

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: 34 Chorley Road, Walton-le-Dale, Preston, PR5 4JA

APPEAL NO: CHG100005630

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 £39,000 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 23 January 2018 in respect of the appeal property (hereditament).
3. The appeal hereditament is a restaurant, known as Pinocchio's, located on Chorley Road, Walton-le-Dale, just over half a mile to the south of Preston. It is a listed building dating from the 17<sup>th</sup> century, and comprises a two-storey rendered brick and slate property with a modern stone clad extension.
4. The present valuation of £39,000 RV is based upon a total area of 482.38 m<sup>2</sup> at an adopted main space price of £100 per m<sup>2</sup>.
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; only one 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 adopted for the appeal property in the 2017 list was £100 per m<sup>2</sup>, compared to that in the 2010 List of £90 per m<sup>2</sup>.
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 the Preston area. 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 £39,000 to £26,250 RV.
13. At the hearing, Mr Houston confirmed that he now sought a revised valuation of £29,750 RV, based upon a main space price of £75 per m<sup>2</sup>.

14. In the Valuation Officer's initial response to the challenge, rental evidence was presented in defence of the adopted £100 per m<sup>2</sup> for the appeal property:

Address	Total area m <sup>2</sup>	Adopted value
29-31 Town Road, Croston, Leyland, PR26 9RA	129.3	£130
6 Market Street, Chorley, Lancs	165.19	£90
241 Fylde Road, Ashton-on-Ribble, Preston PR2	230.8	£100
63 Southport Road, Ormskirk, PR8 5JF	113	£120
The Elephant, Southport Road, Scarisbrick, Ormskirk, L40 8HQ	482.7	£150
Porcinis, 84 Liverpool Road, Longton, Preston, PR4 5NB	198.35	£120
O'Este, Chapel Street, Ormskirk, L39 4QF	253.3	£160
Quattro, 32 Great George Street, Preston	152.21	£90
Verdes Restaurant, The Green, Eccleston, Chorley, PR7 5SU	315.6	£100

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 15 October 2017.

16. The Valuation Officer responded on 19 October 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 evidence. Mr Houston highlighted

that there had been a number of inaccuracies in the information provided, which was accepted by the Valuation Officer.

19. In the Decision Notice issued on 23 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.
20. It was submitted that rental evidence drawn from Preston and the surrounding area supported the £100 per m<sup>2</sup> adopted for the appeal property.
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 out of the centre.
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. I note that the prices adopted range from £90 to £160 per m<sup>2</sup>. The Valuation Officer contended that the appeal property is superior to 6 Market Street, Adlington and 32 Great George Street, Preston (valued at £90 per m<sup>2</sup>), and more akin to 84 Liverpool Road, Longton (valued at £120 per m<sup>2</sup>) and Verdes, The Green, Eccleston (valued at £100 per m<sup>2</sup>) in terms of quality and location.
33. Mr Houston had disputed the relevance of those properties, as they were either not located in Preston, or in the case of 32 Great George Street, this was a takeaway, and not a restaurant. 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 out of town locations in Lancashire.

34. I determine with reference to comparable evidence demonstrating adopted values between £90 and £160 per m<sup>2</sup>, that at £100 per m<sup>2</sup>, the valuation of the appeal property is not unreasonable.
35. Mr Houston confirmed that he had adopted £75 per m<sup>2</sup> for the appeal property based upon his rental analysis of Tiggis at £105 per m<sup>2</sup>; the lower value of £75 per m<sup>2</sup> reflected the appeal property's out of town location. However, I note that the Valuation Officer's analysis of the 2013 rent is higher at £123 per m<sup>2</sup>, and the value adopted for Tiggis is £140 per m<sup>2</sup>. Mr Houston has not referred to any other relevant comparable properties to support his adopted £75 per m<sup>2</sup>.
36. I further consider that Mr Houston's adopted £75 per m<sup>2</sup> is unsupported, when viewed alongside the evidence of comparable properties, particularly as the appeal property has been refurbished to a high standard.
37. 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.
38. I therefore conclude that a RV of £39,000, for the appeal property, based upon a main space price of £100 per m<sup>2</sup> is reasonable.
39. The appeal is therefore dismissed.

APPEAL NO: CHG100005630



**Alf Clark**

**Vice President**

**Date: 10 October 2018**