

THE VALUATION TRIBUNAL FOR ENGLAND



Summary of Decision: non-domestic rating appeal; Accuracy of Compiled list RV in 2017 Rating List; Auction House; Tenancy at Will, passing rent, value in 2010 list; Appeal Dismissed

Re: The Auction Hall, Linden Park Road, Tunbridge Wells, Kent TN2 5QL

APPEAL NO: CHG000000087

BETWEEN: Lower Pantiles LLP Appellant

and

Valuation Officer Respondent

BEFORE: Ms U Haque (Chairman)

Mr S Kandola

SITTING AT: Tribunal Offices, 2nd Floor, 120 Leaman Street, London E1

ON: 7 January 2019

APPEARANCES:

Mr J Sheridan FRICS representing the appellant

Mrs P Stallwood assisting Mr Sheridan

The Respondent Valuation Officer was represented by Mr J Humphreys as advocate and expert witness.

Summary of Decision

1. The appeal is dismissed.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £24,500 from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017. In February 2018 the Valuation Office Agency (VOA) reduced the RV to £18,500; however, when issuing the challenge case decision notice at the challenge stage on 22 June 2018 the VOA further reduced the RV to £16,000 and altered the rating list with effect from 1 April 2017. The appeal was made on 22 August 2018 against the Valuation Officer's (VO) Decision Notice of 22 June 2018 in respect of the appeal property (hereditament) and the RV of £16,000. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £16,000 RV was deemed as correct.
3. The appeal property is a stand-alone building it consists of a ground floor of 224.30 m² and a first floor that can only be used as storage and is 41.10 m² in size there is also a wc and two car parking spaces. The appellant's representative argued that due to its configuration the building can only be used as an auction house.
4. As Mr Sheridan appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).
5. Mr Sheridan declared that he was not instructed under any conditional fee arrangement. Mr Sheridan confirmed 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. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Decision and reasons

7. 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).

8. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.
9. The appellant's representative argued that in his opinion the principal evidence is the tenancy to Hrabia Ltd (Marcus Rowell) dated 19 February 2014 with a start date of 28 July 2013. The appellant's representative stated even though Hrabia Ltd occupied the property on the basis of a Tenancy at Will the company continued to be in occupation at the antecedent valuation date (AVD) of 1 April 2015 and remained the tenant at the commencement of the new list on 1 April 2017. The company remained in occupation until 30 May 2017, nearly 4 years; the appeal property is currently unoccupied. In Mr Sheridan's opinion the longevity of occupation fulfils the assumption that the tenancy would have a reasonable prospect of continuance and on the basis of a year to year rent, in accordance with the rating hypothesis.
10. Mr Sheridan pointed out that the current rent on the appeal property is £25,000 pa this rent includes rates, repairs and service charges. He contended that the net analysis based on actual deductions for rates and service charge is £9,500 (£25,000 minus £10,830.11 (rates) minus £4,629.27 (service charge) equals a net rent of £9,540.62). Based on this net rent Mr Sheridan was proposing a revised RV of £9,500 for the appeal property this devalued to £38 per m² for the ground floor.
11. The VO's representative contended that the current rent on the appeal property does not conform to the rating hypothesis. It is assumed for rating purposes that a tenancy would have a reasonable prospect of continuance. It was the VO's opinion that the Tenancy at Will attached to the appeal property and the rent passing do not conform to the rating hypothesis as the tenancy can be terminated at any time by either party and therefore does not have a reasonable prospect of continuance.
12. The VO stated that even though he disagreed with Mr Sheridan's analysis of the rent as the circumstances of the rent do not, in his opinion, accord with the assumptions required in determining the rateable value little weight should be placed upon it.
13. The VO altered the RV to £16,000 based upon an agreement reached on the assessment in the 2010 list, in which rent for the 2010 list was analysed and a revised price of £65 per m² was agreed. It was the VO's opinion that the open market rental value for this particular property had not significantly altered since the 2010 list therefore the same values should be applied to the 2017 rating list.
14. The panel examined the passing rent of £25,000 pa on the appeal property and the Tenancy at Will issued to Hrabia Ltd. The panel agreed with the VO

that the Tenancy at Will did not conform to the rating hypothesis. It was clear that this tenancy could be terminated at any stage, by either party. Even though the tenant had been in occupation for a considerable amount of time a hypothetical tenant fresh on the scene would be aware that the Tenancy at Will could be terminated at any time and therefore the hypothetical tenant would not have a guarantee that the tenancy would have a reasonable prospect of continuance.

15. As the panel came to the conclusion that the Tenancy at Will presented by the appellant's representative and the passing rent of £25,000 pa do not conform to the rating hypothesis it placed little weight on this evidence.
16. The panel also found that a tenancy agreement existed in 2011 with a passing rent of £40,000 pa however as this rent was agreed some 4 years before the AVD of 1 April 2015 it place no weight upon it. The parties also disagreed on the potential redevelopment of the appeal property and what affect it would have on value. The panel was informed that planning permission to change the appeal property to offices was only obtained in September 2018 this was sometime after 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 this evidence into consideration.
17. The panel found that apart from the Tenancy at Will issued in 2014 and the passing rent of £25,000 pa attached to this tenancy the appellant's representative did not present any other substantive evidence to support his proposed assessment of £9,500. As the panel placed little weight on the Tenancy at Will issued in 2014 it considered the other evidence presented. The panel consider that the only other substantive piece of evidence presented was by the VO of the agreement reached on the 2010 list which had been applied to the 2017 list entry.
18. In appeals of this nature, the burden of prove rested on the appellant's representative to illustrate that the appeal property's assessment was overvalued. In relation to this appeal, Mr Sheridan had failed to persuade the panel that the existing basic rate was excessive.
19. Consequently, the appeal is dismissed.

Appeal No: CHG000000087

Dated: 30 January 2019