THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: Non-domestic rating appeal; Accuracy of Compiled list RV in 2017 Rating List; Offices & Premises; Price per m² to be adopted; Comparable evidence; Historic entry; Appeal allowed

Re: 23 Devereux Court, London WC2R 3JF

APPEAL NO: CHG100048661

BETWEEN: Sykes and Son Ltd — Appellant

And

A Ricketts (Valuation Officer) — Respondent

PANEL: Mr A Ramsey (Senior Member)
Mr P Phelps

CLERK: Mr G Wayman

REMOTE HEARING: 13 September 2021

APPEARANCES:

Mr A Bacon of City Surveyors Ltd representing the appellant
The Respondent Valuation Officer was represented by Mr C Cates (Advocate only)
And Mr R Shaw (Advocate and Expert Witness)

Summary of Decision

1. The appeal is allowed and the panel confirms a revised RV of £47,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £72,500 from 1 April 2017, with a description of Offices and Premises. This was a compiled list appeal so the material day was also 1 April 2017. The appeal was made on 2 July 2020 against the Valuation Officer's (VO) Decision Notice of 28 February 2020 in respect of the appeal property (hereditament) and the RV of £72,500. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £72,500 RV was deemed as correct.

3. The subject property was a Grade 2 Listed un-refurbished mid terraced house dating from 1852 owned and occupied by Sykes and Son Ltd.

4. Mr Bacon appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Bacon's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

5. Mr Bacon in his declaration declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

6. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was 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).

7. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

8. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. 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 an indication that that statement or item of evidence has been overlooked.

Preliminary issues

9. Mr Cates acting as advocate for the Valuation Office Agency (VOA) requested an adjournment on the grounds that the VOA had recently determined that this assessment was incorrect and steps had been made to merge the appeal hereditament with 42 Essex Street. London, WC2R 3JF and backdate the merger to 1 April 2017. Mr Cates confirmed that, as at the date of hearing, this process had not taken place but was due to take place in the next couple of days. Mr Cates pointed out that by the time the decision on this appeal is published the entry for this property would be historic and any decision reached by the panel could not be applied to the new entry for this property.

10. After retiring to consider the adjournment request the panel decided to decline the VOA's adjournment request. The panel was aware that by the time this decision is issued the entry under appeal may be historic. However, the panel can only deal with the issue before it and at the time of the hearing of this appeal the rating list had not been altered and the entry under appeal was still shown in the list.

11. This appeal, had been postponed previously for a different reason therefore there has been plenty of time from the check / challenge stage up until this hearing to identify that the assessment was incorrect and have it altered. However, the panel found it disappointing that this had not been done and it had reached the appeal stage.

12. Mr Cates left the meeting at this point.

13. This appeal was previously listed and postponed from a hearing on 23 October 2020. Prior to the October 2020 hearing Mr Bacon submitted an application for the inclusion of an expert witness report incorporating new evidence. This request was placed before a Senior Member of the Tribunal who decided that this evidence could be admitted. However, the Senior Member gave Mr Shaw the opportunity to respond to Mr Bacon's expert witness report. The panel at this hearing took both Mr Bacon's expert witness report and Mr Shaw's response into account in its decision making.

Issue

14. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Bacon, for the appellant, sought a reduction to £47,000 RV based on £325 per m². Mr Shaw, had revised his valuation and was now defending a revised RV of £65,000, based on £450 per m².

Decision and reasons

15. The appeal hereditament 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 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

16. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

17. No rental evidence was produced for the appeal property, therefore, in order to establish a value for the appeal property the panel referred to the comparable evidence presented by the parties.

18. The panel initially examined 15-19 Devereux Court, this 1990 standard property was situated very close to the appeal property. There was a new January 2016 letting on this property. The VO had analysed the rent to a basic value of £450 m², which took into account that it had partial air conditioning. This property is valued as an office but is being used as a language school. The panel was informed that significant sums had been spent on improving this property. The VO accepted that not all the improvements are rateable but a large proportion of them would certainly need to be taken into account. Mr Bacon argued that the improvements were for converting an office into a school, therefore, the additions for converting it into a school should not be taken into account. The panel considered the parties respective arguments on how the rent on this property should be adjusted and what

improvements should be considered. However, the panel was of the opinion that too many adjustments were needed to this rent to be helpful in establishing a value for the appeal property. The panel was not presented with any documentary evidence to support the parties respective analysing of this rent. For these reasons the panel placed little weight on this evidence.

19. Reference was made to properties in Bedford Row WC1R 4HE and Lincolns Inn WC2A 3LZ these properties were located further away from the appeal property and were period properties.

20. There was a lease renewal on Gnd & 1st Flrs, 26-28 Bedford Row, it was a 10 year lease effective 1 April 2015 at £250,140 pa. Adjusting this rent on a like for like - basis with the appeal property, taking into account it had air conditioning and raised floors, the VO analysed this rent to £475.73 pa.

21. There was also a lease renewal on 4th Floor, 51 Lincolns Inn Field the lease was for 7 years and 2 months effective from 15 February 2015 and the rent was £74,350 pa, with a rent review in the 5th year. This property had air conditioning but no raised floors and making the necessary adjustment the VO analysed this rent to £443.90 m².

22. The panel placed little weight on Bedford Row as it considered this property was a different type of property located further away. Even though the panel placed little weight on evidence given for 26-28 Bedford Row it noted that at 19 Bedford Row WC1R 4EB the VOA had agreed the rateable value on this property at £375 per m² .

23. Lincoln's Inn is located in Camden and is nearer than Bedford Row. Even though the panel noted the evidence within Lincolns Inn it placed more weight on the properties that were located closer to the appeal property.

24. Mr Bacon's starting point on valuing the appeal property at £325 m² was in reference to 42 Essex Street as this property had been agreed at the challenge stage at £350 m². Mr Bacon pointed out that this was a modern property compared to the much older appeal property. Consequently, Mr Bacon contended that the appeal property should be less than this agreement.

25. Mr Bacon also pointed out that 15 Essex Street, a 1990 new build property had a challenge decision at £460 m² which included air conditioning and raised floors. Therefore when comparing on a like for like basis with the appeal property, this gives a value of £400 m². Mr Bacon pointed out that this property was much more modern and therefore the appeal property's value should be less.

26. Mr Bacon also referred to the rent on Ground Floor,12 Devereux Court. This property was let on a new lease from August 2018 on a 10 year term for £24,000 per annum including air conditioning. The property is 54.05 m² and the rent devalued to £422 m² . The panel placed little weight on this rental evidence as it was too far removed from the AVD to be helpful.

27. In support of his revised value of £450 m² Mr Shaw referred to and placed weight on a rent review at 11 Essex Street effective from 1 June 2015 the property having been let for a term of 14 years and part of the floor area had air conditioning. Adjusting for this, the VO devalued the rent to £445 m² on a like for like basis.

28. Both parties referred to 46-48 Essex Street, however, the panel placed little weight on this property as it was impacted by the fact that there was a micro-brewery on the ground floor and access to the upper offices was adjacent to this. The information provided also showed rents in the region of £20 to £30 a foot.

29. Having considered all the evidence presented the panel placed most weight on the agreements reached at challenge stage on 42 Essex Street and 15 Essex Street. These properties were agreed at £350 m² and £400 m² respectively. The panel noted that the appeal property was much older than these properties, therefore, it would need a lot more maintenance and cost spent on it. The appeal property also had the disadvantages of being located next to a public house which would diminish its rental value. It was further disadvantaged by having a poor outlook which was directly onto a brick wall. It was the panel's opinion that, taking these disadvantages into account, the value of the appeal property would be below those agreed at 15 and 42 Essex Street

30. Consequently, taking into account the values adopted for 15 and 42 Essex Street and noting the disadvantages associated with the appeal property. The panel is satisfied that Mr Bacon had demonstrated that a value of £325 m² was a fair and reasonable value to apply to the appeal property. Therefore the appeal is allowed.

Order

31. 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 List within two weeks of the date of this order to show, 23 Devereux Court, London WC2R 3JF at a Rateable Value of £47,000 with effect from 1 April 2017.

32. If the appeal was successful (either in part or full) a refund of the paid fee 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: 24 September 2021

Appeal number: CHG100048661