THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; Dance Studio; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rent passing on the appeal property; it was found that the evidence showed that the existing valuation was not reasonable; appeal allowed in part.

Re: Unit 3, Canterbury Court, 1-3 Brixton Road, London SW9 6DE

APPEAL NO: CHG100081526

BETWEEN:	Dance Flow Academy Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mr T Rakhim (Senior Member) and Ms L Moses

CLERK: Mrs A Keohane

REMOTE HEARING: Remote Hearing No. 2, Wednesday 17 February 2021

APPEARANCES: Mr H Edwardes of Altus Group on behalf of the Appellant
Mr B Kangethe on behalf of the Respondent

Summary of decision

1. The appeal was allowed in part. The assessment was reduced to £58,250 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. This appeal has been brought in respect of the following: Unit 3, Canterbury Court, 1-3 Brixton Road, SW9 6DE, (the 'appeal property') which was entered in the 2017 Rating List as 'Dance School and Premises' at £85,500 RV, effective from 1 April 2017. This assessment was based on a rate of £250/m^2.

5. The appellant's representative submitted a challenge proposal to the Valuation Officer on 18 March 2019. The Valuation Officer considered the appeal property's valuation was not reasonable and the rating list altered to show £61,500 RV, based on £170/m^2. A decision notice to this effect was issued on 2 July 2020. As this alteration was not in accordance with that requested in the challenge proposal, the appellant's representative appealed to this Tribunal on 1 November 2020.

6. This is a compiled list appeal and therefore the material day is 1 April 2017.

7. The appeal property is a dance studio and premises (D2 usage) situated within a detached mixed-use building of masonry construction, arranged over four floors around a central atrium. It is located within Kennington Park Business Centre, off the A23 Brixton Road in London and has local transport links within close proximity. The building is accessed at first floor level and the appeal property is on the ground floor; however, its positioning is such that it has similar characteristics to a basement unit; given its lack of natural light. The appeal property's current assessment of £61,500 RV is based on £170/m^2; the appellant's representative is proposing a revised assessment of £34,750 RV based on £110/m^2.

8. Mr Edwardes was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

9. Mr Edwardes explained that Altus Group was representing the appellant on a contingency fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

10. The expert witness evidence was accepted 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 Procedure regulations 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). The "expert" evidence was considered, and the panel attached weight to it as it saw fit.

11. Mr Edwardes submitted additional evidence to that provided at the challenge stage in the form of a previous tribunal decision in relation to CHG100044695, Unit TR G Trowbray House, 108, Weston Street, London, SE1 3QB, correspondence from Fiona Shorey, the landlord's (Workspace) Senior Rating Surveyor and a full copy of the appeal property's lease agreement.

12. Mr Kangethe raised no objection to the admission of the lease and correspondence; however, he objected to the introduction of the tribunal decision, on the grounds that it was not on ‘all fours’ with the subject appeal. He therefore wished its inclusion to be considered as a preliminary matter.

13. In relation to the tribunal decision, Mr Edwardes had sought its introduction because it related to a very similar case on a Workspace owned assessment in South London that had been determined after the challenge process in the subject appeal had concluded. The same issue on the correct analysis of Workspace lettings was raised during the appeal.

14. As Mr Kangethe had agreed to the inclusion of the appeal property’s lease and the correspondence from Fiona Shorey, the panel added this to the bundle of evidence. Addressing the issue of the tribunal decision, the panel did not view this judicial decision as new evidence. In determining the subject appeal, this panel was not bound by any other tribunal decision and what weight attached to this, if any, would be dependent on how relevant it was felt to be to the matter under consideration. The panel therefore determined that the tribunal decision in relation to Trowbray House was admissible.

15. Mr Edwardes raised his own preliminary issue. He expressed concern that the valuation of the appeal property appeared to have changed since the challenge decision had been issued. Three different valuations had been created, all giving the same RV but with different base rates and allowances. These were:

- The challenge decision. The valuation of the appeal property had been amended to £61,500 RV, using a base rate of £170/m^2. The previously agreed allowance of 5% for lack of natural light had been removed and was identified as now being reflected in the revised rate. It was this valuation the representative’s appeal to the Tribunal was against.

- An alteration had been made to the Rating List after the Challenge had concluded to show a valuation based on a rate of £250/m^2, the original rate prior to the challenge proposal. Within this assessment was an allowance of 32% to bring the assessment to £61,500 RV. This 32% allowance reflected a long corridor/no vehicle access and the lack of windows/natural light to the property.

- A further alteration was made based on an unadjusted rate of £197/m^2. It was this valuation Mr Kangethe had forwarded to the Tribunal prior to the hearing, as the valuation under appeal. To the unadjusted rate a reduction of 8% had been applied to reflect access and 6% for the lack of natural light, bringing the adjusted price to £170.39/m^2. Again, this resulted in £61,500 RV.

16. The panel found the issue of the valuations more of an unusual situation. If Mr Kangethe’s revised valuations were due to new analysis, this had not been discussed with the rating representative, although an appeal was outstanding. If the inclusion of the extra allowances was due to new evidence coming to light, no

application had been made for new evidence to be considered at the hearing. Mr Edwardes stressed that his appeal to the Tribunal had been made against the Valuation Officer's revised base rate of £170/m^2 and the removal of the separate allowance for the lack of natural light. The other allowances identified had not been proposed nor discussed during the challenge process and were not addressed in the evidence bundle.

17. After consideration the panel concluded that, ultimately, it would cause prejudice to the representative if any valuation, other than that issued at the challenge decision stage, was presented at the hearing. Mr Kangethe was requested to proceed on the basis of the original challenge decision.

18. 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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

19. Whether the appeal property's current assessment at £61,500 RV was reasonable?

Evidence and submissions

20. Within the Challenge documentation and in his oral presentation, Mr Edwardes contended that the appeal property's 2017 rating list assessment was incorrect and unsupported by the property's rental evidence, rental evidence from within the area and the assessments of comparable properties within the locality.

21. The appeal property was in D2 use as a dance studio and premises. This was the same use as that of the neighbouring unit, 3A 4 4A & 5 Canterbury Court, that was occupied as a gym. Both units shared a party wall and were of a similar quality; however, the gym was valued using a price of £110/m^2 and the appeal property £170/m^2. During discussions, rental evidence for the gym unit had been considered; however, both parties accepted that this rent carried little weight as it had been set in 2011, some years prior to the AVD, and as it was stepped it required substantial adjustment.

22. Mr Edwardes explained that the appeal property was leased with effect from March 2016 at a rent of £61,500 per annum (pa). The lease was not on a full repairing and insuring (FRI) basis, but internal repairing and insuring (IRI) only. Mr Kangethe had not adjusted the rent to reflect:

- the IRI lease as confirmed by the landlord's Rating Surveyor;
- the rental growth between the AVD and the date of the lease agreement as confirmed by Costar; and
- the three-month rent free period as it had not been a fit out period as the previous occupier, Infinity Arts Ltd, had already fitted out the property as a dance studio.

23. The appeal property was located on the ground floor; however, it had the characteristics of a basement unit as it did not benefit from any windows or skylights

and therefore had no natural light. Mr Edwardes argued that this would restrict its suitability for a range of alternative uses and ultimately, would affect any rental bid. To reflect this disability, he requested the reinstatement of the 5% allowance that had previously been agreed to reflect the lack of natural light. He confirmed that assessments on the first floor still retained this allowance.

24. In the light of the unreliability of the appeal property's rental evidence, Mr Edwardes provided details of other premises subject to D2 use within reasonable proximity. These were of between 118.95m^2 and 1991.03m^2 in size and had been valued on unadjusted rates of between £75/m^2 and £155/m^2 for the 2017 rating list. He considered this evidence supported his proposed valuation for the appeal property based on an unadjusted rate of £110/m^2, an uplift for air conditioning and an allowance of 5% to reflect the absence of natural light.

25. In the Valuation Officer's decision notice, it was recognised that the appeal property's original assessment was unreasonable. It had been revised, based on £170/m^2, mainly having regard to the rent but supported by rental evidence of other properties in the area. The statutory definition of rateable value was referred to; together with the six propositions for weighting evidence as set out in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141.

26. Mr Kangethe considered the appeal property's rent to be good evidence. After considering all of the sections of the lease, he argued that it was on a FRI basis and that the rent quoted did not include service costs. In the absence of definitive proof of rental growth in the area between the AVD and the date of the lease agreement, he found no reason to adjust the rent for this factor. Whilst he accepted the content of Ms Storey's email, he did not consider it clarified the issue of the terms on which the lease had been set, therefore he was satisfied that his analysis of the rent was reasonable.

27. Addressing the comparable properties provided by Mr Edwardes, Mr Kangethe did not accept they supported the proposed rate of £110/m^2. He argued that the best evidence was the appeal property's rent, together with the 'basket of rents' for properties in the appeal property's locality, which supported the adopted rate of 170/m^2. With regard to the separate allowance to reflect the property's lack of windows or skylights, he considered this factor was already reflected in the rate he had adopted in the assessment.

28. In summary, Mr Kangethe considered the appeal property's rent was reflective of the rating hypothesis and therefore could not be disregarded. This rent devalued to £178/m^2, which did not show that the current assessment, based on £170/m^2, with an uplift for air conditioning, was unreasonable.

Decision and reasons

29. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

30. Firstly, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta*, as referred to in evidence, which indicated that the starting point in assessing the appeal property for rating purposes was the passing rent.

31. In this appeal, both parties had given their view on the reliability of the appeal property's rent. Mr Edwardes had argued that the rent of £61,500 pa, set by way of a lease commencing in March 2016 was not on FRI terms. He believed the tenant paid one gross rent, which included service charges, and the lease was on an IRI basis. Because of this, it would require substantial adjustment to bring it into line with the rating hypothesis. On the other hand, Mr Kangethe had scrutinised the clauses within the lease and contended that the lease was FRI and the tenant was responsible for all liabilities. He believed the tenant was required to pay the quoted rent and also a separate service rent; given it specifically stated in the lease that the service rent was to be paid in the same manner as the rent.

32. To clarify the issues with the lease, Mr Edwardes had sought confirmation from the landlord, which had resulted in the email from Ms Shorey. After consideration of this email, the panel found its content inconclusive. It suggested that Workspace leases were IRI in 'almost all cases' but did not confirm whether this was actually the case in the subject appeal. It also set out that service charges were included in the gross rent, but there was no clarification of what was covered in the subject rent; given it appeared that a service rent was paid separately. There was also the issue of the lease agreement being 11 months after the AVD and had not been adjusted to reflect any growth during this period. Further, if Mr Edwardes was correct and the rent-free period was not for fit-out purposes, the panel accepted that the rent should also have been adjusted to reflect this rent free period.

33. After due consideration, the panel concluded that due to the ambiguity of appeal property's rental evidence, it was not persuaded to use this evidence in isolation when determining the outcome of this appeal.

34. In respect of other rental evidence, Mr Kangethe had referred to properties situated on 1-3 Brixton Road as follows, which he considered contributed to the 'basket of rents' for consideration in this appeal:

- Norfolk House, Unit 27 1-3 Brixton Road, SW9 6DE. This property was $604.75m^2$ in terms of main space, (ITMS) described as a business unit and premises/warehouse and had been subject to a new lease effective from May 2016, the rent devalued to £249.69/m^2 on an FRI basis.

- Ground Floor, Chichester House, 1-3 Brixton Road, SW9 6DE. This property was $999.58m^2$ ITMS, described as a business unit and premises/workshop and had been subject to a rent review from 1 September 2015 when the rent was agreed at £157,500 pa. This devalued to £156.07/m^2 on FRI basis. Following further analysis for five parking spaces and to take account of quantum, a rate of £171/m^2 had been arrived at.

- Unit 1 Canterbury Court, 1-3 Brixton Road, SW9 6DE. A new lease on a business unit and premises of $523.43m^2$ ITMS let at a rent of £125,755 pa, effective from May 2014. This devalued on a FRI basis to £240.25/m^2. It included a rent-free period of one month; however, no adjustment had been made for this, as it had been treated as a fit-out period.

35. Mr Kangethe had also referred to the following in the challenge decision:

- 63 Wingate Square. This property had been subject to a new lease effective from June 2015 and the rent devalued to £218/m^2.
- 3 Mullens Place. This property had been subject to a new lease from August 2015 and the rent devalued to £160/m^2.

36. Mr Edwardes did not consider 63 Wingate Square to be comparable to the appeal property, as it was a new build property and when viewed vacant and to let it was office premises. He referred to his own rental evidence as follows:

- Unit 1.13A Canterbury Court, 1-3 Brixton Road, SW9 6DE. This was of 141.85m^2 ITMS, had a stepped rent for two years, commencing with £25,500 pa, effective from October 2014. It also required gas and electric to be deducted. Following analysis, the rent devalued to around £155/m^2.
- Unit 3 Canterbury Court (the appeal property). The property was of 343.70/m^2 ITMS and let at a rent of £61,500 pa, effective from March 2016. It contained a three-month rent free period and when adjusted and analysed to reflect this, devalued to around £155/m^2.

37. Mr Edwardes had also argued that, as a unit with D2 use, the appeal property had been valued within an incorrect scheme. He considered the rental evidence provided by Mr Kangethe related to properties in a different mode and category of occupation and that it was reasonable to value the appeal property in line with units in similar D2 use. To this end, he provided photographs, valuations and details for comparable properties within the SW2, SW4, SW8 and SW9 postcode areas, no more than 2.5 miles from the subject. These assessments were based on prices of between £75/m^2 to £155/m^2 and included the neighbouring gym unit, valued using £110/m^2.

38. In consideration of the details of the comparable properties the panel noted they were situated in a number of locations. It paid attention to the properties within the SW9 area, that had been valued using prices of between £75/m^2 and £125/m^2. 15 Lett Road and the gym unit neighbouring the appeal property were not considered particularly helpful; given they were substantially larger than the appeal property; their assessments being based on £110/m^2. However, there was no evidence to confirm whether these included an element of quantum. The panel did not consider Horizons Leisure on Hackford Road was comparable to the appeal property; it included a wet leisure facility, namely a swimming pool.

39. Ultimately, the panel found little assistance from the assessments of the comparable properties. This evidence set out the various rates applied to different types and styles of properties within different locations; it did not assist in determining the correct level of value for the appeal property around the AVD, in its specific location.

40. Upon consideration of all of the evidence, the panel decided to treat the appeal property's rent with caution; given the lack of clarity over whether the lease was on a FRI or IRI basis or conclusive proof that the rent did not include service costs. The panel preferred to place the most weight on the rental evidence for properties in close proximity to the appeal property, submitted by Mr Kangethe, as these would be reflective of the locality and the rental market for properties in the area around the AVD. On balance, the panel found that the majority of this evidence did not show the basic price of £170/m^2 applied in the appeal property's assessment to be unreasonable.

41. That said, after looking at the photographs of the appeal property, the panel was of no doubt that the lack of natural light was a factor that would have a detrimental effect on the enjoyment of the appeal property and ultimately the rental bid. The panel did not accept Mr Kangethe's view that an allowance to reflect this was already incorporated into the price he had applied. The panel considered this disability should be reflected as a 5% adjustment to the £170/m^2 and in pursuance of this, it confirmed the following valuation.

Floor	Description	Area m2	£ per m^2	Value £
Ground	Staff Toilets & Showers	53.19	161.50	8590
Ground	Office/reception	15.93	177.65	2830
Ground	Studio 1	40.06	177.65	7117
Ground	Studio 1 & 3	216.81	177.65	38516
Ground	Internal Storage	8.51	161.50	1374
		Valuation sub total		58,427

Say £58,250 RV

42. Having regard to the above, the panel confirmed the appeal property's existing assessment was not reasonable and determined a revised assessment of £58,250 RV with effect from 1 April 2017.

43. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show Unit 3, Canterbury Court, 1-3 Brixton Road, SW9 6DE at £58,250 RV with effect from 1 April 2017.

44. Any appeal fee paid will be refunded in full in accordance with regulation 13E.

Date: 11 March 2021

APPEAL NO: CHG100081526