THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; shop and premises; rental evidence; comparable assessments; appeal dismissed.

RE: 1st Floor Rear 12, D'Arblay Street, London W1F 8DU

APPEAL NUMBER: CHG100073165

BETWEEN:	Tamarind Collection	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Dr J Johnson (Senior Member)
Miss EF Blois

CLERK: Mrs H Beresford

REMOTE HEARING ON: 10 March 2021

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

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £29,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 1st Floor Rear 12, D'Arblay Street, London W1F 8DU (the 'appeal property'), which was entered in the 2017 rating list as 'office and premises' at RV £29,000, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Altus Group made an appeal to the Valuation Tribunal for England (VTE) on behalf of Tamarind Collection. The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £16,500 with effect from 1 April 2017.

4. The appeal to the VTE was 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 notice.

5. The appeal property comprises an office and premises. Number 12 D'Arblay Street is a terraced building with an office in the basement, a ground floor shop which is a hardware store, and three floors of offices above. D'Arblay Street is situated close to Oxford Street.

6. The appellant's representative, Mr Hill, 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 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 raised a preliminary issue; he was aggrieved at Mr Hill's decision to alter his proposed valuation of the appeal property on the evening before this hearing. Mr Hill had altered his proposed valuation from RV £16,500 to RV £20,750 based on a main space price of £445/m^2 with an allowance of 22.5% to reflect that the property was situated to the rear of the property. Mr Hill was asked to explain what had prompted this alteration. Mr Hill stated that he had made an error in his calculation and wished to correct it before the hearing. On hearing Mr Hill's explanation Mr Cates confirmed that he was happy to allow the revised valuation to be admitted and to continue with the hearing.

Issue

13. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £500/m^2 in respect of the appeal property, but the appellant sought a reduction to £445/m^2 with an allowance of 22.5% to reflect that the property was situated to the rear of the property. The parties had agreed that the property measured 59.45m^2 in terms of main space (ITMS)

Evidence and submissions

14. Mr Hill, the appellant's representative, had submitted evidence which included: a written submission; a valuation office scheme; photographic evidence; a location plan; a map of the comparable properties; the current 2017 assessment; and a revised valuation in respect of the appeal property.

15. Mr Hill contended that the rating assessment of £500/m^2 on the subject property is not in line with its passing rent of £17,015 per annum which was agreed on 22 March 2016. Mr Hill had originally argued that the effective date of the rent was in some proximity to the antecedent valuation date 1 April 2015 (AVD) but that some growth could have occurred in the period following AVD, as the market for Soho offices continued to grow. Mr Hill originally argued that the rent should be discounted to portray a revised rental figure of £15,313.50 resulting in a price of £255/m^2. This had been altered during negotiations to £350/m^2 with an RV of £16,500.

16. However, Mr Hill had revised his analysis just prior to the hearing and now proposed a price of £445/m^2 with an allowance of 22.5% for the property being situated to the rear of the property which he stated resulted in an RV of £20,750. He argued that this valuation reflected his argument that the rent on offices to the rear of a property would command a lower rent than those at the front, he believed that this was evidenced by the rent passing on 1st Floor Front, 12 D'arblay Street which analysed to £540/m^2 as opposed to £362.54/m^2 for the subject property.

17. Mr Hill believed that the settlements on comparable properties which he had cited also supported his argument that his revised valuation and he asked the panel to confirm an RV of £20,750 for the appeal property.

18. The Valuation Officer's representative Mr Cates had provided: a valuation of the appeal property; a comparable rental summary for three properties; and a response to the challenge.

19. Mr Cates argued that Mr Hill had not considered the rent passing correctly in his analysis. Having requested a copy of lease it had been established that only the initial rent had been submitted by the appellant's representative and it was confirmed from the lease that the rent payable for year one was £17,015 which then increased to £22,687 for the following four years. Mr Cates had calculated the annual rent, based on the rent paid for the full five years of the lease agreement to be £21,553 per annum. This analysed to a rate of £362.54/m^2, based on a floor area of 59.45/m^2 ITMS.

20. Mr Cates contended that the rental evidence for three properties which were also situated within 12 D'Arblay Street supported a tone of £500.00/m^2 for the subject property. He did not believe that there was any increased value in offices to the front of a property in Soho as compared to the rear. He contended that a large amount of the small offices in Soho are occupied by media companies, who want a prestigious address in Soho, and are probably less concerned about the position of the office. Mr Cates asked the panel to confirm an RV for the appeal property of £29,500.

Decision and reasons

21. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the 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) and Leicester City Council* [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 Mr Hill had stated that there was rental evidence for the subject property, he believed that an agreement of £17,015 per annum had been reached in March 2016. However, the panel was aware that this was not the case, the lease was in fact £17,015 for year one, before increasing to £22,687 for the following four years. The panel therefore found that Mr Hill's argument that the rent should be further devalued to £15,313.50 to reflect the increase in rental values between the AVD and the effective date was unwarranted as the calculation was not based on the correct rental value.

25. On cross examination by Mr Cates, Mr Hill admitted that he had not seen a completed lease for the appeal property and that the lease submitted was incomplete. As well as this, there was no record of the lease with Land Registry. Mr Hill accepted that the lease was not in the name of the appellant, Tamarind Collection, he argued that this was because Tamarind Collection were a part of the company Indian Cuisine Ltd. who were the lease holders. The panel also noted that according to the Valuation Officer's records no form of return had been submitted in respect of the 2005, 2010 and 2017 revaluations. It was, therefore, unable to attach significant weight to this rental evidence.

26. Mr Hill had requested a 22.5% allowance to compensate for the fact that the appeal property was at the rear of the property. The panel found that Mr Hill had provided no evidence of comparable properties to support his argument that this allowance was warranted.

27. The panel turned to the rental summary and comparable properties cited by the parties. It noted that, in particular, the rent on 2nd Floor Front, 12 D'Arblay Street devalued to £551.12/m^2 ITMS with effect from 1 November 2015 and was a new letting, and the rent on 1st Floor Front, 12 D'Arblay devalued to £540.41/m^2 ITMS effective 1 December 2016 and was a lease renewal.

28. Other comparable properties located nearby also supported a tone of £500/m^2. The panel was aware that 1st Floor, 12 Berwick Street, London W1F 0PN had a rent of £33,000 effective 1 June 2016 which devalued to £502.37/m^2 and was a new letting and 3rd-4th Floors, 6 Poland Street, London W1F 8PT had a rent £81,840 with an effective date of 16 August 2015 which devalued to £546.26/m^2.

29. The panel found that the basket of rents on the subject property 12 D'Arblay Street, and others on the neighbouring roads which had been valued on the same basis, supported a tone of £500/m^2 and an RV £29,500 with effect from 1 April 2017 for the subject property.

30. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to RV £20,750 was warranted. Therefore, the appeal was dismissed.

Date: 22 March 2021

Appeal number: CHG100073165