respondent's case, I raised with the Respondent whether a decision notice could be issued when the VO had failed to address the Appellant's challenge. The Appellant's case relied on those properties directly opposite as being at a lower zone A value. After considering the law I was unconvinced that what the Valuation Officer had produced was a valid decision notice, when all it said in response to the Appellant's contention was:

    'I am seeking to confirm the current details with regard to that properties current rental agreement, but it is conceivable that this assessment requires further examination.'

19. When questioned, Mr Robinson explained that the VO had decided that the evidence the Appellant relied on wasn't fatal to the case, and that a decision had been taken that there was sufficient evidence to uphold the assessment.

Mr Robinson took over the appeal for the VOA and reviewed the evidence. After an internal discussion with colleagues it was decided to increase the zone A values of properties opposite, prior to the hearing. It seems to me that this misses the point of the Check, Challenge, Appeal process, which is to address the Appellant's challenge.

20. In my opinion, a failure to properly address the Appellant's challenge, which was clear, reasonable and unequivocal raises a number of issues as to the validity of the determination as :

    a. The Decision notice does not set out the VO final and considered position but rather produces a view that partially answers the challenge leaving open the possibility of further consideration, which cannot be what parliament intended.;

    b. Undermines the Government's intention that all matters of challenge should be addressed at Challenge Stage;

    c. Compels the Appellant to proceed to appeal as his case has not been addressed fully, which creates prejudice to his position; and

    d. Requires the Appellant to undergo further expense (an appeal fee) and delay to obtain a final decision, again prejudicial to his position.

21. This being the first appeal heard under the new arrangements, I hope that the Respondent will reflect on what I have said regarding the necessity to thoroughly answer the basis of challenge. I am satisfied that the VOA are developing their procedures in the new CCA appeal process and that their practice will develop to ensure that the intention of Parliament is put into effect.

22. Whilst unsatisfactory and in the absence of legal argument to the contrary, I held that the VO had issued a Decision Notice which was adequate for the instant appeal

23. The second issue which needed addressing is the production of new evidence in this appeal that as far as I could tell did not comply with any of the new provisions in the new appeal process.

24. The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009 No 2269) (as amended) state:

> **Admission of new evidence on NDR appeal**
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> **17A.**—
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> (1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—
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> (a) that evidence—
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> (i) is provided by a party to the appeal;
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> (ii) relates to the ground on which the proposal was made; and
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> (iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or
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> (b) all the parties to the appeal agree in writing to the party providing the new evidence.
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> (2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—
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> (a) the new evidence; and
>
> (b) the ground on which the proposal was made.

(3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal.

25. The evidence gave effect when the list was altered (some two weeks after notice was served and a couple of weeks before the hearing) but was not agreed to in writing. Indeed the Appellant wasn't even afforded the opportunity to make such an agreement. Therefore, it cannot be accepted under 17A (1)(b) of the regulations.

26. In accordance with 17A (1)(a) this evidence was clearly provided by a party to the appeal and relates to the grounds on which the proposal was made. However, the Respondent was aware of the possible error in his Rating List when the challenge was made and could have altered the list before issuing his Decision Notice. There simply is no reasonable excuse for the failure to deal with this issue within the pre appeal stages of the process. On that basis I refused to include the late evidence in accordance with 17A (1)(a)(iii).

27. For completeness I have set out below the Tribunal's Direction in respect of late evidence. I would encourage all parties to follow it, as in this case if I had allowed the evidence at the hearing, then I would have had to offer the Appellant an adjournment to consider whether he wished to provide further rebuttal evidence, which would be not only costly in time and effort but also would undermine a further intention of Parliament which was to speed up the appeal process generally by providing a clear framework for considering a case together with sanctions for non-compliance. Suffice to say, that for the new system to work all parties must engage with the process and comply with not only the letter, but also the spirit the law relating to openness and candour in the decision process of Challenge is to work.

28. Tribunal's own Practice Statement directs that:

Standard Directions for 2017 List and later List NDR appeals contained within the notice of hearing

Further evidence

1. No later than **four weeks** before the date of the hearing, a party must make written application to the Tribunal (with a copy to the other parties) if it intends to include at the hearing any new evidence which:

a) was not included within the notice of appeal but which all parties have subsequently agreed in writing to include (together with a copy of the written agreement); or

b) relates to the ground on which the proposal was made, was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations.

2. The application must specify the reasons for the late application and if under b) above set out:

- why the evidence was not available earlier;
- when it came into the possession of the party.

3. Starting from the date notice is served on them requesting the inclusion of the new evidence, parties to the appeal have **two weeks** to raise with the Tribunal any objection in writing and issue copies to all other parties.

4. The Tribunal will notify the parties of its decision whether or not to include the new evidence. Where it decides to include this new evidence any other party to the appeal may make application within **one week** of the notification by the Tribunal for further new evidence to be considered at the hearing. In making application the party must state why this new evidence is required, how it relates to the evidence that the Tribunal has already agreed to include and how it relates to the ground on which the proposal was made. The application must include a copy of the evidence the party wishes to include; at the same time copies of the application and evidence must be served on all other parties. Those parties have **one week** from when the application is served to make any objection in writing to the Tribunal, copying in all

other parties.

Decision

29. The appeal 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 let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

30. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

31. The Appellant made mention within the challenge stage of the number of shops that had become empty since the 1 April 2017 (the material day). As the Tribunal was only considering the circumstances at 1 April 2017 it was unable to take any of that evidence into consideration.

32. The appeal hereditament has a rent on it. It has been a long held practice in rating that the starting point of any valuation is the rent on the appeal property. The closer the rent is to the AVD of 1 April 2015 and the statutory definition, the greater weight should be given to it. The appeal property is rented on full repairing and insuring terms at a figure of £18,000 per annum from 1 February 2016, with a three month rent free period. Even when adjusting for the rent free period and, it being eight months after the valuation date, it supports the rateable value. Mr Scott stated that the figure set for the rent was based on the pension requirements of the previous owner/occupier who was looking for a retirement income. The lease was also only for a two year fixed period with six-monthly rolling break clauses.

33. The rental evidence is best tested against rents of other properties in the area. As it is a shop the common practice is to use the zoning method to value. The rent on the appeal property devalues to £639 m^2 for zone A which is higher than the figure used in the RV. Three of the four comparable rents devalue to figures in excess of the £575 m^2 zone A used to value the appeal hereditament. One, 90A, is lower at £540 m^2 but required considerable

adjustment to reflect the statutory terms and was two years prior to the AVD. I noted that two of the four comparable properties appeared to have different uses, with one likely to have A2 (financial) use and the other A3 (café) use. I asked as to whether that might affect the rent and was advised by the Respondent it didn't (although no evidence in support was provided). Furthermore, one of the comparable properties had a return frontage and no evidence was put forward on how that might affect value.

34. For the purpose of this appeal I have considered the shops opposite to be lower than that for the appeal property. I therefore agree with the Appellant that the values of shops opposite, the footfall and the pattern of values in the area all support his case.

35. Mr Scott did not accept that the shops opposite should have had their assessments increased. He said the solution was to reduce his property's value to fall in line with others.

36. In this appeal I have given greater weight to the evidence of the appeal property rent and those close by, than those on the opposite of the road (which support the Appellant's contention) or indeed the footfall and, confirmed the RV in the list as not being unreasonable.

37. The appeal is therefore dismissed.

APPEAL NO: CHG000000022

President

Registrar

26 March 2018