THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Prime location; Office buildings; Open market value; Appeal dismissed.

RE: 1st Flr Se Part 1, Great Cumberland Place, London W1H 7AL

APPEAL NUMBER: CHG100081408

BETWEEN: Synergy Associates Ltd (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 £29,000 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 £29,000 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 8 July 2020. The challenge sought a reduction in RV to £22,500.

3. The appeal hereditament was an office on the first floor of an eight story multi-occupied office building. It was located near to Marble Arch in London, was built in the 1920's and measured $61.8m^2$.

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, in his opinion, the best comparable property was (k/a Suite 1) 1st Flr SW1, Great Cumberland Place. This unit was located on the same floor, in the same office building as the subject property and had a new lease effective from 27 October 2015. He provided the panel with photographs of the building and of the respondent's comparable property, copies of lease agreements, and a table of analysed rents containing both the appellant's and respondent's comparable properties. Mr Poole argued that the subject property was excessively valued with a base rate of £450 per square metre (psm), adjusted to £472.50psm to include the comfort cooling in the office. He sought a reduction in RV to £22,500 using an adjusted rate of £367.50psm.

14. Mr Cates advised the panel that, in his opinion, the new leases in the building after the antecedent valuation date (AVD) were not open market due to the works that were being planned for the building. He provided comparable rents from before the AVD from within the building and a rent effective from November 2014 on an office in a nearby building. Mr Cates asked the panel to dismiss the appeal and for the RV of £29,000 to be confirmed in the current rating list.

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 –*
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> *(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 subject hereditament was in the 2017 rating list with RV £29,000. The property had been valued with an unadjusted base rate of £450.00psm that was adjusted to £472.50 to account for the office benefitting from comfort cooling.

19. It is acknowledged that a planning application was submitted to demolish the building the subject property was located in. The planning application was made on 31 March 2017 and was approved towards the end of 2017. The assessment was altered to RV £0 with effect 25 February 2019.

20. The appeal property was subject to a new lease with effect from 26 August 2011. The lease was on a 5-year term and the passing rent was £60,210. Neither party had analysed the rent, but the panel were informed that it included a sublet to another occupier and the form of return indicated that the lease operated outside of the Landlord and Tenant Act 1954.

21. The panel heard that the appellant had not confirmed to Mr Poole if the lease was renewed in 2016, however they vacated the premises in September 2018. The panel placed little weight on the rent of the subject property due to the amount of adjustments that would be required for it to meet the rating hypothesis.

22. (k/a Suite 1) 1st Flr SW1, Great Cumberland Place had a passing rent of £48,880 on a new 5-year lease effective from 27 October 2015. Mr Poole made no adjustments to the passing rent and had devalued it to £389.80psm.

23. Mr Cates advised the panel that, in his opinion, the rent required adjustment to meet the rating hypothesis as it included a 3-month rent free period, a premium of £14,664 paid in October 2015 and a service charge of £9,461. Mr Poole objected to this contention and explained he had not adjusted for the premium as it was not clear what it was for.

24. Mr Poole was asked what a premium would generally be paid for based on his knowledge of the office rental market. He stated that a lump sum was sometimes paid in lieu of a lower rent, however he said that it was unusual to see significant premiums in lieu of a lower rent and that in the case of the comparable property, it was not clear what the premium was for and he could not be confident it was paid for the above reasons.

25. 1st Flr Ctr East & Pt Se 1, Great Cumberland Place was provided as a comparable property by Mr Poole. This was a sublet of the subject hereditament and had a passing rent of £48,600 with effect from 16 May 2014 on a 2-year lease. The lease was renewed with effect from 26 August 2016 for 3 years with a passing rent of £56,700. Mr Poole made no adjustments to the rents and devalued them to £293.83psm and £342.81psm respectively.

26. The panel heard from Mr Poole that based on his knowledge of the office rental market in the area surrounding the subject property, he considered that it was a rising market with rental growth in offices in Mayfair. He based this on rents for his clients in the area and reports from CoStar, a commercial real estate publication.

27. Mr Cates put forward two comparable offices located in the same building as the subject property, 5th Flr Nth & Ctr West 1 (5th Flr) and 7th Flr South East 1 (7th Flr). Both properties have leases effective before the AVD that were not adjusted by Mr Cates. The passing rent on the 5th Flr was £127,790 with effect from 28 September 2013 which Mr Cates devalued to £539.74psm. The passing rent on the 7th Flr was £99,900 with effect from 17 August 2012 that Mr Cates devalued to £454.79psm.

28. The panel noted these rents were quite far removed from the AVD of 1 April 2015, however it accepted Mr Cates's contention that they demonstrated rental anomalies post AVD in the office building at Great Cumberland Place in a generally rising rental market. The panel also considered that the rents pre-AVD required no adjustment to meet the rating hypothesis.

29. Mr Cates also provided Grd & 1st Flrs 15 Berkeley Mews as a comparable property. This was a two-storey period building that housed offices and was located within half a mile of the appeal property. There was a lease renewal with a passing rent of £57,000 effective from 1 November 2014, five months prior to the AVD.

30. Mr Poole contended that Berkeley Mews was not comparable due to the character of the building. He stated you could not compare an eight storey multi let office building with a two-storey converted office building. Mr Poole argued the two buildings would attract different tenants from different industries.

31. It was the panel's view that 15 Berkeley Mews was comparable to the appeal hereditament as it was located in the same, very good, area and provided office space. The panel was of the opinion that a tenant looking for office space in a high-end location would consider the appeal property and the comparable office at Berkeley Mews and there was no evidence to show this was not the case.

32. When considering all the evidence before them, the panel found that the leases signed post-AVD at Great Cumberland Place did not appear to be open market value compared with the rents being achieved pre-AVD and the panel were persuaded that they were affected by the upcoming demolition plans for the building.

33. The panel could not overlook a reduction in rental values within Great Cumberland Place of almost £200psm when it has been accepted that there was a rising office rental market in the location at the time.

34. The panel considered that the rents at Mr Poole's two comparable properties were not adjusted for the premiums that were paid when the leases were signed and found there was not a sufficient reason provided for this.

35. It was the panel's opinion that the rent at Berkeley Mews that had been devalued to £470.41psm was the strongest evidence in the circumstances and indicated what rents would be achieved for offices in a prime location at that time.

36. Therefore, the panel found that the base rate of £450psm, adjusted to £472.50psm for comfort cooling, was not unreasonable for the appeal hereditament.

37. Consequently, based on the evidence before it, the panel dismissed the appeal and the RV of £29,000 was confirmed with effect 1 April 2017

Date: 9 March 2021

Appeal number: CHG100081408