VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: Local Government Finance Act 1988; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; fitness centre; rental evidence; tone of the rating list, comparable properties; appeal dismissed.

APPEAL NUMBER:	CHG100079085
RE:	Part Ground, 1st, 2nd, & Mezzanine Floors, 119-121 Middlesex Street, London E1 7JF (the "subject property")

BETWEEN:	Ten Health and Fitness Ltd	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	24 February 2025
BEFORE:	Mrs N Carman, Presiding Senior Member Ms T M Blades, Senior Member
CLERK:	Mrs A Sloan
APPEARANCES:	Mr P Smith (of Ryan Property Tax Services Ltd, representing the appellant) Mr C Cates (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel made no alteration to the entry in the rating list and confirmed the rateable value (RV) at £101,000 with effect from 1 April 2017.

Introduction

3. The appellant made a proposal on 4 March 2019 to challenge the entry in the 2017 Rating List of £101,000 with effect from 1 April 2017. The proposal sought a reduction to £54,500 as

the appellant considered the valuation unreasonable. The Valuation Officer (VO) did not agree, and a Challenge decision was issued on 4 September 2020 maintaining the existing entry in the rating list. An appeal against that decision was received by the Tribunal on 4 January 2021.

4. Mr Cates stated that he was appearing before the Tribunal as Advocate for the VO, presenting evidence prepared by a colleague. In view of the Upper Tribunal's judgment in *Gardiner & Theobold LLP v Jackson (VO)* [2018] UKUT 0253 (LC), Mr Smith declared that he was appearing for the appellant as both Advocate and Expert Witness, and he was instructed under a conditional or other success-based fee arrangement. He confirmed that he understood his duty was to the Tribunal, regardless of whether the evidence supported his client's case.

5. The panel accepted Mr Smith's 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). 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.

6. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Preliminary issue

7. On 27 January 2025, Mr Smith submitted new evidence under Regulation 17a of the Tribunal's procedure regulations. The evidence consisted of a settlement on Basement 29-35 Rathbone Street, London W1T 1NJ from 2022, where the assessment had been altered from £400/m^2 to £230/m^2. There was no response to this application from the VO.

8. The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 as amended details at Regulation 17a the circumstances when new evidence may be included in Non-Domestic Rating appeals.

"17A. Admission of new evidence on NDR appeal

(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—

(a) that evidence—

(i) is provided by a party to the appeal;
(ii) relates to the ground on which the proposal was made; and
(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence."

9. At the hearing, Mr Cates confirmed that the VO had no objection to the inclusion of this evidence. The panel was satisfied that it was related to the grounds of the appeal as it

demonstrates the tone of the list, and the alteration had not been made at the time of the Challenge decision. It therefore found the new evidence could be admitted. Mr Smith also provided some photographs on 23 February 2025 of comparable properties already referenced in the evidence bundle. The Tribunal's directions permit photographs and maps to be provided shortly before the hearing and there was no objection from Mr Cates, so the panel added this submission to the bundle.

Issue and Relevant Law

10. The subject hereditament is within a mixed-use building and is arranged over four floors, including the basement. It is described in the rating list as a fitness centre and premises. The survey details were not in dispute.

11. The issue to be determined by the panel was whether the existing valuation, based on an unadjusted rate of £350/m^2, was unreasonable. Mr Smith contended that the subject property had been valued on a scheme for offices and should be valued in line with other fitness centres in the locality. His proposed valuation was based on an unadjusted rate of £190/m^2.

12. The material date on which to consider the physical state of the hereditament and its locality was 1 April 2017, when the entry was made in the rating list. The valuation date for the 2017 rating list is 1 April 2015, the antecedent valuation date (AVD). The rateable value (RV) must represent the statutory definition of the annual rent the property might reasonably achieve from year to year, assuming the tenant is responsible for repairs and insurance, with effect from 1 April 2015.

13. Both parties referred to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141, which provided guidance on the weight to be applied to different forms of evidence.

Discussion

14. Mr Smith contended that the rent passing on the subject property, from June 2013 is too far removed from the AVD to be of assistance in determining the likely rental value on the AVD of 1 April 2015. He therefore based his valuation on comparison with other similar fitness centres in the locality. He submitted that the subject property is valued under the VO scheme 350943, which he did not consider appropriate and felt the current valuation reflects office space, rather than a fitness centre. He provided evidence that the property had consent to change from office use (Class B1) to a Pilates studio (Class D2).

15. Provided in evidence was a copy of the appellant's submission and the VTE decision on the subject property regarding the entry in the 2010 rating list. Mr Smith submitted that the VTE decided on the 2010 list appeal that the subject property should be valued in scheme 109161 for class D2 properties and ordered a valuation based on £145/m^2. He stated that this scheme has a range of values from £22.25/m^2 to £478/m^2, but the most commonly used value was £280/m^2. An extract from the VOA's rating manual for Sports and Leisure Centres was provided and Mr Smith contended that the subject property should be valued in band 2; Central London and discrete high value locations, purpose built/quality conversions, at a rate up to £200/m^2. A table of thirteen comparable properties was provided demonstrating a range of values from £110/m^2 to £380/m^2.

16. Mr Cates disagreed with Mr Smith's position and defended the existing entry in the 2017 rating list. He pointed out that the planning consent for the change of use was in February

2013 and therefore was already granted when the subject property's rent was agreed in June 2013. He therefore felt that the rent agreed on the property should not be disregarded and that it supported the existing valuation. Mr Cates confirmed that, although the description in the rating list for the subject property shows as fitness centre and premises, this is not a binding characteristic of value. The subject property was previously office space and, in accordance with *Lotus and Delta*, it would be wrong to ignore the open market rent agreed between the appellant and the landlord. In his opinion, the rent from June 2013 carried weight as it was less than two years before the AVD and reflected the rent achievable on the open market for a property in this building with D2 use already granted. Mr Cates submitted that the subject property must be valued as a vacant Pilates studio on 1 April 2015 and consideration given to what rent would be achievable. While accepting the subject property's rent was negotiated some time before the AVD, he highlighted that there was no evidence that the market had dropped between June 2013 and April 2015 to such an extent that an RV of £54,500 was realistic.

17. While the panel noted the inclusion of the VTE decision on the 2010 rating list entry, it placed little weight on this as evidence. The Tribunal in that appeal was looking at a different market and placed less weight on the subject property's rent because it was agreed some five years after the AVD for that list, 1 April 2008. The panel found that the rent was more relevant when considering the 2017 list. It noted that the lease agreed between the appellant and the landlord was over a term of fifteen years at a rate of £95,000 per annum from 13 June 2013. In response to Mr Cates' questions, Mr Smith was unable to confirm how much the appellant had spent on adapting the subject property from offices to a Pilates studio. Mr Cates submitted, with reference to internal photographs of the property, that there would not be a significant amount of work involved in converting the space back to offices if required and this would be reflected in the rent.

18. The panel found that, in accordance with *Lotus and Delta*, the starting point of the valuation must be the rent agreed on the subject property. The VO analysed the rent to £329.18/m^2, and the valuation was based on £350/m^2. The panel found this to be persuasive evidence that the valuation was not excessive.

19. Examples of seven comparable properties were provided by the VO including rents ranging from January 2014 to May 2016. In terms of metres squared (ITMS) the subject property is the largest of the VO's comparable properties, at 288.6m^2. The seven examples presented by the VO were valued between £300/m^2 and £500/m^2. The panel noted that the VO's examples were all on different floors in their respective buildings, including basements, mezzanines, and 1st, 2nd, or 3rd floors, and therefore comparable in character to the subject property. Of particular note was 1st - 3rd Floors, 118 Middlesex Street, in close proximity to the subject property, which was valued at the same rate of £350/m^2. The panel found from this evidence that the subject property's rent and those on similar assessments suggested £350/m^2 was not unreasonable.

20. In contrast, many of Mr Smith's comparable properties presented are significantly larger than the subject property, ranging from 457m^2 to 1,124m^2. Mr Smith submitted that the best comparison, being situated close to the subject property, was 5 -11 Fetter Lane EC4A 1BR. The panel noted that this property is described as a leisure centre and is over double the size of the subject property. It did not consider this to be particularly comparable. While external photographs were supplied of some of Mr Smith's examples, there were no internal images. The panel noted that the subject property was a Pilates studio and found this was not likely to provide the same facilities as a much larger gym or leisure centre, which may include

weights rooms, swimming pools, multiple fitness studios and potentially squash or tennis courts.

21. Basement and Ground Floor 21 Ludgate Hill, London EC4M 7AE is comparable in size to the subject property, at 227.37/m^2 but the VO's records showed that the valuation for this assessment was based on its new fifteen-year lease from September 2014, which analysed to £156.78/m^2. The panel concluded that this rent supported the valuation for this property at £162.50/m^2 and did not demonstrate the subject property should be valued on the same basis.

22. The examples presented by Mr Smith of Unit 30 at 10 Hornsey Street, Part Basement Bevis Marks House, Lower Ground Floor 117-119 Houndsditch, and 4-5 King John Court were all significantly smaller than the subject property and valued at between £300/m^2 and £380/m^2. The panel did not find these examples supported a reduction to £190/m^2 for the subject property. The gym at Houndsditch, EC3A 7BU measuring 141.41m^2 was valued at £190/m^2 but the panel had no image (external or internal) of this property or detail about its facilities for comparison with the subject property, so was unable to place weight on this smaller property to support a reduction. The panel found the late submission under Regulation 17a by Mr Smith regarding the settlement on Basement 29-35 Rathbone Street was of little assistance as no detail was provided on the description, size, or character of the hereditament for comparison.

23. The panel noted that the subject property includes a Pilates studio, gym, physiotherapy rooms and changing rooms. No detail was provided of the facilities at the comparable properties presented for the panel's consideration. It found that the VO's examples demonstrated that the subject property is valued in line with similar or smaller properties nearby and these appeared more comparable than those presented by the appellant's representative.

24. After considering all the evidence available, the panel found that the strongest evidence was the rent agreed on the subject property from 2013. The rent was negotiated less than two years before the AVD at a rate to reflect the planning consent for the change of use already granted. The level of rent supported the existing valuation and would reflect the location and the building. The panel accepted that the rent would need some adjustment to reflect the market conditions between 2013 and 2015, but it was not persuaded that the value of the property would have dropped to the level of £54,500 sought by the appellant when the rent agreed was £95,000. The VO's analysis showed that the rent passing on the subject property supported the unit price applied to the valuation and the panel found that the appellant's representative had not demonstrated to its satisfaction that £350/m^2 was unreasonable for the subject property.

Disposal

25. In view of the above findings and conclusions, the panel confirmed the entry in the 2017 valuation list at £101,000 from 1 April 2017 and dismissed the appeal.

Date issued to parties: 19 March 2025

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.