THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Shop and premises; Price per square metre; Rental evidence; Assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed

Re: (&41 Berwick Street) 24-25 Noel Street, London W1F 8GU

APPEAL NUMBER: CHG100078629

BETWEEN:	E-Post Media Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr R White (Senior Member)

CLERK: Miss K Hendry IRRV (Tech)

REMOTE HEARING on Tuesday 8 December 2020

APPEARANCES: Mr D Hill of Altus Group Ltd (Appellant's Representative)
Mr C Cates (Valuation Officer's Representative)

Summary of decision

1. Appeal dismissed. I confirmed the rateable value (RV) of £317,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: (&41 Berwick Street) 24-25 Noel Street, London W1F 8GU which was entered in the 2017 rating list as "office and premises" at £337,500 RV effective from 1 April 2017.

3. Following the challenge submitted, Mr Hill proposed that the RV should be reduced to £270,000 with effect from 1 April 2017.

4. The appellant's challenge proposal to the Valuation Officer was made on 5 March 2019. The Valuation Officer issued a challenge decision on 12 August 2020, which stated that the rating list entry was considered to be reasonable, and therefore there would be no

amendment made. The appellant's appeal to the Valuation Tribunal for England (VTE) was received on 24 September 2020, and made on the grounds that the RV is excessive.

5. 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.

6. 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.

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

8. Mr Hill 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 Hill declaration of truth included a statement that he was instructed under a contingency based fee.

9. Mr Hill declaration confirmed 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 his client's case.

10. I 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).

11. I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

12. The appeal property is situated within an office building arranged over multiple floors. It is located on the south side of Noel Street, midway between the junctions with Wardour Street and Berwick Street. It also connects with 41 Berwick Street. It is within close proximity to Oxford Circus and Tottenham Court Road Underground Stations.

13. Following the challenge, both parties agreed an allowance of 6% should apply to the appeal property for the shape of the building. Therefore when the Valuation Officer issued the decision notice, it was confirmed the new RV to be £317,500 with effect from 1 April 2017.

14. 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 myself before coming to my decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

15. The issue was the correct RV to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

16. The appellant's representative, Mr Hill, had provided the Tribunal with both parties' submissions.

17. Mr Hill was seeking a revised RV of £270,000 and relied on the following evidence:

   a. The appeal property was taken on a ten year lease from 13 July 2017, with five yearly reviews. The headline rent was £350,000 however for the first two years of the term the rent was £218,750. Analysed at 7% the net effective rent equates to £292,124.16. However Mr Hill recognised that the lease was signed after the antecedent valuation date (AVD) and therefore attached little weight to this rent. However taken with other evidence, the rent does give an indication as to the appropriate RV and suggests the current RV is excessive.

   b. Mr Hill turned to the rents of comparable properties in the locality;

Address	ITMS	Rent Effective From	Effective Rent	Notes	Revised Price per M^2	Unadjusted Rate M^2
(&41 Berwick Street) 24-25 Noel Street, London W1F 8GU	638.93	13/01/2017	£297,500	Appeal Property – 10 Year Lease with 5yr review. Rent effective after AVD	£457	£500
1st Flr, 8-12 Broadwick Street, London W1F 8HW	149.01	01/12/2013	£63,000	Prior to AVD	£426	£500
4th Flr, 25-26 Poland Street, London W1F 8QN	97	01/02/2014	£43,000 (Adjusted £40,133.33)	4 Months rent free agreed - close to AVD	£413	£500
1st Flr, 25-26 Poland Street, London W1F 8QN	122.04	01/03/2015	£53,500	Rent in close proximity to AVD	£438	£500
3-4 Wardour Mews, London, W1F 8AJ	196.8	17/07/2015	£78,720	Stepped rent - Year 1-3 £78,000 Year 4 to 5 - £80,000	£431	£450

18. 3-4 Wardour Mews was recently agreed at challenge stage and reduced from £500/m^2 to £450/m^2. This is the best comparable to the appeal property as it is similar in age and also has no lifts. The other comparable on which Mr Hill placed considerable weight was 13 Berwick Street that had been submitted by the Valuation Officer. The rent indicated a new basis of value at £440/m^2 similar to the agreed rate of £450/m^2 on Wardour Mews.

19. To support the RV in the 2017 list, the Valuation Officer relied upon the following evidence;

a. This is a tight area of Soho which is home to a particular group of occupiers, media companies. For that reason there is often a premium within rents due to the strong desire to be in this location. Rents in 2015 show a continued demand for this type of property in this area for this type of occupier. The appellant is at an advantage as they have a full building rather than having to let individual smaller suites.

b. The rent on 1st Flr, 8-12 Broadwick Street, is stepped and not does not represent an accurate clean rent, therefore this comparable put forward by the appellant's representative carries less weight in terms of the hierarchy of evidence as outlined in *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141.

c. The rent on 4th Flr, 25-26 Poland Street, although it is pre AVD, a rent free period has been agreed and it is not clear if this has been considered when providing the rental figure.

d. 1st Flr, 25-25 Poland Street, Although close to AVD, records show that there was a 3 month rent free and it states this was for fit out and would be ignored by the Valuation Office when analysing. Lease on the property states that the annual rent figure is £78,960 and not £53,500.

e. No rental growth adjustment have been applied.

f. Mr Cates put forward the following comparable properties;

Address	Total Area M2	Rent Effective From	Rent	Adjusted Rent	Analysed Rent	Adopted Value M^2	Notes
1st and 2nd Flrs, 13-14 Archer Street, London W1D 7BD	286.43	01/12/2015	£210,000	£181,246	£632.78	£500	New Lease with 5 year term. Assumed FRI. Adjustmentd made for stepped rents. 8 months post AVD
Bst-3rd Flr, 5-6 Portland Mews, London W1F 8JG	210.39	27/03/2015	£167,868	£139,890	£664.90	£500	New Lease with 10 year term. Assumed FRI. VAT liable rent-adjustments made. Good evidence, close to AVD
(Incl 1st-3rd Flrd 14) 13 Berwick Street, London, W1F 0PW	369.85	01/02/2015	£163,000	£163,000	£440.72	£550	Rent review, 20 year term. Assumed FRI. No adjustment made, two months pre AVD.

g. The rent at 13 Berwick Street was actually two leases combined. 13 Berwick Street had a rent of £120,000 and commenced on 21 September 2014. 14 Berwick Street rent was £43,000 which commenced on 1 February 2015.

h. The best comparable property being Bst- 3rd Floor, 5-6 Portland Mews as this is a new letting which holds more weight and is the closest to the AVD. Looking at the comparable evidence put forward, £500/m^2 is rather conservative and could be higher, but the evidence easily supports the £500/m^2 adopted value and not a lower adopted rate.

Decision and reasons

20. After due consideration of all of the evidence submitted by the parties, I determined that the appeal should be dismissed.

21. In deciding this appeal I was governed by rating legislation laid down by Parliament which defines Rateable Value: Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, defined that the Rateable Value of a non-domestic property shall be taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

    i. The first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

    ii. 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; and

    iii. the third assumption is that the tenant undertakes to pay all the 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.

22. For the 2017 rating list the 'day by reference to which the determination is to be made' is the AVD of 1 April 2015. Economic factors must be assumed to be as they were at that date for the purposes of estimating RV. Apart from the statutory assumptions as to reasonable repair, matters affecting the physical state of the hereditament, and the physical state of its locality, are taken to be as they actually were at the "material day". In determining any appeal under the above hypothesis, it is necessary to have regard to matters referred to in Paragraph 2 (7) of Schedule 6 to the Act, those being, broadly, the physical nature of the property and its locality, as they stood at the 'material day'. This date is determined in accordance with the grounds of the proposal giving rise to the appeal. The material day for the purposes of this appeal is 1 April 2017.

23. In order to determine the correctness or otherwise of the assessment of the appeal property, I looked at the evidence available.

24. I found authoritative guidance in the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* (1976) RA 141, regarding the weighting of evidence. In all cases, the passing rent on the appeal property should be used as the starting point in its consideration of the RV for the appeal property. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it.

25. Whilst the appeal property does have a rent of £350,000 pa, which analysed to £457/m^2 this was effective from 13 January 2017, more than two years after the AVD and therefore carries little weight. Like the parties I found it was necessary to consider the rent in line with other rents in the locality.

26. The parties did not challenge the comparable properties presented by the other party with the exception of Portland Mews. Mr Hill said it would command a premium since it was located in a quiet mews. That would mean the value would be greater than properties located on main roads. No evidence substantiating this claim was presented and Mr Hill considered that his comparable at Wardour Mews was the best comparable even though like Portland Mews it was located in a quiet mews. All the comparable properties were within or on the border of the W1F postcode area.

27. The appeal building was entirely occupied by the same tenant. The total area at 638m^2 was significantly larger than the comparable properties. Mr Cates explained that given the nature of the tenants occupying the properties in this area the rate per square metre was the same irrespective of size and type of letting. Mr Hill did not dispute this analysis.

28. Looking at all the comparable properties provided, all bar two have been valued at £500/m^2. 13 Berwick Street had been valued higher at £550/m^2. This property has two separate leases but occupies the building as one unit. The assessment was currently the subject of a challenge. 3-4 Wardour Mews had been valued at £500/m^2 but following a challenge the rate had been agreed at £450/m^2. Adjustments would be needed to bring these rents in line to a rental value as of AVD.

29. Mr Hill considered that the best comparable was 3-4 Wardour Mews. The rent that was agreed post AVD on 17 August 2015 analysed to £431/m^2. Following a challenge the Valuation Office had reduced the assessed rate from £50/m^2 to £450/m^2. This indicated that the proposed rate of £425/m^2 was reasonable.

30. Mr Hill considered that the other direct comparable was 13 Berwick Street that had been proposed by the Valuation Office in support of its rate of £500/m^2 for the appeal property. It was located on Berwick Street. The rent had been agreed shortly before the AVD on 1 March 2015 and analysed to £440/m^2.

31. The occupation of 13 Berwick Street was held under two separate leases. One being dated 21 September 2014, six months before the AVD, at a rent of £120,000 and the other being dated 1 February 2015, one month before AVD, at a rent of £43,000. In determining the analysed rent of £440/m^2 the rents had been aggregated i.e. £163,000, without any adjustment for the different dates. This meant one could place less reliance on the analysed rent.

32. Mr Cates relied on three comparable properties. 5-6 Portland Mews was a new rent which became effective from 27 March 2015, very close to AVD. This rent analysed at £664.90/m^2, which was in excess of the current adopted price of £500/m^2. 13-14 Archers Street was a new lease that came into effect eight months after the AVD on 1 December 2015. This rent analysed higher than the £500/m^2 at £632.78/$m^{2.}$ The rate was similar to Portland Mews.13 Berwick Street was also used to support the appeal property rate of £500/m^2. The issues relating to this property are referred to above.

33. Three other comparable properties were referred to by Mr Hill. Broadwick Street's rent had been agreed sixteen months before the AVD and involved a stepped rent so little or no

weight was attributable to this evidence. The two comparable properties in Poland Street produced contrasting evidence despite their rent dates being very close to the AVD. No adjustment was made for the rent-free periods on either property but having corrected the rent for the first floor to £78,000 from £53,500 the adjusted rent was £647/m^2 whilst that for the fourth floor was £413/m^2.

34. The properties at Portland Mews and Archer Street were new leases and provided persuasive evidence in support of a rate of £500/m^2. Set against these comparable properties was Wardour Mews that was not a new lease and had a stepped rent but the new assessed rate of £450/m^2 was unarguable since it had been agreed with the Valuation Office. On balance 13 Berwick Street seemed to favour a rate of £500/m^2 rather than a rate of £425/m^2.

35. It is for the appellant to prove their case. I am not persuaded that the proposed rate of £425/m^2 has been convincingly demonstrated to be correct.

36. Accordingly, the appeal has been dismissed.

Date: 16 December 2020

Appeal number: CHG100078629