VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Surgery and Premises; accuracy of rateable value; rental and comparable evidence considered; Zone A rate; found that weight of evidence supported a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed in part.

RE: Basement and Ground Floors, 2 Lower Grosvenor Place, London, ,SW1W 0EJ

APPEAL NUMBER: CHG100061599

BETWEEN:	The Beresford Clinic (Represented by Altus Group) and	Appellant
	Andrew Rickets (Valuation Officer)	Respondent

PANEL: Mr A Khurram (Senior Member)
Ms J Barnes

CLERK: Mr L Bertie

REMOTE HEARING ON: 29 October 2020

APPEARANCES: Mr D Hill of Altus Group for the Appellant.
Mr M Pullen for the Valuation Officer.

Summary of decision

1. Appeal Allowed in part. The entry in the 2017 Rating List for the appeal property was altered to Basement and Ground Floors,2 Lower Grosvenor Place, London,SW1W 0EJ Rateable Value £36,000 with effect from 1 April 2017.

Introduction

2. The appeal before the panel was a 2017 Rating List appeal. The Subject Property (SP) has the description of Surgery and Premises RV 38,250 with effect from 1 April 2017 and is located at Lower Grosvenor Place with the Price per Square Metre (PSM) of £850. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage, the Valuation Office Agency (VOA) considered that the RV was correct. The appeal was received on 19 June 2020 against the Valuation Officer's (VO) Decision Notice of 27 May 2020.The VO's decision was to treat the appellant's proposal as not well founded and the entry of £38,250 RV was deemed as correct. The proposed RV sought by the appellant was £30,750.

3. 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.

4. 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.

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

6. Mr Hill appeared on behalf of the Appellant as both surveyor-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 Hill's declaration of truth included a statement that he was instructed on a contingency fee basis. He 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 the evidence supported the client's case.

7. The Valuation Officer's representative, Mr Pillen, advised the panel that he appeared as an advocate for the case but was an expert on general valuation matters.

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

9. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all 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 by the panel.

10. The subject property comprises a ground floor surgery. It is situated at a side street of Buckingham Palace Road close to Grosvenor Gardens and Lower Belgrave Street . The area of

the subject property is agreed by the parties to be 148.03 m^2 in terms of main space (ITMS) with a base rate of £850 per m^2.

Issue

11. The issue between the parties concerned the RV of the appeal property and specifically, the £m2 to be adopted. Mr Hills sought a £m2 of 680 and a RV of £30,750 . Mr Pillen, for the VO, sought to defend the existing RV of £38,250 which was based on a £m2 of £850.

Decision and reasons

12. 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). 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. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

13. In line with the decision in Lotus and Delta v Culverwell (VO) [1976] RA 141 , Mr Hills suggested that the rent on the subject property should be taken as a starting point, as it was reflective of the appeal property being in a poorer retail position because of a new Nova retail development at Sir Simon Milton Square/ Lower Belgrave Street . Consequently, the rateable value should be reduced to reflect this fact.

14. In his challenge, Mr Hill had given details of the rent passing on the subject property, which was £26,000 pa effective from 29 September 2013 . It was a 15 year lease with 5 yearly rent reviews. He had analysed this rent to £585 per m^2 (£44.42 ITZA) which he argued indicated that the adopted rate of £ 850 per m^2 was excessive and should be reduced. In support of his contention , Mr Hill highlighted graphically his contention that the rental level would have been £680 at 1 April 2015 in Lower Grosvenor Place.

15. Mr Pillen stated that the rent of the appeal property was remote from the AVD, and therefore it was out of line with other rents passing in the locality. In accordance with Lotus and Delta v Culverwell (VO) [1976] RA 141, the rents of comparable properties in the locality should therefore be given the most weight. The basket of evidence, which included the rent on the subject property, and the rents on a number of comparable properties, was in his opinion, indicative that the base rate of £850.00 per m^2 ITZA for the subject property, was not excessive.

16. The panel was provided with details of four comparable retail properties in the locality of the appeal property to support the existing rate of £850 per m^2 for the subject property. The first of these was Cafe and Premises, BST & GRD FLR 4 Lower Grosvenor Place, London SW1W2 0EJ which was £41.18 per m^2 ITZA. It was a new letting from 1 September 2017 of £31, 000 on a 10 year lease with a 5 year rent review with a fit out which was not adjusted in the rent. This rent analysed at £837.74/m2; Shop and Premises, BST & GRD FLR 6 Lower Belgrave Street London SW1W 0LJ which was 31.86 m^2 ITZA . This was a rent review from 25 March 2014 of £28,900 which was a rent review on a 15 year lease with 5 yearly rent reviews. The rent analysed at £907.16/m^2 ; BST & GRD FLR 16 Lower Belgrave Street London SW1W 0LJ which was 33.83 m^2 ITZA . This was a rent review from 25 March 2014 of £28,900 which was a

rent review on a 15 year lease with 5 yearly rent reviews. The rent analysed at £854.27/m^2 and Shop and Premises, GRD FLR 41 Lower Belgrave London SW1W 0LS which was 27.10 per m^2 ITZA. It was a new, open ended letting from 1 March 2014 of £18, 500 which analysed at £648.52/m2 with 5 yearly reviews .This overall evidence showed rents analysed between £648.52 - £907.16 per m^2 with an adopted rate £m2 of £850 for properties between 34.01 m2 – 126.40 m2 in size.

17. The panel noted the rental evidence for BST & GRD FLR 4 *Lower Grosvenor Place,* London *SW1*W *0EJ* and gave little weight to this rent as although it was a new letting, it was agreed from 1 September 2017 and was therefore remote from the AVD of 1 April 2015.

18. The other rental evidence was in Lower Belgrave Street which showed a wide range of values between *648.52* - £*907.16* per m^2. The panel also noted that 41 Lower Belgrave London SW1W 0LS which had an analysed £m2 of £648.52 but an adopted £m2 of £850 but that it was an open ended agreement which therefore did not comply with the rating hypothesis and therefore little weight was given to this rent .

19. Additional evidence was submitted regarding graphical evidence indicating the trend in rents in the locality. This contended to show the rental evidence taken from the appeal property from 2013, as to how the market moved from 2013 to 2017 and an indication of its rental value at AVD which would be, the Zone A rate £680/m^2. The panel gave little weight to this methodology and preferred to consider the actual rental evidence submitted rather than a mathematical calculation.

20. In this regard, the panel compared the positioning and the locality of the appeal property in comparison to Lower Belgrave Street. The panel considered that properties in Lower Belgrave street are for premises to the north of Ebury street and a reasonable distance from Victoria rail and underground Station and not directly opposite. The panel considered that as highlighted by the appellant's representative, Lower Belgrave Street is in a more prominent position than Lower Grosvenor Place as, you now have to pass through/by the Victoria Nova Scheme which houses numerous shops and restaurants which would have an effect on footfall of customers coming through to Lower Grosvenor Place.

21. This in the opinion of the panel would be reflected in a lower rental bid at Lower Grosvenor Place in comparison to Lower Belgrave Street in the open market at AVD (1st April 2015). Furthermore, in the 2010 Rating List, retail in Lower Belgrave Street was valued at a higher level (£675/m^2) in comparison to Lower Grosvenor Place (£600/m^2) which further supports this contention.

22. The panel was therefore of the opinion that the rate of £850 per m^2 adopted by the Valuation Officer's representative would be reflected by a lower bid and should be altered to £800 m2.

23. The appeal was therefore allowed in part.

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 2017 Rating List for Ground Floors,2 Lower Grosvenor Place, London,SW1W 0EJ to Rateable Value £ with effect from 1 April 2017.

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

Date: November 2020

Appeal number: CHG100061599

Floor	Description	Area m²/unit	Price per m²/unit	Value
Ground	Retail zone A	24.67	£800.00	£19,736.00
Ground	Retail zone B	18.96	£425.00	£7,584.00
Ground	Retail zone B	5.56	£283.31	£1,485.00
Ground	Retail zone C	7.22	£212.50	£1,444.00
Ground	Retail zone C	7.19	£141.65	£956.00
Ground	Retail area	18.43	£106.25	£1,843.00
Basement	Internal storage	66.00	£40.38	£2,508.00
Total		**148.03**		**£35,556.00**

Additional details

Description	Area m²/unit	Price per m²/unit	Value
Air conditioning system	82.03	£7.00	£574.00

Total £36,130.00

Rateable Value £36,000.00

NB. After the decision was released to the parties, the tribunal's attention was drawn to a clerical error in its valuation breakdown. This clerical error has now been amended in accordance with Regulation 39 of the VTE Procedure regs.