THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Office building; Comparable rental evidence; Appeal dismissed.

RE: 2nd Flr 13-14 Cork Street, London W1S 3NS

APPEAL NUMBER: CHG100073938

BETWEEN: Habro Properties (represented by Altus Group) — Appellant

And

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Ms J Routledge (Senior Member)
Mr A Wheeler

CLERK: Ms S Hodgson

ON: 17 February 2021

APPEARANCES: Mr C Poole of Altus Group for the appellant
Mr C Cates of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £84,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £84,500 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017.

The challenge stage was completed on 11 August 2020. The challenge sought a reduction to £75,000.

3. The appeal hereditament was a self-contained office on the second floor of a six-storey period building located in Mayfair, close to the Piccadilly tube station. The hereditament measured 129.2m^2 and was valued using an unadjusted base rate of £625 per square metre (psm).

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.

6. 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 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.

Issue

7. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

8. Mr Poole 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 Poole declared that he was instructed on a contingency fee basis.

9. Mr Poole 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.

10. Mr Cates appeared on behalf of the respondent as both advocate and expert witness on general rating matters. Mr Cates declared that he was not instructed under any conditional fee arrangement. Mr Cates declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the case.

11. 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).

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

13. Mr Poole explained to the panel that he had taken the lease renewal on the appeal property from July 2016, and a new letting at the appeal property from July 2011, and using industry led values calculated a figure of what he believed the appeal property would have let for at the antecedent valuation date (AVD) of 1 April 2015. Mr Poole disputed the comparable evidence provided by the respondent for 3rd Flr 13-14 Cork Street and stated it had been refurbished to a high standard and the rent was therefore an outlier and less reliable. Mr Poole sought a reduction in RV to £75,000 with an unadjusted base rate of £557psm with effect 1 April 2017.

14. Mr Cates referred to the rating hypothesis and disagreed with Mr Poole's calculation as being the best way to establish a value for the appeal property at the AVD. He provided a comparable office on the 3rd floor within the same building as the appeal property which was a new letting with a lease effective from 1 August 2015. Mr Cates asked the panel to dismiss the appeal and confirm the RV of £84,500 in the rating list with effect 1 April 2017.

Decision and reasons

15. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

2(1) 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.

16. In respect of an appeal against an entry in the 20017 rating list, the rental levels are to be taken as those passing at the AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No.2841).

17. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

18. The appeal property was subject to a 5-year lease renewal with effect from 18 July 2016. The passing rent was £84,058 on full repairing and insurance terms with 1 month rent free.

19. Mr Cates adjusted the rent to £82,506 allowing for the 1-month rent free period and devalued this to £608.18psm.

20. Mr Poole adjusted the rent to £75,005 and devalued this to £580.53psm. Mr Poole arrived at this adjusted figure by toning back the passing rent by 10% based on reports on CoStar that indicated rental growth of approximately 10% in Mayfair between April 2015 and July 2016.

21. Mr Poole also advised the panel there was a lease on the appeal property on a 5-year term with effect from 18 July 2011 with a passing rent of £57,855. Mr Poole used this rent to sense check the calculations used to adjust the 2016 rent above.

22. The panel heard that the difference between the 2011 rent and the 2016 adjusted rent of £75,005 was an increase of 42.3%. Mr Poole calculated that this worked out at an increase of 0.6% per month and he used this figure to estimate what the 2011 rent on the appeal property would have been in April 2015. This came out at £75,766 which, in Mr Poole's opinion, supported his adjustment of the 2016 rent and the RV he had requested of £75,000.

23. The panel noted that the calculations of the 2011 and 2016 rent were based on average increases, however the graphs supplied by Mr Poole showed that the movement in rents was not linear and therefore the calculated approach did not account for all the movement in the rental market.

24. The panel considered the comparable rental evidence provided for 3rd Flr 13-14 Cork Street. This was a new letting on a 5-year lease with effect from 1 August 2015. The passing rent was £84,500 with a 3-month rent free period to allow for fitting out the office. Mr Cates devalued the rent to £871.67.

25. Both parties agreed that the 3rd floor office had been refurbished prior to the new letting. Mr Poole argued that the office was of a superior quality to the subject property and therefore he believed the rent was less reliable. Mr Cates contended there was no evidence provided to show that the refurbishment would have accounted for an increase in the base rate by almost £300psm and it was his opinion that the rent showed what the market was willing to pay at the time.

26. The panel accepted Mr Cates's contention and was of the opinion that while there would have been an uplift for the quality of the refurbishment, it did not agree that this would account for a significant percentage of the rent.

27. The panel was not persuaded by Mr Poole's calculations when there was a rent in the same building as the subject property that was only five months after the AVD.

28. When weighing the evidence, it was the panel's view that a lease renewal would attract less weight as would a lease further away from the AVD. More weight would be given to a new letting and a rent close to the AVD. Therefore, the panel found that the best evidence was the new letting at 3rd Flr, 13-14 Cork Street.

29. The panel noted that the rent devalued at a higher rate than the subject property but accepted this was due to the refurbishment. It was the panel's opinion that it supported the current unadjusted base rate of £625psm.

30. Consequently, based on the evidence before it, the panel dismissed the appeal and the RV of £84,500 was confirmed with effect 1 April 2017.

Date: 12 March 2021

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