

THE VALUATION TRIBUNAL FOR ENGLAND



Summary of Decision: non-domestic rates; restaurant; rental evidence submitted by Respondent not admissible; appeal dismissed as comparable assessment evidence did not support a lower rateable value.

Re: Italian Orchard, 96 Whittingham Lane, Broughton, Preston, PR3 5DB

APPEAL NO: CHG000000163

BETWEEN: *San Marco Ltd* Appellant

and

Mr Richie Roberts Respondent
(Valuation Officer)

BEFORE: Mr Alf Clark (Vice President of the Tribunal)

SITTING AT: Offices of the Tribunal Service, Manchester

ON: Wednesday 12 September 2018

APPEARANCES:

Mr John Houston from John Houston Consulting, representing the Appellant as advocate and expert witness.

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 comparable evidence supports the Rateable Value (RV).

Introduction

2. This was a 2017 Rating List appeal. The RV of the appeal hereditament was £72,000 from 1 April 2017. This was a compiled list appeal so the material day was also 1 April 2017. The appeal was made on 8 May 2018, following the Valuation Officer's Decision Notice of 22 January 2018 in respect of the appeal property (hereditament).
3. The appeal hereditament is a restaurant, situated off Whittingham Lane at Broughton, Preston. It is in a rural location approximately four miles north of Preston city centre. The property was converted to a restaurant in 1985, and it was extended in 2001 with a modern glass dining room to the front. It sits in large grounds and has a large customer car park.
4. The present valuation of £72,000 RV is based upon a total area of 1,157.57 m² at an adopted main space price of £90 per m².
5. In a statement which accompanied the challenge, Mr Houston explained why he believed that the 2017 assessment was incorrect and excessive. He argued that the Valuation Officer had been indiscriminate in the values applied in the 2017 revaluation, as evidenced by the fact that some restaurants had retained the same main space rate as in the 2010 Rating List; some have had a £10 or £20 uplift to the main space rate; none, as far as he could ascertain, had been reduced.
6. Mr Houston contended that the price adopted for the subject premises had taken no account of the widely acknowledged fall in all commercial property rental values in Preston and Central Lancashire between 2008 and 2013, caused by the economic recession, in particular restaurant and licensed property rental values.

7. In support of his argument, he referred to Tiggis at 38-42 Guildhall Street, which had been let from 6 April 2009 at a rent of £60,000 per annum, inclusive of all the trade fixtures and fittings, and goodwill. When the 2010 List assessment was contested at the Valuation Tribunal, the Valuation Officer's representative, Mr Robinson, stated that in his opinion, between the antecedent valuation date (AVD) of 1 April 2008 and the start of the lease on 6 April 2009, rental values for restaurants had fallen by circa 7%.
8. On 15 March 2013, a new ten year lease was effected on Tiggis to La Marokina Limited. Mr Houston analysed the stepped rent at an annual equivalent of £54,000 per annum over the first five years of the lease to review, which equated to a fall in rent of 16.3% between 2008 and 2013.
9. Mr Houston stated that he had no evidence that restaurant rents in Preston and the surrounding area in the interim period to the new AVD of 1 April 2015 increased, and yet the main space rate on Tiggis in the 2017 list was £140 per m², compared to the VT decided rate of £130 per m² for the 2010 List. This was in contrast to a restaurant opposite, Face, Guildhall Street, where the main space rate remained the same between the two Rating Lists at £120 per m².
10. In further support, Mr Houston referred to lease renewal negotiations he was involved with on Brown's, in Guildhall Street. The former tenants sought a new lease for a term of twelve years from 29 June 2013 at a rent of £30,000 per annum. The passing rent at that time within the subsisting lease was £60,000 per annum. The lease renewal negotiations did not complete.
11. 158-159 Friargate (formerly Mood) was let for a term of 25 years on 1 July 2001 at an FRI rent of £105,000 per annum. In December 2010, a new lease was effected at a rent of £75,000 per annum. When that business failed, the unit was re-let in October 2011 on a new five year lease to Mac Leisure Limited, at a rental of £50,000 per annum for the first year and £55,000 per annum for years two to five.
12. Mr Houston concluded that the indications were that restaurant and licensed property rental values declined between 1 April 2008 and 1 April 2015 in

Preston city centre. The main space price used in the assessment on the subject property for 2010 was agreed with the Valuation Officer after detailed consideration of rental evidence. He therefore argued that the main space rate for the subject premises in the 2017 List should be lower, not higher than the 2010 List, and requested an alteration from £72,000 to £48,250 RV. At the hearing, Mr Houston contended for a revised valuation of £52,000 RV, based upon an adopted price of £65 per m².

13. In the Valuation Officer's initial response to the challenge, rental and comparable evidence was presented in defence of the adopted £90 per m² for the appeal property. Rental evidence was provided in respect of the following comparable properties:

Address	Total area m ²	Adopted value	Current RV
The Villa, 76 Whalley Road, Clitheroe, BB7 1EE	204.95	£150	£30,500
Papa Luigis, Wigan Road, Euxton, Chorley, PR7 6JH	289.77	£140	£41,500
154 Preston New Road, Samlesbury, Preston, PR5 0UP	214.94	£140	£30,750
Tiggis, 38-42 Guildhall Street, Preston, PR1 3NU	369.14	£130	£49,250
The Elephant, Southport Road, Scarisbrick, Ormskirk, L40 8HQ	409.77	£120	£49,000
Face Restaurant, Guildhall Street, Preston, PR1 3NU	211.15	£120	£25,250
29-31 Town Road, Croston, Leyland, PR26 9RA	113.75	£110	£12,500
Porcinis, 84 Liverpool Road, Longton, Preston, PR4 5NB	161.29	£100	£16,000
305 Barden Lane, Burnley, BB10 1JA	160.82	£90	£14,250

The Agra, Horse Hill Farm, Accrington Road, Hapton, Burnley, BB11 5QJ	293.85	£80	£25,250
--	--------	-----	---------

14. The following properties were scheduled as comparables:

Address	Total area m ²	Adopted value	Current RV
The Villa, 76 Whalley Road, Clitheroe, BB7 1EE	205.0	£170	£34,750
Quattro's Italian Restaurant, Rainford Road, Ormskirk, L39 0HF	234.3	£160	£37,250
322-325 Garstang Road, Fulwood, Preston, PR2 9UP	297.9	£150	£46,500
535 Southport Road, Ormskirk, L40 9RF	313.0	£150	£46,750
166 Garstang Road, Fulwood, Preston, PR2 8NB	251.0	£150	£39,000
The Elephant, Southport Road, Scarisbrick, Ormskirk, L40 8HQ	409.8	£150	£61,000
Red Cat Inn, Blackburn Road, Chorley, PR6 8LD	166.6	£150	£24,750
Yu & You's, Longsight Road, Blackburn, BB1 9EU	239.2	£140	£34,750
Papa Luigis, Wigan Road, Euxton, Chorley, PR7 6JH	289.8	£140	£41,500
154 Preston New Road, Samlesbury, Preston, PR5 0UP	214.9	£140	£30,750
123-124 Church Street, Preston PR1 3BT	134.8	£140	£18,750
Unit 9 Liverpool Road, Little Hoole, Preston,	236.5	£140	£34,250

PR4 5JT			
Shajan Indian Restaurant, Longsight Road, Blackburn, BB1 9EX	539.9	£140	£75,500
Top Wok, Wigan Road, Leyland, PR25 5SB	235.7	£130	£30,500

15. Following receipt of the Valuation Officer's initial response to the challenge, Mr Houston requested to inspect the forms of return, in relation to the comparable rental evidence, in an email dated 21 September 2017.
16. The Valuation Officer responded on 25 September 2017, that "as no Regulation 17 schedule has been issued then an inspection of the documents could not take place. Regulation 17 is issued prior to 8 weeks from a relevant hearing date and therefore one will not be issued during the Challenge process."
17. Mr Houston expressed his surprise at the response, and asked for the Valuation Officer to provide adjustment and analysis of the rental evidence.
18. Prior to the issue of the Valuation Officer's Decision Notice, the parties corresponded with regards to the rental and comparable evidence. Mr Houston highlighted that there had been a number of inaccuracies in the information provided, which was accepted by the Valuation Officer.
19. Additional rental evidence of comparable properties was included by the Valuation Officer in a further response to the challenge, dated 7 December 2017:

Address	Total area m ²	Adopted value
241 Fylde Road, Ashton-on-Ribble, Preston, PR2 2NH	187.4	£100
O'Este, Chapel Street, Ormskirk, L39 4QF	211.82	£160
Verdes Restaurant, The Green, Eccleston, Chorley, PR7 5SU	221.62	£100

A Touch of Spice, Garstang Road, Broughton, Preston, PR3 5JA	301.99	£120
---	--------	------

20. In the Decision Notice issued on 22 January 2018, the Valuation Officer confirmed that he was not persuaded on the evidence discussed and exchanged that the rating list entry was incorrect. The Valuation Officer argued that the rent cited by the appellant on Tiggis restaurant should be weighed as part of the basket of evidence, and the fact that the rent had fallen was not indicative of a general trend. It was submitted that rental evidence drawn from Preston and the surrounding area supported the £90 per m² adopted for the appeal property. The appellant had not provided any evidence to support his adopted price (assumed to be £60 per m² as a valuation had not been provided by Mr Houston).
21. The Valuation Officer argued that the evidence on Brown's and Mood was not relevant, as those properties were occupied as bars/nightclubs rather than restaurants. They did not provide any evidence of value as at 1 April 2015, as in the case of Brown's, the lease negotiations did not complete; in the case of Mood, the evidence is from four years prior to the AVD.
22. The final argument for the Valuation Officer was that comparison between the two lists was not conclusive, as the purpose of a revaluation is to reflect relative as well as overall changes in rental value. Each rating list stands on its own merits and has to be viewed *de novo* on the evidence available at the AVD.
23. In an email dated 11 July 2018, Mr Robinson confirmed that Mr Houston had been given the opportunity to inspect the forms of return on 12 June 2018. He also confirmed that the policy of the Valuation Office Agency had now changed to reflect that the rental schedule contains all the information to meet the Regulation 17 legislation, and the processes had been altered to allow the interested party to inspect the documents should they request to do so.
24. At the hearing, Mr Houston confirmed that he was representing the appellant, San Marco Ltd, in respect of the subject property and three other restaurants also owned by them. He was aggrieved that the Valuation Officer had failed

to allow him to access the forms of return until appeals had been made, at a cost of £300 per appeal to the appellant.

Decision and reasons

25. 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).

26. 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.

27. The appeal hereditament is not subject to a rent, and therefore there is no direct rental evidence available.

28. I consider that the rental evidence submitted by the Valuation Officer is inadmissible, as there had not been a Regulation 17 Notice served, as required by regulation 4 of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009 NO. 2269), as amended by SI 2017 No. 156:

(4) Information to which this paragraph applies shall not be used in any relevant proceedings by a billing authority, a LO or a VO unless—

(a) not less than two weeks' notice, specifying in relation to any information to be so used the documents or other media in or on which that information is held and the dwelling or hereditament to which it relates, has previously been given to every other party to the proceedings; and

(b) any person who has given not less than 24 hours' notice of his intention to do so has been permitted, at any reasonable time—

(i) to inspect the documents or other media in or on which such information is held; and

(ii) to make a copy (other than a photographic copy) of, or of any extract from, any document containing such information;

[(c) for a NDR appeal, the information relates to a matter included in--

- (i) the notice of appeal or any document accompanying the notice of appeal; or
- (ii) new or further evidence admitted under regulation 17A].

29. As a consequence, the appellant's representative had not been able to inspect forms of return until after he had submitted an appeal. I find that the actions of the Valuation Officer are unacceptable, though I note that Mr Robinson has confirmed that there has been a change of policy, and therefore this situation should not arise again.
30. The only rental evidence for consideration is that provided by Mr Houston. I am not persuaded by the relevance of Brown's and Mood, for the reasons outlined by Mr Robinson. The only other rental evidence is that provided in respect of Tiggis, 38-42 Guildhall Street, however, I am not persuaded that Tiggis is directly comparable to the appeal property, as it is located in the centre of Preston, whereas the appeal property is located four miles out of the centre, in a rural location.
31. While I appreciate that Mr Houston had referred to the rental evidence on Tiggis to demonstrate a fall in rental values for restaurants in the Preston area between 2008 and 2013, this is only one example, and does not necessarily support a general trend. Furthermore, the evidence of the fall in rent for Tiggis does not address what happened to rental values between 2013 and the AVD for the 2017 List, 1 April 2015. Mr Houston commented that he had no evidence that restaurant rents in Preston had increased, but by the same token, there was no evidence that they had fallen.
32. In the absence of any reliable or admissible rental evidence, I have referred to the evidence of comparable properties presented by the Valuation Officer. Mr Robinson referred to Touch of Spice, Garstang Road, as the closest comparable property, however, Mr Houston disputed its relevance, as he is aware that it is leased as a pub. While that may be the case, it is a fact that the property is valued as a restaurant at £120 per m². I therefore consider that it is relevant for comparison with the appeal property, and it demonstrates that the appeal property at £90 per m² is not unreasonable.

33. Mr Houston had disputed the relevance of the Valuation Officer's other comparable properties, as they were in different locations. I agree that the comparable properties are not all located in Preston, however, I am satisfied that they provide a good indication of values adopted for restaurants in similar rural locations in Lancashire.
34. Given the range of values adopted for comparable properties, from £80 to £170 per m², I am uncertain as to how Mr Houston has arrived at his adopted £65 per m² for the appeal property. He has not provided evidence of any other relevant comparable properties to support £65 per m².
35. I further consider that Mr Houston's adopted £65 per m² is unsupported, when viewed alongside the evidence of comparable properties, particularly as the appeal property is maintained and decorated to a high standard.
36. I agree with the Valuation Officer that the 2010 and 2017 Lists are separate and distinct. The property and its locality must be considered as they physically existed at the material day, but market conditions together with the economic climate that existed at the AVD. Comparisons between the two lists are not conclusive, and each List stands on its own merits and has to be viewed *de novo* having regard to the relevant evidence.
37. I conclude that a RV of £72,000, for the appeal property, based upon a main space price of £90 per m² is reasonable.
38. The appeal is therefore dismissed.

APPEAL NO: CHG000000163



Alf Clark

Vice President

Date: 10 October 2018