RA/27/2006

LANDS TRIBUNAL ACT 1949

RATING – valuation – 2000 rating list – shop and premises – whether premises assumed to be open plan rebus sic stantibus – whether tone of the list established, requiring parts of shop to be valued as ancillary office – appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LONDON SOUTH EAST VALUATION TRIBUNAL

BETWEEN **JERRY JEZIERSKI** **Appellant**

and

DENNIS PATRICK OSBORNE **Respondent**
(Valuation Officer)

Re: 7 Clapham High Street
London
SW4 7TS

Before: N J Rose FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 4 December 2006

Appellant in person
Respondent in person with permission of the Tribunal

The following cases are referred to in this decision:

Futures London Limited v Stratford (VO) (2006) RA 75
William (VO) v Scottish and Newcastle Retail Limited [2001] RA 41

DECISION

1. This is an appeal by the ratepayer, Mr Jerry Jezierski, against the decision of the London South East Valuation Tribunal, confirming the assessment in the 2000 rating list of a shop known as 7 Clapham High Street, London, SW4 7TS at RV £7,700. The appeal was conducted in accordance with the Tribunal's simplified procedure. Mr Jezierski appeared in person. The respondent valuation officer, Mr Dennis Patrick Osborne MRICS also appeared in person with permission of the Tribunal. I inspected the hereditament in company with the parties on 11 December 2006.

2. The circumstances of this appeal are unusual. Mr Jezierski had no objection in principle to the value of £7,700. He said that if, in August 2001, when he first instructed a firm of rating advisers to submit a proposal to reduce the assessment on his behalf, he had known what he now knows about rating valuation, he would not have contested the assessment. As the result of a number of subsequent events, however, he wished to pursue his appeal against the VT's determination and seek a lower valuation. Mr Osborne's valuation of the appeal hereditament, prepared for the purposes of this appeal, was £7,850, but he considered that the compiled list assessment of £7,700 was not unreasonable and he asked the Tribunal to confirm it as the VT had done.

Description

3. The appeal hereditament is situated on the south-east side of Clapham High Street, between the junctions with Lendal Terrace and Bedford Road, close to Clapham North underground station. Clapham High Street is a continuation of the A3 and runs from Clapham North to Clapham Common. Clapham is a densely populated south London suburb, located within the London Borough of Lambeth.

4. The appeal hereditament comprises the ground floor of a three-storey terrace property. It is in a commercial location in a local parade of similar shop units, many of which are occupied as take-away food outlets. At the material day – 1 April 2000 – the hereditament was used for the dispensing of herbal remedies and for the practice of alternative medicine. It was divided by partitions to form a reception area, a retail dispensary, waiting area, office, treatment and consulting rooms, kitchen and retail storage. The net internal frontage is 3.93m, widening to 5.05m and narrowing again at the rear. The total floor area is 85.41m^2.

Rating history

5. The appeal hereditament was entered in the 2000 rating list from 1 April 2000 at RV £7,700 and described as shop and premises.

6. A proposal to alter the 2000 list, made on Mr Jezierski's behalf by Hammer Properties, was received by the Valuation Office Agency on 17 August 2001. The resulting appeal was dismissed by the Valuation Tribunal on 17 July 2003. The reason given was that

> "the Tribunal was informed that the appellant no longer wished to pursue the appeal."

7. A further proposal was made by Hammer Properties five days later. It was in identical terms to the one submitted in 2001 and remains outstanding.

8. On 6 December 2004 Mr Jezierski himself submitted a proposal. The appeal resulting from that proposal was dismissed by the Valuation Tribunal on 26 January 2006 and the current appeal arises from that decision.

Mr Jezierski's case

9. Mr Jezierski said that in August 2001 a surveyor from Hammer Properties approached him, suggesting that the rates payable on his property were too high and promising to secure a substantial reduction if he were instructed to lodge a proposal. He decided to accept the offer and paid an initial fee of £300. He received no information about the progress of his appeal until November 2004, when he was visited by a representative of the Valuation Officer, who wished to re-measure the premises. It was only then that he learned that the original appeal had been dismissed by the VT and that a further appeal was outstanding. Mr Jezierski said that he then carried out his own research into the matter, which showed

> "that no reasonable grounds (as it was claimed by Hammer Properties) exist in order to obtain rates reduction and the case would have been withdrawn."

10. Subsequently, the Valuation Officer made a proposal to increase the assessment of the appeal hereditament to RV £8,300. When Mr Jezierski spoke to Mr Piyasena, the Valuation Officer then dealing with the matter, he was told that the re-calculated floor area was greater than that on which the compiled list assessment had been based. Mr Jezierski was very surprised at the suggestion because, he said, the premises had not expanded in any way.

11. Mr Piyasena re-visited the property. He explained that the original valuation of £7,700 had been based on a measured survey in 1974, which showed that an area of 16.10m^2 at the rear was used as an office and this had been valued at one-eighth of the appropriate Zone A rate of £190 per m^2. Since that space was no longer in office use it should be valued as part of the shop, at the remainder rate of one-quarter of Zone A. Mr Jezierski considered that, since the original valuation had been based on the actual (office) use of the rear area rather than on a hypothetical basis treating the entire premises as retail, the same approach should be adopted by Mr Piyasena when he discovered that the property was used for a variety of purposes. Thus the area at the rear, which was now used as office, treatment rooms and storage should be valued as such and not on the assumption that it formed part of an undivided shop unit. Mr Jezierski drew Mr Piyasena's attention to the assessment of a neighbouring property,

13 Clapham High Street which was assessed at only £4,000 in the 2000 rating list. That valuation was also based on £190 for the Zone A area, but the office and storage space behind was valued at between one-sixth and one-eighth Zone A. Moreover, the value of £5,000 attributed to No.13 in the 2005 rating list was based on £250 per m^2 for Zone A and one-eighth Zone A for the office and storage space behind. Instead of agreeing to adopt a similar approach to the valuation of the appeal hereditament, the Valuation Officer increased the 2005 list assessment of No.13 to £9,200, based on two zones and a remainder.

12. Mr Jezierski said that he then felt that he was being victimised by the Valuation Office for pursuing his appeal. He also considered that he was unfairly treated by the VT. The VT decision read as follows:

> "The appeal before us arises from a proposal received by the Valuation Officer on 6 December 2004, against the entry in the 2000 rating list of £7,700.
>
> Mr Piyasena outlined the background and history of the appeal. The property was inspected and re-measured on 26 November 2004 when it was found that the Valuation Officer's record of the floor areas was incorrect. As a result the assessment was revised to a proposed rateable value of £8,300. Following a further inspection on 12 May 2005, the Valuation Officer adjusted his floor plan areas to take account of a solid wall, and consequently proposed a revised rateable value of £8,200. Unfortunately, in neither instance was a Valuation Officer notice issued and it is now too late to do so since the 2000 rating list is closed.
>
> Mr Piyasena submitted his proof of evidence, which he went through in detail. The rent for the subject property was agreed with effect from 1 July 1998 (ie close to the antecedent valuation date of 1 April 1998) at £12,000 per annum, and devalues at £240.33 in terms of main space (ITMS). The rent for 3 Clapham High Street (£5,000 pa with effect 26 March 1999) devalues at £245.18 ITMS, and the rent for 9 Clapham High Street (£9,360 with effect from 1 May 1999) devalues at £306.90 ITMS.
>
> Mr Piyasena contended that the Valuation Officer's assessment, based on a Zone A rate of £190 per square metre, is not excessive and he referred to a summary of comparable assessments in Clapham High Street as supporting evidence.
>
> The Tribunal is asked, therefore, to dismiss the appeal.
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> Mr Jezierski's argument was that the Valuation Officer has not valued the property having regard to the way the floor space is actually used in connection with his business in alternative medicine.
>
> He explained that not all the floor space is used for retail purposes and he referred to the floor plan in his bundle of papers, to illustrate those parts that are used as consultation rooms, therapy rooms, and for storage.
>
> Having carefully considered the submissions of the parties, the Tribunal reaches the following conclusions.

The Tribunal is satisfied that the Valuation Officer had adopted the correct approach in assessing the property as a shop. It is an established principle in rating that a property must be valued vacant and to let – ie a shop as a shop, but not a particular type of shop. Also, rating is based on hypothetical tenancy rather than actual tenancy.

Turning to the level of value, the Tribunal is satisfied that Mr Piyasena's valuation, based on a rate of £190 psm, is not excessive and is consistent with the tone.

Furthermore, the Tribunal notes that the rent passing is £12,000 per annum, commencing 1 July 1998 – ie close to the antecedent date of 1 April 1998.

As mentioned at the hearing, the 2000 rating list is now closed and thus the Valuation Officer is precluded from increasing the entry in the list.

Accordingly the appeal is dismissed."

13. Mr Jezierski said that his submission to the VT lasted for nearly two hours – many times longer than that of Mr Piyasena – and that the VT had failed to do him justice in describing his case in only six lines. The reason the VT dismissed the appeal was that it found the hereditament should be valued as a shop at £190 per m^2 Zone A. But that was not in issue. The basis of valuation and the Zone A rate were agreed. Mr Jezierski's point was that the rear section should be valued at a lower proportion of the Zone A rate than had been adopted by the Valuation Officer and the VT totally ignored his arguments in that regard. Mr Jezierski also took exception to the fact that the VT had referred to Mr Piyasena's proof of evidence, but to Mr Jezierski's "bundle of papers".

14. Mr Jezierski produced the Valuation Officer's valuations for the 2005 list for 22 shops between 16 and 119 Clapham High Street, where storage space had been valued at one-eighth of the Zone A rate or less. He had not been able to obtain details of the valuations of these properties for the 2000 list, but it was reasonable to suppose that a similar approach had been adopted then. He referred to the 2005 list entries for two properties occupied by similar businesses to his own. One was on the first floor of 151-153 Clapham High Street and the other on the first to third floors of 7 Clapham Common South Side and both were valued entirely as offices. Finally, he produced details of 151 Clapham High Street and 28 Abbeville Road. In both cases the 2005 list valuations took masked areas at one half of the appropriate Zone A rate.

15. Mr Jezierski said that his main comparable was No.13. He had produced the other details to demonstrate how office and storage areas had been treated elsewhere. He did not rely on those comparables, however, because he recognised that those assessments might themselves require updating, since it was clear that many of the properties had not been inspected by the Valuation Officer for a long time.

16. Mr Jezierski made the following additional points. The approach adopted by the Valuation Office of valuing similar properties in different ways gave some occupiers an unfair competitive advantage. By asking Mr Jezierski to produce details of other properties which

appeared to be assessed at a lower rate than his own and then seeking to increase the assessments of such properties, the Valuation Officer was placing him at risk of reprisals from other ratepayers. The Valuation Office had used the updating of valuations to take account of changes in layout as an excuse to maximise revenue. In one month alone, May 2006, some 400 appeals by Hammer Properties were listed for hearing by VTs in London. In every case the appeal was withdrawn or Hammer Properties failed to attend. A number of other companies operated in a similar fashion. If the Valuation Office Agency and the Valuation Tribunals put an end to such practices, much taxpayers' money would be saved and/or the Valuation Office Agency would have the resources necessary to ensure that their property records were up to date. Mr Jezierski realised that this Tribunal had no jurisdiction to consider the activities of rating advisers. His complaints on the matter had been referred to the Department of Trade and Industry, although he did not know whether they were being taken seriously.

17. In conclusion, Mr Jezierski said his objectives in pursuing the appeal were as follows. For the 2000 list the appeal hereditament should be valued in the same way as No.13. The front section of the premises should be treated as retail. The remainder, starting with the small remnant of a structural wall towards the rear and at right angles to the shop front, should be treated as offices. Mr Jezierski did not seek to quantify the valuation on this basis, although he was invited to do so by Mr Osborne prior to the hearing.

18. For the 2005 list – not the subject of this appeal – Mr Jezierski would accept Mr Osborne's zoning approach, on the basis that all shops would be treated in the same way, but the allowance for masking should be increased from 5% to 10%. Finally, he hoped that the Valuation Office would at last take steps to deal with the problems caused by the activities of firms such as Hammer Properties.

Valuation Officer's case

19. Mr Osborne is employed as rating team leader in the Lambeth Valuation Office. He said that he had valued the shops in the parade from 3 to 19A on the zoning basis, adopting two zones of 4.57m and 7.62m deep and a remainder at one-quarter Zone A. He explained that zoning is normally taken to the first structural wall only. Where occupiers have carried out minor works of alteration such as the erection of stud partitioning or similar non-load bearing walls within what might otherwise be the retail area, these are to be ignored. Areas behind any structural walls, such as offices and stores, are to be valued according to their relative worth and not included in the zoned areas. This will be a matter of comparison and judgment.

20. Mr Osborne said that on 16 May 2002 a proposal was made on No.19A by Hammer Properties. This proposal was withdrawn on 18 June 2003 after discussions with the Valuation Officer. None of the compiled list assessments of the other properties in the parade had been challenged. Mr Osborne concluded that the level of value applied to this parade had been accepted and that the tone of the list was settled.

21. Although the rent paid for the appeal hereditament, agreed very close to the antecedent valuation date was, at £223 per m^2, considerably higher than the basis of £190 per m^2 adopted, Mr Osborne felt that it should be considered in the light of *Futures London Limited v Stratford (VO)* (2006) RA 75, where the Lands Tribunal (Mr P H Clarke FRICS) had preferred to adopt a settled tone rather than the rent of the hereditament itself. Nevertheless, the analysis of the actual rent payable for the appeal hereditament indicated that the established tone was not excessive. Mr Osborne disagreed with Mr Jezierski's argument that the property should not be valued in strict accordance with the zoning method. Considered vacant and to let it was a shop unit, in a parade of shop units in either retail or take-away restaurant use. It had a full height glazed frontage. The occupier had erected partition walls to form a number of treatment rooms for use in his alternative therapy business. These should be ignored for rating valuation purposes and the shop should be zoned in the conventional way.

22. Nevertheless, Mr Osborne recognised that the property suffered from some minor disabilities. Firstly, a narrow part of Zone B was masked, and secondly the layout and use of the remainder area were constricted by the existence of some intrusions. These disabilities were not present in the comparable properties in the parade and he considered that they merited a 5% end allowance. His valuation was therefore £7,850, as follows:

Zone	**Area m^2**	**£ per m^2**	**£**
A	17.21	190.00	3270
B	37.96	95.00	3606
Remainder	28.49	47.50	1353
Kitchen (A/6)	1.75	31.73	55
			8284
Less 5% for masking and layout of remainder			414
		Total	7870
		Say	£7850

23. The rateable value in the list with effect from 1 April 2000 was £7,700. Mr Osborne considered that that value was within reasonable tolerance of his own valuation and was therefore acceptable.

24. As for Mr Jezierski's observations on Hammer Properties, Mr Osborne said that, so long as an appeal was validly made, the Valuation Officer was under an obligation to deal with it. It had to be remembered that, irrespective of the identity of the agent, there was a ratepayer behind every appeal who wished to secure a reduction in his rates liability. The Customer Service Manager of the Valuation Office Agency had been involved in extensive correspondence on the subject with Mr Jezierski and several of the issues raised would be addressed in a separate forum.

Conclusions

25. I start with Mr Jezierski's criticisms of the VT decision. Although no transcript of the VT proceedings was available, Mr Osborne did not contradict Mr Jezierski's account and I am prepared to accept, for the purposes of this decision, that the VT did not understand the precise nature of the case presented to it by the ratepayer. I am bound to say, however, that the VT would have been assisted in its understanding of the case if Mr Jezierski had produced a valuation showing the make-up of his suggested RV. He did not do so, either before the VT or in this Tribunal. Had he prepared such a calculation, it would have been clear that he accepted that the hereditament should be valued as a shop at £190 per m^2 and that the dispute related only to the proportion of that figure to be applied to the rear section of the premises.

26. It is not the practice of this Tribunal, however, to decide whether the VT was right to arrive at the conclusion it did on the basis of the evidence before it. A rating appeal in the Lands Tribunal takes the form of a rehearing. The entire matter is considered afresh, solely on the basis of the evidence presented in this Tribunal and it is to that evidence that I now turn.

27. Mr Jezierski is asking for his property to be valued on exactly the same basis as 13 Clapham High Street. Mr Osborne disagrees because, he says, a recent inspection by his colleague has shown that the Valuation Office's survey of No.13 was out of date and its valuation based on such survey is incorrect. The appeal hereditament has been valued on the same basis as the remainder of the parade and that basis has now formed a settled tone which it is too late to challenge. In support of his approach, Mr Osborne cited the decision of this Tribunal in *Futures London Ltd*. In the course of that decision Mr Clarke made the following observations on the concept of the tone of the list:

> "There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, assessments will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by a valuation tribunal or this tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled: rents will be largely subsumed into assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position at any time regarding the tone of the list is a question of fact. When an assessment is challenged before a tribunal the correct time for deciding whether the tone of the list has been established is immediately before the hearing. The weight to be given to comparable assessments as evidence of value will depend on the circumstances in each case. These may indicate that little or no weight should be given to comparable assessments, eg where acceptance of value is more acceptance of rate liability or where a body of settlement evidence rests on a single agreed assessment."

28. In the course of the hearing I indicated that I had insufficient information to enable me fully to understand the manner in which the shops in the parade had been valued for the 2000

list. I was told that they had all been valued at £190 per m^2 in terms of Zone A, but the only detailed valuations produced were those of the appeal hereditament and No.13. At my request, therefore, Mr Osborne sent to the Tribunal and to Mr Jezierski copies of the 2000 list valuations of each shop in the parade. He also provided copies of the plans upon which the valuations had been based, with the exception of No.5 where the plan could not be located. Both parties were given an opportunity to comment on this additional information.

29. Having studied the valuations, it is clear to me that no consistent approach has been adopted towards the valuation of the non-retail space in the parade. Kitchens have generally been valued at one-sixth Zone A, although that at No.15 was valued at the full Zone A rate. Only two valuations ascribed values to offices, namely the original valuations of the appeal hereditament and No.13. In the case of the former the office was valued at one-sixth Zone A. At No.13 two office areas were valued. One, with an area of 17.2m^2, was valued at one-sixth Zone A and the other, extending to 14.1m^2, was taken at the full Zone A figure. Internal storage was also valued in different ways. It was taken at the full Zone A rate (No.17), A/2.2 (No.3) and A/4 (No.19A). A value of A/8 was applied to storage within the main shop area (No.11) and behind a solid wall (Nos.15, 19 and 19A).

30. As mentioned in *Futures London Ltd*, a tone of the list is an established pattern of values. There is plainly no such pattern in the parade of shops containing the appeal hereditament. The values ascribed to the various units are mutually inconsistent. I therefore reject Mr Osborne's opinion that his valuation has been prepared in accordance with the established tone.

31. In the absence of a tone of the list, the appeal hereditament falls to be based on rental evidence and not other rating assessments. Pursuant to paragraph 3 of Schedule 6 to the Local Government Finance Act 1988, the day by reference to which the valuation is to be made is 1 April 1998 – the antecedent valuation date. Mr Jezierski took a lease of the appeal hereditament on 20 June 1998, less than three months after that date, at a rental of £12,000 per annum exclusive, subject to a rent free period of 3 months, and with the lessor responsible for repairs and insurance. Mr Osborne calculated that, in terms of rateable value, that rent was equivalent to £9,755. Mr Jezierski did not question that analysis, nor did he suggest any reason why the rent paid did not reflect market value at the date the lease was signed. In the absence of any more reliable evidence, therefore, I find that the rateable value of £7,700 in the list is not excessive. The appeal fails.

32. I would add that I do not think Mr Jezierski is justified in criticising the Valuation Office for "victimising him for appealing", or for placing him at risk as a result of his drawing the Valuation Officer's attention to the assessment of No.13. The fact is that Mr Jezierski chose to draw Mr Piyasena's attention to the assessment of No.13 after he had realised that there were no reasonable grounds for obtaining a reduction in the assessment of his own property. The Valuation Officer is under a statutory duty to maintain an accurate list. As Mr Osborne pointed out during the site visit, there are some 80,000 hereditaments in the London South rating area and the Valuation Office Agency has insufficient staff to ensure that its referencing records are always up to date. It does, however, re-inspect properties which are the subject of an appeal or have been the subject of alterations which have been identified by the billing authority. Once

his attention had been drawn to the true position at No.13, the Valuation Officer was bound to serve a proposal to correct the error in the list and he cannot reasonably be blamed for having done so. Moreover, rates are paid to the billing authority, not the Valuation Office Agency. To suggest that the Valuation Officer's actions in this case were motivated by financial considerations is fanciful.

33. Nor, for the reason that Mr Osborne gave (paragraph 24 above), should the Valuation Officer or the VT be criticised for dealing with proposals from Hammer Properties. Mr Osborne was understandably reluctant to respond in detail to Mr Jezierski's account of the activities of that firm and I have, of course, received no evidence from them. In those circumstances it would not be appropriate for me to say any more on the subject.

34. For the sake of completeness I would refer to three further matters. Firstly, in the light of my inspection I consider that Mr Osborne was right to treat the appeal property as an open plan unit. The removal of the partition walls would necessitate the replacement of at least part of the ceiling, some rewiring, redecoration and recarpeting. Such works would, however, constitute minor alterations to the hereditament and may therefore be taken into account (see *Williams (VO) v Scottish and Newcastle Retail Ltd* [2001] RA 41). Secondly, I consider that Mr Osborne was also right not to discount the valuation of the appeal hereditament to reflect its splayed shop front, because with only minor alterations an incoming tenant would be able to secure a standard shop front. Thirdly, there is no justification for Mr Jezierski having been offended by the wording of the VT decision. When the matter was raised, the VT said that the words to which Mr Jezierski objected were widely used and did not imply anything. I am sure that is the case.

35. The appeal is dismissed.

Dated 14 December 2006

N J Rose FRICS