

VALUATION TRIBUNAL FOR ENGLAND



*Non-domestic rating; 2010 rating list; dentist surgery; method of valuation; Gallagher (VO) v Dr M Read & Partners & Dr J Poyser & Partners (RA/31/2012); Doctors' Rent and Rates Scheme; contractor's test; appeal allowed.*

RE: 51 Falcon Road, London SW11 2PH

APPEAL NUMBER: 596025382057/537N10

BETWEEN	Perfect Smile, Falcon Road Ltd	Appellant
	And	
	D Jackson (Valuation Officer)	Respondent

PANEL: Mr A Craig (Chairman)

Mr M Nwosu

SITTING AT: VTS Offices – London 2<sup>nd</sup> Floor, 120 Leaman Street, London E1 8EU

ON: 14 September 2017

APPEARANCES:

Mr M Shapcott of Evans & Payne for the appellant

Mrs L Brown-Lee of the Valuation Office Agency (VOA) for the respondent

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**Summary of decision**

1. Appeal allowed: The rateable value (RV) of 51 Falcon Road, London SW11 2PH is reduced to £3,250 with effect from 1 April 2010.

## **Introduction**

2. This appeal had been brought in respect of the following: A proposal made by the appellant to alter the entry made by the Valuation Officer (VO) into the 2010 rating list for 51 Falcon Road, London SW11 2PH, described as surgery and premises, RV £10,000. Agreement between the VO and the appellant had not been possible and the matter was therefore referred to the Valuation Tribunal for England (VTE) as an appeal under Regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2268.
3. The appeal property was constructed in 1996 in a development which includes a doctor's surgery and a chemist's. The appeal property was being used as a dentist's surgery. The appeal property is in a secondary location within the London borough of Wandsworth.
4. The VO's representative informed the panel that she had some preliminary issues to raise: she was now contending that the proposal was invalid and that the appellant's representative had only stated at the hearing that the areas were in dispute.
5. The VO's representative contended that the proposal was invalid as incorrect rental details were shown on the proposal form. The panel invited the VO's representative to refer it to relevant legislation and to make her legal arguments in support of her submission. At this point, the VO's representative said she was withdrawing her submission that the proposal should be ruled invalid.
6. The panel noted that any disagreement between the parties over the areas would have been apparent during the exchange of documents: however no action had been taken. The panel noted that discrepancies could be explained by the fact that the parties had each adopted a different method of valuation and had not attempted to produce alternative valuations adopting each other's methods. The panel determined to adopt the areas appropriate to which ever valuation method was deemed to be the correct approach.
7. 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 its having overlooked by the panel.

## **Issue**

8. The issue in dispute was the appropriate method by which the appeal property should be valued. The appellant's representative contended that the appeal property should be valued on the contractor's method and the RV should be reduced to £3,250. The VO's representative argued that the appeal property should be valued on the rentals method and that the appeal should be dismissed.

## Decision and reasons

9. The subject hereditament is a dental surgery within a purpose-built health centre, constructed in 1996, which also includes a much larger doctors' surgery and a pharmacist's/chemist's shop. The Valuation Officer's representative, Mrs Lily Brown-Lee, had previously agreed that the doctors' surgery with the address 47 Falcon Road should be valued using the contractors' basis. This accords with section 6 part 3, valuation of all property classes, of the Rating Manual, 'Practice note 2: 2010: The valuation of primary care centres', which had been agreed with representatives of NHS England and is expected to be applied by all parties to appeals relating to property occupied by NHS England.
10. The practice note states: 'Occupiers/ratepayers other than NHS England are not bound by this agreement. However the content of the practice note is to be applied to all hereditaments in the occupation of all ratepayers within this class.'
11. We had regard to the Upper Tribunal decision in *Gallagher (VO) v Dr M Read & Partners & Dr J Poyser & Partners (RA/31/2012)*, which is concerned with the correct valuation approach on properties occupied under Planning Use Class D1 in relation to doctors' premises, which accepts that, while the best evidence would be evidence of lettings of comparable premises in the open market, use of the rentals method would depend on 'sufficient, appropriate and reliable comparable evidence being available from the marketplace'.
12. The 'current market rents' derived from the Doctors' Rent and Rates Scheme (DRRS) are unreliable for rating valuation purposes as they do not accord with the rating hypothesis. As the aforementioned practice note states, 'this includes lease rents on GP surgeries, lease rents on Primary Care Health Centres and lease rents on other healthcare uses in shared premises where it is evident that they too are affected by the DRRS rents'.
13. Mrs Brown-Lee argued that the dental surgery was properly valued using the rentals basis and by reference to other dental surgeries in a variety of locations. It was her case that the contractors' basis was inappropriate as this was not the way dental surgeries were generally valued and she sought to defend the rateable value in the compiled 2010 list of £10,000, which equates to £162.45/m<sup>2</sup>. She argued, further, that a February 2014 rent of £15,183 per annum, which she had taken from the Form of Return, supported the value in the list, albeit that rent was agreed almost six years after the antecedent valuation date.
14. Using the Contractors' basis, Martin Shapcott, of Evans and Payne, for the appellant, valued the hereditament at £3,261, say £3,250, equating to £46.43/m<sup>2</sup>. We scrutinised his calculations and Mrs Brown-Lee did not suggest there was any fault in them as she had neglected to carry out a valuation exercise using the Contractors' basis, it being her case that it was not the appropriate method. We are satisfied that, if applying the Contractors' basis, Mr Shapcott's proposed rateable value is based on correct calculations.

15. Wandsworth Borough Council had granted planning permission in January 1994 for the purpose-built health centre as part of a development, which also included 25 flats. A condition of the planning permission was as follows: 'The ground floor doctors' surgery and dentist, as shown on the approved plans, shall be used for medical or health service uses only and for no other purpose (including any other purpose in Class D1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987.'
16. We have to be concerned with the hypothetical ratepayer coming fresh to the scene: we are not concerned with the actual ratepayer. As far as this Tribunal is concerned, we find it impossible to distinguish between a doctors' surgery and a dentist's, both within the same purpose-built health centre and both constrained by the same specific restriction on use set out in the 1994 planning consent, whereby use is restricted to medical or health service use. We believe it is immaterial that one space is occupied by an NHS doctors' surgery and the other by a private dentist. Theoretically either surgery, albeit they are of different sizes, could be occupied by either occupier and we are satisfied that the integrity of the rating list demands that they be valued on the same basis. The Valuation Officer has already agreed that the doctors' surgery should be valued on the Contractors' basis and, accordingly, this agreed basis must be used also for the other surgery. The February 2014 rent on the dental surgery cannot be treated as 'sufficient, appropriate and reliable', nor is it an open market rent compliant with the rating hypothesis. Following the ratio in *Gallagher*, we have disregarded it.
17. The subject hereditament must be valued using the Contractors' basis. The appeal is allowed and we direct rateable value £3,250 with effect from 1 April 2010.

### **Order**

18. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Valuation Officer to alter the 2010 rating list entry in respect of 51 Falcon Road, London SW11 2PH to rateable value £3,250 with effect from the 1 April 2010.

Date: 11 October 2017

Appeal Number: 596025382057/537N10