

THE VALUATION TRIBUNAL FOR ENGLAND



Summary of Decision: non-domestic rates; 2017 rating list appeals; shop and premises; café and premises; rental evidence; minimum guaranteed rent, together with supplementary top-up; consolidated appeals; appeals allowed as the evidence showed that the existing valuations were unreasonable.

Re: Casey Jones, East Concourse, Victoria Station, London SW1 1JT (Appeal 1)
Unit 1 Mainline Concourse Opp Platform 16, Waterloo BR Station, London SE1 7LY (Appeal 2)
Unit 15 R/O Concourse Mainline, Opp Platform 16, Waterloo BR Station, London SE1 7LY (Appeal 3)
Unit R18, Paddington Station, London W2 1HB (Appeal 4)

APPEAL NUMBERS: CHG100339899 (Appeal 1), CHG100140083 (Appeal 2), CHG100140079 (Appeal 3) and CHG100151377 (Appeal 4)

BETWEEN:	Select Service Partner	Appellant
	and Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mr K Sutch (Senior Member)

CLERK: Mrs R James

REMOTE HEARING 4: Wednesday 12 January 2022

APPEARANCES: Mr I Tanner of Tanner Rose (on behalf of the Appellant)
Mr D Barber (Respondent's representative)

Summary of decision

1. (Appeal 1) Casey Jones, East Concourse, Victoria Station, London SW1 1JT – appeal allowed; £300,000 Rateable Value (RV), effective from 1 April 2017
2. (Appeal 2) Unit 1 Mainline Concourse Opp Platform 16, Waterloo BR Station, London SE1 7LY – appeal allowed; £350,000 RV, effective from 1 April 2017
3. (Appeal 3) Unit 15 R/O Concourse Mainline, Opp Platform 16, Waterloo BR Station, London SE1 7LY – appeal allowed; £320,000 RV, effective from 1 April 2017

4. (Appeal 4) Unit R18, Paddington Station, London W2 1HB – appeal allowed; £450,000 RV, effective from 1 April 2017

Introduction

5. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with the Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
6. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.
7. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.
8. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two members of the Tribunal, including at least one Senior Member. However, paragraph 11 of those Arrangements also provide that a Senior Member may sit alone to avoid postponing the hearing where a second panel member is unable to sit for any reason.
9. In respect of this hearing, a second panel member has been unable to sit. In accordance with Paragraph 11 of the Tribunal Business Arrangements, I am satisfied that I am authorised to hear and determine this appeal alone.
10. Mr Tanner was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain 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). Mr Tanner explained that Tanner Rose was representing the appellant in this appeal on a fixed fee basis.
11. These appeals have been brought in respect of the following:
 - i) (Appeal 1) Casey Jones, East Concourse, Victoria Station; shop and premises occupied by Burger King. The appellant’s Challenge to the Valuation Officer (VO) was made on 3 July 2020. The appeal to this Tribunal was made on 15 September 2021, following the VO’s Decision Notice of 24 June 2021. The original assessment of £390,000 RV, with effect 1 April 2017 had been reduced at the challenge stage to £345,000 RV.
 - ii) (Appeal 2) Unit 1 Mainline Concourse Opp Platform 16, Waterloo BR Station; shop and premises occupied by WhistleStop. The appellant’s Challenge to the Valuation Officer (VO) was made on 7 November 2019. The appeal to this Tribunal was made on 15 September 2021, following the VO’s Decision Notice of 18 May 2021. The original assessment of £505,000 RV, with effect 1 April 2017 had been reduced at the challenge stage to £370,000 RV.

- iii) (Appeal 3) Unit 15 R/O Concourse Mainline, Opp Platform 16, Waterloo BR; café and premises occupied by Starbucks. The appellant's Challenge to the Valuation Officer (VO) was made on 7 November 2019. The appeal to this Tribunal was made on 15 September 2021, following the VO's Decision Notice of 18 May 2021. The original assessment of £535,000 RV, with effect 1 April 2017 had been reduced at the challenge stage to £415,000 RV.
- iv) (Appeal 4) Unit R18 Paddington Station; shop and premises occupied by Burger King and Caffè Ritazza. The appellant's Challenge to the Valuation Officer (VO) was made on 19 December 2019. The appeal to this Tribunal was made on 15 September 2021, following the VO's Decision Notice of 17 June 2021. The original assessment of £675,000 RV, with effect 1 April 2017 had been reduced at the challenge stage to £535,000 RV.

12. On the request of Mr Tanner and with the agreement of Mr Barber, the panel decided to consolidate the hearing of these four appeals.

13. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that I considered all of the evidence presented before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

14. Should the supplementary top-up element be reflected in the appeal properties' assessments?

Evidence and submissions

15. I had been provided with a bundle of evidence for each appeal, which comprised the challenge submissions and VO's decision notices, a copy of the respective leases in respect of the subject properties, photographs and location plans in respect of the subject properties, previous Valuation Tribunal decisions in relation to M2/3 Western Concourse, Kings Cross BR Station (Appeal Number 521027648180/053N10, dated 5 April 2018) and Central Station, Neville Street, Newcastle Upon Tyne (Appeal Number CHG100049832, dated 4 December 2019), schedules of comparable assessments, together with both parties' respective valuations for the subject properties.

16. Mr Tanner proposed reduced assessments for the four subject properties in line with their respective minimum guaranteed rent (MGR). He contended that the MGR had been set to open market value. He added that the supplementary top-up element was exclusive to the respective occupiers. Accordingly, he sought the following reduced assessments:

- i) (Appeal 1) - Casey Jones, East Concourse, Victoria Station - £300,000 RV, effective from 1 April 2017
- ii) (Appeal 2) - Unit 1 Mainline Concourse Opp Platform 16, Waterloo BR Station - £350,000 RV, effective from 1 April 2017
- iii) (Appeal 3) - Unit 15 R/O Concourse Mainline, Opp Platform 16, Waterloo BR Station - £320,000 RV, effective from 1 April 2017

iv) (Appeal 4) Unit R18, Paddington Station - £450,000 RV, effective from 1 April 2017

17. Mr Barber sought dismissal of the appeals. He contended that there were two parts to the subject leases and both parts had been correctly reflected in the current assessments.

Decision and reasons

18. The subject hereditaments 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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015; the antecedent valuation date (AVD). These were compiled list appeals so the material date was 1 April 2017.

19. The subject properties were retail units/cafés located within Victoria Station, Waterloo Station and Paddington Station in London. All the subject properties were operated by Select Service Partner as Burger King, WhistleStop, Starbucks and Burger King and Caffè Ritazza, respectfully.

20. Both parties had agreed that there was no consistent tone for the retail/café units within London railway stations. The exception being food courts and balcony areas. The assessments of retail/café units at railway stations were valued having regard to their individual rents. It was highlighted that two units located very close to each other could have significantly differing rents due to footfall, pedestrian flow and prominence.

21. It was common practice for such units to have two elements to their leases, a MGR, together with a supplementary top-up. The supplementary top-up element came into effect if that particular occupier's trade exceeded the limit specified within their lease.

22. In these appeals, I had to consider whether it was appropriate to reflect the supplementary top-up element within the subject properties' respective assessments or solely have regard to the MGR.

23. I had been provided with the following rental evidence in relation to the subject properties:

Appeal	MGR	Actual 2015 rent paid	Current RV (defended by VO)	Representative's proposed RV
Appeal 1	£300,000 Apr 2015	£345,100	£345,000	£300,000
Appeal 2	£350,000 Nov 2015	£370,624	£370,000	£350,000
Appeal 3	£320,000 Dec 2015	£414,281	£415,000	£320,000
Appeal 4	£450,000 Mar 2014	£534,700	£535,000	£450,000

24. There were two parts to the subject leases and Mr Barber was of the opinion that both parts should be reflected in the subject assessments. He explained that it was market practice for there to be a MGR plus a supplementary top-up element within the rental agreements on such units. He contended that the hypothetical tenant would not agree to a MGR at open market value in the knowledge that he would also have to pay a supplementary top-up element should their profits exceed a certain limit. He explained that there were many instances where the supplementary top-up element had been paid on a consistent basis. In

this regard he referred to Casey Jones (Appeal 1), where a supplementary top-up had been paid in 2014, 2015 and 2016. Therefore, he considered that it was reasonable to take account of the actual rent paid, which included both the MGR and the supplementary top-up.

25. I noted that the four current assessments that were being defended by Mr Barber, were all in line with the actual rents paid in 2015; this included the MGR, plus supplementary top-up.
26. However, I was more persuaded by the arguments put forward by Mr Tanner. Mr Tanner explained that when units on a station concourses became vacant, an open tendering process would commence. Rental bids would be invited by potential tenants. Mr Tanner contended that the rental bids put forward were proposed MGRs that were indicative of the open market value.
27. The landlord, Network Rail, did not consider the supplementary top-up element provided a rent to open market value. At rent review, one option was that if a supplementary top-up had been consistently paid, the MGR would be increased to 80% of the actual rent paid (MGR and supplementary top-up). Had the landlord considered that the supplementary top-up arrived at open market value, then the rent review MGR would be 100% of the actual rent paid.
28. I agree that the supplementary top-up element was personal to the specific occupier. There was nothing to say that the hypothetical tenant would pay the same level of supplementary top-up, or indeed pay a supplementary top-up at all. I was of the opinion that the supplementary top-up element could reflect excessive performance that would not be achievable by the average hypothetical tenant.
29. I also accepted that the base rent (MGR) had been set from an open competitive rental tendering process. Furthermore, it would not be beneficial for a hypothetical tenant to bid an unrealistically low MGR as this would not secure the unit and it would mean that supplementary top-ups were inevitable. A hypothetical tenant coming fresh to the scene would place an open market value bid for a MGR to both secure the unit and reduce the likelihood of paying supplementary top-ups; this would give more certainty on the actual rent that would be payable should the unit be secured.
30. I had been provided with a schedule that detailed 31 comparable properties' assessments where the 2017 Rating List assessments had been valued in line with their respective MGR. The majority of assessments had been valued below the MGR, at the actual MGR or a fraction higher. Therefore, I found that it was not uncommon for units to be valued in line with the MGR. Furthermore, some of those properties listed within the schedule were located within Victoria and Waterloo railway stations.
31. I found the subject properties' MGRs good evidence, having been set reasonably close to the AVD.
32. Having regard to my conclusions, I allowed the appeals in full. I determined that the four subject properties should be valued in line with their respective MGR; which were as follows:
 - i) (Appeal 1) Casey Jones, East Concourse, Victoria Station - £300,000 RV, effective from 1 April 2017;
 - ii) (Appeal 2) Unit 1 Mainline Concourse Opp Platform 16, Waterloo BR -£350,000 RV, effective from 1 April 2017

- iii) (Appeal 3) Unit 15 R/O Concourse Mainline, Opp Platform 16, Waterloo BR Station - £320,000 RV, effective from 1 April 2017; and
- iv) (Appeal 4) Unit R18, Paddington Station - £450,000 RV, effective from 1 April 2017

Order

33. As a consequence of the above decision, the Valuation Officer is ordered to reduce the respective 2017 Rating List entries, within two weeks of the date of this Order, as follows:

- i) (Appeal 1) Casey Jones, East Concourse, Victoria Station, London SW1 1JT – £300,000 Rateable Value (RV), effective from 1 April 2017
- ii) (Appeal 2) Unit 1 Mainline Concourse Opp Platform 16, Waterloo BR Station, London SE1 7LY - £350,000 RV, effective from 1 April 2017
- iii) (Appeal 3) Unit 15 R/O Concourse Mainline, Opp Platform 16, Waterloo BR Station, London SE1 7LY – £320,000 RV, effective from 1 April 2017
- iv) (Appeal 4) Unit R18, Paddington Station, London W2 1HB – £450,000 RV, effective from 1 April 2017

Refund of fees

34. A refund of the paid fees will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 20 January 2022

Appeal Numbers: CHG100339899, CHG100140083, CHG100140079 and CHG100151377