THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; appeal against the entry in the rating list at 1 April 2017; shop and premises; price per m^2 to be adopted in the appeal property's assessment; level of allowance applicable; rental evidence; comparable assessments; appeal allowed.

RE: 8-10 Ryder Street, London, SW1Y 6QB

APPEAL NUMBER: CHG100076356

BETWEEN:	Chris Beetles Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Miss M F Dowrick (Senior Member)

CLERK: Mrs A Keohane

HEARING: Remote hearing No 4 on 4 December 2020

APPEARANCES: Mr H Edwardes of Altus Group (Appellant's representative) as advocate and expert witness
Mr C Cates (Respondent's representative) as advocate and expert witness

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Summary of decision

1. Appeal allowed. The assessment was reduced to £92,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. 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.

3. 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.

4. In accordance with the Tribunal’s Business Arrangements, I have been authorised to consider and determine this appeal sitting alone.

5. This appeal has been brought in respect of 8-10 Ryder Street, London, SW1Y 6QB (the ‘appeal property’), entered in the 2017 rating list as ‘shop and premises’ at £106,000 RV, effective from 1 April 2017.

6. The appellant submitted a challenge proposal that was received by the Valuation Officer on 25 February 2019. The grounds of the proposal indicated that the entry for the appeal property shown in the rating list on 1 April 2017 was wrong and should be reduced to £80,500 RV. The Valuation Officer reduced the assessment to £101,000 RV but as this was not to the extent requested in the proposal, an appeal was made to the Valuation Tribunal on 18 September 2020 on the grounds that the valuation for the hereditament was not reasonable.

7. Mr Edwardes appeared on behalf of the appellant as 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 Edwardes confirmed that he was instructed on a contingency fee arrangement. However, 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 his client’s case.

8. The expert witness evidence was accepted 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).

9. In considering the “expert” evidence, I attached the weight I deemed appropriate in this case.

10. The appeal property is part of a five-storey building offering mixed use accommodation including retail space on the ground floor and office space on upper floors. The property is situated on Ryder Street, close to the junction with Duke Street and within close proximity to Green Park Underground Station. It is occupied by the appellant as an art gallery.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that I considered all of the evidence presented before reaching my decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

12. The issue in dispute concerned the unadjusted main space rate to be applied in the appeal property's assessment and the level of allowance to reflect layout and the lack of internal interconnection between 8 and 10 Ryder Street at ground floor level.

13. Mr Edwardes sought a main space rate of £1100/m^2 (£1030/m^2 originally but confirmed at the higher figure at the tribunal hearing) and an allowance of 8.5%. Mr Cates held the view that a main space rate of £1250/m^2 and an allowance of 5% was fair and reasonable.

Evidence and submissions

14. The bundle of evidence provided in this case contained the information exchanged between the parties during the check and challenge stage of proceedings and internal and external photographs were provided at the time of the hearing. The appeal property and all of the comparable properties referred to were on ground and basement level.

15. Mr Edwardes provided copies of the leases relating to the appeal property and 2A-4 Ryder Street that had been drawn up between the occupiers and The Crown Estate. He drew attention to the rental evidence for 8-10 Ryder Street (85m^2 in terms of main space (ITMS)), 2A – 4 Ryder Street (57.84m^2 ITMS), 17 Ryder Street (37.84m^2 ITMS) and 5 Ryder Street (39.17m^2 ITMS), all of which had been set between 2014 and 2016. The Valuation Officer's analysis of these rents had resulted in main space prices of between £1085.46/m^2 and £1374.21/m^2.

16. Mr Edwardes argued that most weight should be given to the rent of the appeal property and 2A-4 Ryder Street. 8-10 Ryder Street was held on two separate leases for 15-year terms, effective from 15 May 2015 and within each lease was a three-month rent-free period; the total rent equated to £102,790 per annum (pa). 2A-4 Ryder Street was also held on a 15-year lease at a rent of £64,600 pa, effective from 15 May 2015 which also included a rent-free period. Following his own analysis of these rents Mr Edwardes had come to main space rates of £1139.13/m^2 and 1030.59/m^2 respectively, which he considered demonstrated that his revised rate of £1100/m^2 was reasonable. Unfortunately, a breakdown of the assessment based on this revised figure was not provided.

17. At the time of the challenge, and in previous rating list valuations, the appeal property's assessment had incorporated an allowance of 8.5% to reflect the lack of internal intercommunication between the two units at ground floor level. In reducing the main space rate from £1350/m^2 to £1250/m^2 following the challenge proposal, the Valuation Officer had also reduced the allowance to 5%. In the absence of any physical changes to the appeal property, Mr Edwardes argued for the allowance to remain at 8.5%.

18. On behalf of the Valuation Officer, Mr Cates contended that the amended valuation of £101,000 RV, including a 5% access allowance was reasonable. He considered that if all of the rental evidence available for properties on Ryder Street was considered, the rental levels of the appeal property and 2A-4 Ryder Street

appeared to be low. There had also been no requirement for CI Property Investors, the landlords of 5 and 17 Ryder Street to offer any incentives, for example rent-free periods, to retain the occupiers. Mr Cates considered that the appeal property's revised assessment, based on £1250/m^2, was reasonable.

19. Regarding the lower allowance. Mr Cates argued that as no reduction had been specifically allowed in the appeal property's rent to reflect this disability, the higher level of allowance was not applicable. Having regard to his evidence, he sought confirmation of £101,000 RV with effect from 1 April 2017.

Decision and reasons

20. 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".

21. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

22. 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.

23. In this case, the following rental evidence had been provided for consideration:

- <u>8-10 Ryder Street (the appeal property)</u>
  This property was subject to two separate leases at a rent of £53,456 pa and £49,334 pa respectively; giving a combined rent of £102,790 pa. Both rents had been set for a period of 15 years, effective from 15 May 2015, and each included a three-month rent-free period. As these were lease renewals and the appellant had been in occupation a number of years, Mr Edwardes viewed this rent-free period as an incentive, not a fitting out

period. He had analysed the rents to a main space rate of £1139.13/m^2. The Valuation Officer had also analysed these rents but come to a figure of £1244.72/m^2.

- <u>Bst & Grd Flr 2A-4 Ryder Street</u>
  This property's rent of £64,600 pa was fixed by a lease renewal in May 2015 for a period of 15 years. This also included a rent-free period. Mr Edwardes had analysed the rent to £1030.59/m^2 and the Valuation Officer to £1085.46/m^2.

- <u>Bst & Grd Flr 5 Ryder Street</u>
  The lease for this property had been renewed in December 2016, and the rent was fixed at £51,500 pa. It was smaller than the appeal property ITMS and no rent-free period had been agreed. In adjusting and analysing this later rent, the Valuation Officer had reached a value of £1348.85/m^2, a figure lower than the original £1350/m^2 adopted for assessments in this area; this prompted the reduction to £1250/m^2.

- <u>Bst & Grd Flr 17 Ryder Street</u>
  This property was also smaller than the appeal property and subject to a lease renewal in May 2014, at a rent of £52,000 pa. The Valuation Officer had analysed this rent to £1374.21/m^2 and Mr Edwardes to £1374.26/m^2.

24. Upon consideration of all of the evidence presented, I find that the rental evidence in respect of the appeal property and that of 2A-4 Ryder Street is the most compelling evidence in this appeal. Whilst I accept that the rents did not relate to new lettings as envisaged by the rating hypothesis, they were nonetheless lease renewals and had been agreed between the parties just over a month after the AVD, making them very pertinent in the subject case. These rents also related to the largest of the properties for which rental information had been provided.

25. I have placed little weight to the evidence of 17 Ryder Street and 5 Ryder Street. Both were smaller properties ITMS and the rents had been set some distance prior to and post the AVD. Consequently, I did not consider them to be as useful as the rents set close to the AVD, in May 2015.

26. The appeal property's current assessment is based on a main space rate of £1250/m^2, with an allowance of 5% to reflect internal issues. Having regard to the analysis of the rental evidence for the appeal property by both Mr Edwardes and the Valuation Officer, I note they produce main space rates of £1139.13/m^2 (Mr Edwardes) and £1244.72/m^2 (Valuation Officer). In respect of 2A-4 Ryder Street, analysis of the rent produced main space rates of £1030.59/m^2 (Mr Edwardes) and £1085.46/m^2 (Valuation Officer).

27. Having regard to the above, I consider the current main space rate of £1250/m^2 to be excessive, but I am not persuaded by the evidence that the rate of £1100/m^2 proposed by Mr Edwardes is correct. On balance, I find that a main space rate of £1175/m^2 is applicable and a valuation based upon this would not be unreasonable.

28. Turning to the issue of the allowance to be applied in the assessment to reflect the layout and access issues between 8 and 10 Ryder Street. Whilst accepting that

each rating list is separate and distinct, I note that an allowance of 8.5% had been applied in the appeal property's assessment for previous rating lists. Mr Edwardes confirmed that nothing had changed within the property since the start of the 2017 rating list and Mr Cates confirmed that when two or more properties were occupied as one, it was not unusual for a 5% allowance to be given: in effect, a 5% allowance had been given to 2A-4 Ryder Street. Mr Edwardes argued that 2A-4 Ryder Street did not suffer the same internal access problems as the appeal property and after considering this aspect, I am satisfied that the 8.5% allowance should be re-instated in the appeal property's assessment.

29. During questions between the parties, various factors were raised in relation to property fit out, the reason for the rent-free periods, why The Crown Estate had not taken the opportunity to let 8-10 Ryder Street on a single lease at the time of the lease renewals and also speculation in relation to the changes to the rental market within London since the AVD. I note that no definitive answers were provided during the questioning and therefore I placed little weight to these factors when reaching my decision.

30. Having regard to the above, I allow the appeal and a breakdown of my valuation is set out below:

Floor	Description	Area	£/m2	Value
Ground	Retail Zone A	21.03	1175.00	24,710
Ground	Retail Zone A	27.36	1175.00	32,148
Ground	Retail Zone B	20.13	587.50	11,826
Ground	Retail Zone B	23.73	587.50	13,941
Ground	Retail Zone C	5.08	293.75	1,492
Ground	Retail Zone C	6.93	293.75	2,036
Basement	Office	24.70	58.75	1,451
Basement	Retail Area	81.41	123.00	10,013
Basement	Internal Storage	13.62	58.75	800
Basement	Internal Storage	2.75	58.75	162
Basement	Internal Storage	3.42	58.75	201
Basement	Internal Storage	3.42	58.75	201
Basement	Kitchen	4.97	58.75	292
	Air conditioning			1,449
			Subtotal	100,722
		Less layout/access 8.5%		8,561
			Total	92,161
			Say	92,000 RV

Order

31. 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 reduce the entry in the rating list to £92,000 RV with effect from 1 April 2017.

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

Refund of appeal fee

33. 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).

Date: 23 December 2020

Appeal number: CHG100076356