

VALUATION TRIBUNAL FOR ENGLAND



Non Domestic Rating Appeal; 2010 Rating List; Shop and premises; Areas in dispute; Air conditioning; Relativities to be applied to kitchen and ancillary office; end allowance sought for layout: Appeal allowed.

RE: 87 Broadway, London, W13 9BP

APPEAL NUMBER: 527024095329/538N10

My B K Limited and Mr M Dunlevey (Valuation Officer)	Appellant Respondent
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PANEL: Mrs M Colne (Chairman)
Mr B Patel

SITTING AT: VTS Offices, 120 Leaman Street, London

ON: Friday 16 October 2015

APPEARANCES: Mr M Makhdumi of Evans & Payne (on behalf of the appellant)
Miss Sogal (for the Valuation Officer)

Summary of Decision

1. Appeal allowed. The appeal property's assessment was reduced from £42,750 Rateable Value to £40,000 Rateable Value, with effect from 1 January 2011.

Introduction

2. The appeal has been brought in respect of the following: 87 Broadway, London, W13 9BP (the 'appeal property'), which was entered in the 2010 rating list as 'shop and premises' at £42,750 Rateable Value, with effect from 1 January 2011.
3. The appeal arose following a proposal received by the Valuation Officer on 11 June 2014. As the respondent had not reduced the assessment to £1 Rateable Value, the figure sought on the proposal, the matter was referred to the Tribunal under regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.
4. The appeal property was a shop and premises that traded as Burger King. The appeal property was a double shop; however the front part of No 85 had been sublet to a different occupier that traded as a mobile phone shop. The appellant occupied all of

87 Broadway and the rear parts behind the mobile phone shop. It was located in West London, west of the North Circular Road but well within the Hayes by-pass. It was situated within the middle of a parade of terraced shops within West Ealing, which was a busy parade but not the main shopping location in the area. The tone applied was £460/m² Zone A and this was not in dispute.

5. As a Preliminary issue, the Valuation Officer requested that the appeal be adjourned and relisted to a later date; the reason being that she had only been notified that the case was to be heard the day prior to the hearing. However, the clerk provided the panel with an email that the tribunal office had sent the parties on 12 October 2015, which notified the parties that this appeal was to be heard on 16 October 2015. Therefore, the panel held that sufficient notice had been provided that this case would be heard. Accordingly, the panel went on to hear the appeal.
6. 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 it being overlooked by the panel.

Issues in dispute:

7. There were several issues in dispute, namely:
 - i) the correct floors areas for the appeal property;
 - ii) the actual area that benefitted from air conditioning;
 - iii) the relativities applied to the kitchen and ancillary office areas; and
 - iv) whether or not an allowance of 2.5% was warranted for layout.

Evidence and Submissions

8. Mr Makhdumi provided the panel with a bundle of evidence, which included his statement, location plans, internal and external photographs of the appeal property, a copy of the current and his proposed assessment, floor plans and his measurements for the premises, details of properties cited for comparable purposes and a copy of scale applied to zoned properties valued in accordance with VXSZONED1. In view of the evidence he had presented, Mr Makhdumi asked the panel to determine his proposed reduced assessment of £40,000 Rateable Value with effect 1 January 2011. His proposed valuation took account of his revised areas, an area of 97 m² that benefitted from air conditioning, relativities of A/10 being applied to the kitchen and ancillary office areas and a 2.5% end allowance to reflect the appeal property's layout.
9. Miss Sogal provided the panel with the appeal history, a copy of the current and her proposed reduced assessment. Miss Sogal explained that she had accepted the appellants' representative's revised areas for the play area, she agreed that the kitchen and ancillary office areas should be valued at a relativity of A/10 and had applied a 2.5% end allowance to reflect the appeal property's layout. Accordingly, she asked the panel to determine her proposed revised assessment of £41,500 Rateable Value, with effect from 1 January 2011.

Decision and Reasons

10. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of an appeal against an entry in the 2010 rating list, the Rating Lists

(Valuation Date) (England) Order 2008 (SI 2008 No.216) required the rental levels to be taken as at the antecedent valuation date (AVD) of 1 April 2008.

11. The panel noted that the following issues had been resolved:
 - i) that a 2.5% end allowance was warranted to reflect the appeal property's unusual layout;
 - ii) that the kitchen and ancillary office areas should be valued at a relativity of A/10; and
 - iii) that the appellant's representative's revised areas for the play area should be adopted.
12. Therefore, the only issues that remained in disputed were the actual measurement of the appeal property and the extent of the premises that benefitted from air conditioning.
13. The panel found that the appellant's representative had inspected the appeal property on 11 June 2014. He had also provided the panel with a floor layout plan of the premises and a breakdown of his measurements. The appellant's representative had repeatedly tried to agree the measurements and arrange a joint inspection with the Valuation Officer. The Valuation Officer had not inspected the appeal property and had not provided a floor layout plan or a breakdown of her measurements. Therefore, the panel placed more weight on the measurements put forward by the appellant's representative's and accepted his areas.
14. The panel then addressed the extent of the premises that benefitted from air conditioning. The appellant's representative explained that there were two air conditioning units and both were located over the seating area at the front of the premises; they had been specifically located to ensure the seating area was kept cool. He had calculated the area of 97 m² up to the counter as benefitting from air conditioning. Behind the counter there were hot plates where the food was kept warm and he considered that air conditioning would not be required in that area. The Valuation Officer had proposed a revised area for the air conditioning of 122.23 m² and considered that the area up to the appliances benefitted from air conditioning.
15. On this point the panel found in favour of the appellant's representative and held that an area of 97 m² befitted from air conditioning. There were only two air conditioning units to the front of the premises that were specifically located over the seating area. The area of 97 m² included the area occupied by the counter. The panel accepted the appellant's representative's point that the occupier would not want the air conditioning to go any further back as it would chill the food that they were trying to keep warm.
16. After having regard to the above conclusions, the panel found in favour of the appellant's representative on each issue raised and the Valuation Officer had conceded on a number of issues. Accordingly, the panel allowed the appeal and determined the appellant's representative's proposed reduced assessment of £40,000 Rateable Value, with effect from 1 January 2011.

Order:

17. Under the provisions of Regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the appeal property's entry to £40,000 Rateable Value, with effect 1 January 2011.

18. Under Regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 3 December 2015

Appeal number: 527024095329/538N10