THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Office and premises; main space price; appeal dismissed.*

RE: Basement To First Floor, 46 Queen Annes Gate, London, SW1H 9AP

APPEAL NUMBER: CHG100047312

BETWEEN:	Sandcroft International Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mrs X Holt (Senior Member)
Ms J V Barnes

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 3 on 9 March 2021

APPEARANCES: Mr D Hill from Altus Group (Appellant's representative)
Mr C Cates (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed.

Introduction

2. This appeal has been brought in respect of the following: Basement To First Floor, 46 Queen Annes Gate, London, SW1H 9AP (the 'appeal property'), which was entered in the 2017 rating list as 'Office and premises' at rateable value £81,500 effective from 1 April 2017 based on a main space price of £440/m^2. The appellant was seeking a rateable value of £66,000 based on a main space price of £355/m^2.

3. The appeal property was a period office building situated in a row of four similar properties. Two of these were residential. The other property, 42 Queen Annes Gate, was also an office let on a lease. The rent for that property was £124,661.92 per year which analysed at £585/m^2.

4. 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.

5. 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 position.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Hill made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 16 October 2020 following the Valuation Officer’s Decision Notice of 8 July 2020 in respect of the appeal property (hereditament).

8. Mr Hill had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Hill’s declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

9. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is allowable due to the Tribunal’s rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

10. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

11. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

12. The appellant had provided the Tribunal with both parties’ submissions. The evidence included the following: the appellant’s statement of case, photographs of

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

the appeal property and the locality, photographs and details of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, extracts of the judgments *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *Barnard v Walker* (VO) [LVC/231/1975] and copies of correspondence that had passed between the parties.

13. The appeal property was held freehold. The last recorded letting was in 2009 at £74,500 but this was too far from the AVD to be reliable. Mr Hill argued that the rent for 42 Queen Annes Gate was not reliable as he had doubts over the reliability of the form of return.

14. However, to support his argument that the rateable value was incorrect Mr Hill provided the following assessments placed on comparable properties:

Property	RV	Rent	Area	Analysed rent
Fourth Floor, 27 Queen Annes Gate	£88,500	£88,000	212.70m^2	£413/m^2
Second Floor, 24 Old Queen Street	£33,000	£32,079	82.90m^2	£411.48/m^2

15. He argued that the most reliable rent was that for 27 Queen Anne's Gate which was better suited for use as an office, being a modern purpose built office.

16. 27 Queen Anne's Gate had been agreed at £425/m^2. In the 2010 rating list it was valued at £475/m^2 and for the 2017 rating list it had been agreed at £425/m^2, a reduction of 11% between the two AVDs. This suggested that demand for offices in Queen Annes Gate was not as strong in 2015. However, at £425/m^2, this suggested that here was an emerging tone of value for modern offices in that locality.

17. He then argued that older properties were not as valuable as modern offices and provided the following assessments as evidence of this:

Property	Year built	Value	
77 Grosvenor Street	2007	£1,050/m^2	
58 Grosvenor Street	1800	£750/m^2	Challenge proposal in seeking value of £595/m^2
12-13 Essex Street	1954, renovated in 2009	£550/m^2	
22-23 Essex Street	1823	£355/m^2	

18. Mr Hill also argued that 42 Queen Annes Gate had been refurbished which would increase the rental value of that particular property, which is why it had been let for £124,661.92 per year and was another reason that the rent for that property was unreliable.

19. Given all of the above, Mr Hill argued that the current main space price was excessive. He asked the panel to allow the appeal and determine that the correct main space price for the appeal property was £355/m^2, which resulted in his proposed assessment of £66,000 RV.

20. Mr Cates was representing the VO as advocate and expert witness. He contended that the appeal property should be valued higher as it had period features that appealed to professionals such as accountants and solicitors, whereas 27 Queen Annes Gate was a standard office building.

21. He contended that the appellant was relying on one rent for a different type of property which was not a 'like for like' comparison being a 1980s build multi-occupied office. However, Mr Cates argued that 42 Queen Annes Gate was comparable as it was the same period office which analysed at 585/m^2. He also disagreed with Mr Hill that the form of return for 42 Queen Annes Gate was unreliable. He argued that it fitted with the rating hypothesis as being a year to year letting and that there was no evidence that the lease was between connected parties as the companies concerned did not share any directors.

22. He also disagreed with Mr Hill's argument that the value of offices had decreased between the 2010 to 2017 rating list.

23. He contended that Mr Hill was asking for a RV of £8,500 less than the appeal property's 2010 rating list assessment. He had produced no evidence to support a fall in office values. Mr Cates considered that the evidence supported the existing rateable value being within the grounds of a reasonable valuation and he asked the panel to dismiss the appeal.

Decision and reasons

24. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

25. There was another important date for rating appeals and that was known as the 'material day.' This was the date on which the physical factors had to be taken into account. In this appeal, the material day was 1 April 2017.

26. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
>
> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this

assumption any repairs which a reasonable landlord would consider uneconomic; and

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

27. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

28. The panel agreed with Mr Cates that 27 Queen Annes Gate was not comparable to the appeal property as it was a modern office and was not a 'like for like' comparison. It therefore did not assist the panel to determine the rateable value for the appeal property.

29. After applying little weight to the assessment evidence for 27 Queen Anne's Gate, the panel was left with very little evidence on which to determine the appeal.

30. However, the panel turned to 42 Queen Annes Gate, as it was the most comparable property, being in the same row and the same type. Mr Hill had doubts about the reliability of the form of return as it contained anomalies. He also argued that the lease was with a connected party as, although the box relating to connected parties was ticked 'no', the comments box stated that it was an associate company of the landlord, and that the lease was unusual as it allowed for yearly rent reviews, it was three years in length which was a short lease and it had yearly break clauses. Mr Hill argued that rent reviews are usually every five years and most leases did not contain yearly break clauses.

31. Mr Cates had contended that neither the landlord or tenant of 42 Queen Annes Gate shared directors, and that yearly rent reviews and break clauses fit the rating hypothesis as a year to year letting. Whilst the panel did appreciate that the form of return may not have been completed properly and that there may have been some anomalies, Mr Hill had not provided any substantial evidence to the panel to support his argument that the lease was between connected parties and if therefore applied little weight to his argument.

32. With no evidence that the lease was between connected parties, the panel found that the rental evidence did fit with the rating hypothesis that it was a year to year letting and concluded it was the best evidence to establish the rateable value for the appeal property.

33. Mr Hill had argued that 42 Queen Annes Gate had been refurbished and therefore it would achieve a higher rent. The rent for 42 Queen Annes Gate had been analysed to £585/m^2. However, the rateable value for the appeal property had been calculated using a main space price of £440/m^2 which was £145/m^2 lower

than the main space price for number 42. This suggested to the panel that the main space price for the appeal property may have been too low.

34. The panel then considered Mr Hill's argument that older offices were not as valuable as newer ones. Whilst Mr Hill had provided a couple of examples to support this argument, without any additional supporting evidence, the panel did not find this argument convincing, as there could have been a number of reasons for those two older properties being valued lower, such as the quality or lack of facilities.

35. Making best use of the information presented to it, and in the absence of any conclusive evidence to prove otherwise, the panel concluded that the main space price of the appeal property was correct. The panel had not been presented with sufficient evidence to demonstrate that the existing assessment was unreasonable. Accordingly, the panel dismissed the appeal.

Date: 26 March 2021

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