VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; offices and premises; rental evidence; comparable assessments; appeals allowed in part.

RE: First and Second Floors, 115 Mount Street, London W1K 3NQ

APPEAL NUMBERS: CHG100054071 and CHG100054257

BETWEEN:	John Arkwright and Co Ltd Hoddell Stotesbury and Morgan Ltd	Appellants
	and	Respondent
	Mr A Ricketts (Valuation Officer)	

PANEL: Mr W Read (Senior Member)
Mrs F Duggan

CLERK: Mrs H Beresford

REMOTE HEARING ON: 30 November 2020

APPEARANCES: Mr A Marshall of Conneely Tribe (Appellants' representative)
Mr C Cates (for the Valuation Officer)

Summary of decision

1. The appeals were allowed in part, the assessments were reduced to £47,000 for the first floor and £28,000 for the second floor with effect from 1 April 2017.

Introduction

2. These appeals have been brought in respect of the following: First and Second Floors, 115 Mount Street, London W1K 3NQ (the 'appeal properties'), which were entered in the 2017 rating list as 'office and premises' at rateable value (RV) £58,000 and £35,500 respectively, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Hoddell Stotesbury and Morgan Ltd and John Arkwright and Co Ltd made appeals to the Valuation Tribunal for England (VTE). The appeals were made because the valuation officer decided not to alter the 2017 rating list following the appellants' check and challenge. The appellants had sought reductions to RV £38,000 for the first floor and £20,000 for the second floor with effect from 1 April 2017.

4. The appeals to the VTE were made on the grounds that the valuation for the appeal property was not reasonable, as the valuation officer had not made any alteration to the rating list in his challenge decision notices.

5. The appeal hereditaments are located in the Mayfair area of London. It is a mixed-use property with residential accommodation on the third floor. Hoddell Stotesbury and Morgan Ltd occupy the first floor which has an area of 86.5m^2 and John Arkwright and Co Ltd occupy accommodation on the second floor which has an area of 51.9m^2.

6. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

8. It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. 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.

10. 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.

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

Preliminary Issue

12. Mr Cates, the valuation officer's representative, raised a preliminary issue, he stated that part of the evidence submitted by the appellants' representative had been submitted after the initial proposal was made which was contrary to regulation 9 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017. Mr Marshall, the appellants' representative, accepted that this was the case and agreed not to refer to the evidence which had been submitted in error. This evidence was also disregarded by the panel in reaching its decision.

Issue

13. The base level of value adopted for the appeal properties was not agreed. The valuation officer had adopted a main space rate of £675.00/m^2 in respect of both appeal properties, but the appellant sought a reduction to £440.00/m^2.

Evidence and submissions

14. Mr Marshall had provided a submission which included: a written statement of case; leases in respect of both appeal properties; a response to the initial challenge decision; various email communications between the parties; and correspondence with the landlord in negotiation of the rent.

15. Mr Marshall explained that prior to the new rents being set Hoddell Stotesbury and Morgan Ltd held the lease for the first to third floors and sub-let the second floor to John Arkwright and Co Ltd. Under the new agreement the third floor had been surrendered and John Arkwright and Co Ltd had taken its own lease on the second floor. This, and the rents passing had been agreed in September 2015, however, whilst the decorating was taking place the appellants had agreed to relocate to the third floor and the agreements didn't come into force until 31 March 2016. Even after decorating Mr Marshall argued that the subject properties were of relatively poor quality.

16. Mr Marshall contended that the properties should be valued in line with lease renewal agreements reached in respect of the appeal properties in September 2015 but not effective until 31 March 2016. The rent agreed was £38,000 per annum for the first floor and £20,000 per annum for the second floor. This analysed to a price per metre squared of £439.31.

17. Mr Marshall asked the panel to confirm an RV of £38,000 for the first floor and £20,000 for the second floor.

18. The Valuation Officer's case included: the challenge decision notice; details of two comparable properties; and a written response to assertions made by Mr Marshall. Mr Cates gave an oral submission in response to Mr Marshall.

19. Mr Cates argued that the lease agreements provided by the appellants were unhelpful because they began one year after AVD. He stated that because the agreements were lease renewals they could not be relied upon because the open market had not been tested. He also argued that as part of the lease renewal agreement the appellants had given up the third floor, which was the residential part of 115 Mount Street. Mr Cates believed that this would have been an incentive for the landlord to agree a lower rent on the first and second floor.

20. Mr Cates was of the opinion that the RV of the subject properties did not reflect the rent at the antecedent valuation date (AVD) of 1 April 2015 and therefore asked the panel to confirm an RV of £58,000 for the first floor and £35,500 for the second floor.

Decision and reasons

21. The panel had to determine the rateable value for the appeal properties, 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.

22. 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;
>
> 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;
>
> 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"

23. 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.

24. The panel noted that there was rental evidence for the subject properties as it accepted that the evidence showed that the rents had been agreed in September 2015 and that various decorating work had been undertaken before the agreements came into effect. However, the panel was aware that this had been agreed with the landlord in an artificial market and consequently the true market value had not been tested.

25. The panel turned to the evidence of three comparable properties referred to by Mr Cates. In particular, the second and third floors at 130 Mount Street which were situated close to the subject properties and were of a similar size, the second floor being $68.3m^2$ and the third floor being $78m^2$. These properties had new leases with unadjusted rents of £95,000 agreed 1 May 2015 for the second floor and £92,800 agreed 1 December 2015 for the third floor.

Both properties had a main space rate of £675.00/m^2. The panel noted that these offices had been recently refurbished and were of a better quality than the subject properties.

26. Consequently, the panel found that a hypothetical tenant coming fresh to the scene would not have been prepared to pay the same rent for the appeal properties as for a newly refurbished property with the benefit of lifts, air conditioning and a reception area.

27. Equally, the panel did not agree that a rate of £440/m^2 should be adopted as proposed by Mr Marshall, the panel was aware that the rent agreed was not an open market rent and that some concession may have been made by the landlord in agreeing the new leases for the first and second floor whilst retaining the residential part of the property on the third floor.

28. The panel found that there was very little evidence of comparable properties upon which to base its decision, however, taking into consideration the foregoing findings the panel held that a main space price of £550.00/m^2 was fair and reasonable. This amounted to an RV of £47,000 for the first floor and £28,000 for the second floor with effect from 1 April 2017 and the appeal was therefore allowed in part.

First Floor

Floor	Description	Area m^2	£/m^2	Value £
First	Office	79.8	550.00	43,890
First	Kitchen	6.7	550.00	3,685
Total		**86.5**		**47,575**
			Say RV	**47,000**

Second Floor

Floor	Description	Area m^2	£/m^2	Value £
Second	Office	24.8	550.00	13,640
Second	Office	27.1	550.00	14,905
Total		**51.9**		**28,545**
			Say RV	**28,000**

29. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

30. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of RV £47,000 for the first floor and RV £28,000 for the second floor with effect from 1 April 2017.

31. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making

Date: 11 December 2020

Appeal numbers: CHG100033466 and CHG100033458