THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal – Preliminary Issue of new evidence submitted by appellant's representative – rental evidence – weighting of evidence – did leases reflect the rating hypotheses - settlements within building equally 26% reduction from original RV – appeal dismissed

Re: Unit 3.30 Canterbury Court, 1-3 Brixton Road, London, SW9 6DE

APPEAL NUMBER: CHG100086898

BETWEEN:	Carislease	Appellant
	and	
	The Valuation Officer	Respondent

PANEL;	Mr K Sutch (Senior Member)
	Mrs C Dodsley
CLERK:	Mr A Jolly
REMOTE HEARING	Thursday 15 April 2021
APPEARANCE:	Mr H Edwardes of Altus Group representing the occupier Carislease (appellant)
	Mr B Kangethe representing the Valuation Officer (respondent)

Summary of decision

1. Appeal Dismissed. Rateable Value (RV) £15,000 confirmed with effect 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: An appeal received on 15 January 2021 against the Valuation Officer's Challenge Case Decision Notice dated 17 September 2020 which made no change to the entry in the Rating List.

3. 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.

4. 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.

5. 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.

6. Mr Edwardes 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 Edwardes' declaration of truth included a statement that he was instructed under any conditional fee arrangement.

7. Mr Edwardes 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.

8. 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).

9. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. The appeal property was an Business Unit and Premises located on the third floor in a detached mixed use building of masonry construction and arranged over four floors around a central atrium which was built in the 1800s and refurbished and extended in 2006 adding the third floor. The premises were served by a small lift for the whole building. There was some external space on the 3rd floor used by the offices. The property is situated on a development of other similar buildings known as Kennington Park Business Centre. It lays just of the A23 Brixton Road in London, with good road networks and other transport links. The property had been entered in the 2017 Rating List at RV £15,000 with effect from 1 April 2017.

Preliminary Matters

11. Mr Edwardes served on 17 March 2021 new evidence which included:
    - an Expert Witness Report,
    - a previous Valuation Tribunal Decision dated after receipt of the appeal,
    - statement from the managing agents for Canterbury Court,
    - leases from properties previously discussed and leases from properties not previously discussed,
    - settlement details occurring after receipt of the appeal
    - revised valuation increasing the RV sought from £4,400 to £11,000.
    - plans of the property and photographs.

12. The Valuation Officer had objected to the inclusion of the new evidence on 17 March 2021 referring to an email he issued on 5 March 2017 apart from the plans and photographs as these were already included in the appellant's appeal documents. Following the objection a number of emails were issued to seek clarification of what evidence was to be included and

what evidence was being objected to. The clerk referred the matter to the Senior Member who agreed that the matter of the new evidence should be considered as a preliminary issue at the hearing.

(1) 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.

13. The panel considered that the Valuation Tribunal decision relating to Trowbray House, Weston Street, London (CHG100044695 and CHG100044439) issued on 10 November 2020 should be admissible as decisions were not evidence and also the decision was issued after the appeal was lodged. The panel also considered that the settlement details should be submitted as again these were settled after the appeal had been lodged and the appellant's representative could not have known about them when lodging his appeal. The panel also considered that the leases which related to properties that had been discussed during challenge stage could be included as these clarified the contentions of the appellant's discussions. The panel also accepted the revised valuation seeking RV £11,000.

14. The panel did not admit the statement from the managing agent, the leases of properties not previously discussed and the Expert Witness Report as all of these could have been acquired prior to the submitting of the appeal.

15. As the panel was admitting new evidence to the hearing the Valuation Officer was given the opportunity to seeking an adjournment in order to either submit any further evidence in relation to the new evidence. Mr Kangethe was content to proceed with the hearing.

Issue

16. The issue before the panel concerned what RV should be applied having regards to the rental evidence and the weighting of that evidence.

Evidence and submissions

17. Mr Edwardes informed the panel that he had dealt with a number of appeals in relation to the Kennington Business Park and was aware of six settlements of premises within Canterbury House on the 1st, 2nd floors and one on the 3rd floor. He stated that the reductions in RV equated to 26%. He did not consider there was any difference in the quality of the premises between the floors and therefore the percentage reduction should be the same on the 3rd floor as it was on the 1st and 2nd floors and the one hereditament reduced on the 3rd floor. He considered that the RV should be reduced accordingly to RV £11,000

18. Mr Edwardes referred to the rent passing on the appeal property and other properties within Canterbury House. He stated that the leases were not standard full repairing and insuring leases (FRI) and in most instances included service charges and also a charge for gas and electric. He considered that the leases did not meet the rating hypothesis of a FRI lease and

would require considerable adjustment to accord and therefore less weight should be attached to them. In support of his contention he cited a Valuation Tribunal decision relating to Trowbray House, Weston Street, London (CHG100044695 and CHG100044439) in which paragraph 21 stated:

> 21. The panel having considered the rental evidence presented was satisfied that whilst the rental agreements for Trowbray House were close to the antecedent valuation date they did not meet the rating hypothesis and required significant adjustment to accord. The panel therefore accepted that due to the adjustments required they would be less reliable.

19. Mr Edwardes explained to the panel that the managing agents provide the information of the lease not by Forms of Return (FOR) but by a schedule. He did not consider the information always reflected the situation and therefore was not always accurate due to stepped rents, rent inclusive of gas and electric and service charges and the tenant only responsible for internal repair and insurances. He also stated that some rents will include furniture whereas some did not. For these reasons he considered little weight should be placed upon the rental evidence of properties within Canterbury House.

20. Mr Edwardes requested the panel allow the appeal and confirm RV £11,000 with effect from 1 April 2017.

21. Mr Kangethe stated that the base rate was £525 per m² and that the appellant's representative was seeking a reduction of 26% to £388 per m².

22. Mr Kangethe considered the 2019 rent for the appeal premises was too remote from the antecedent valuation date (AVD) and that the previous lease from 2013 with a renewal in 2016, which devalued to £610 per m² with no adjustment, provided supporting evidence of his adopted value. He stated that he had not considered the rent on the appeal property in isolation but had considered rents of other premises in the locality and provided details for Units 3.32; 3.42 and 3.17 which were all new leases from between June 2015 and January 2016. He stated that adjustments had been made to the rental information to accord with the rating hypotheses and he considered that the rents illustrated that £525 per m² was not unreasonable. He stated that the rental evidence, in his opinion, showed that values were greater for the 3rd floor than the 1st and 2nd floors.

23. Mr Kangethe informed the panel that Workspace, the managing agents, have staff that complete the necessary forms which include adjusting for the service charge and the forms also separate the costing for the utilities and therefore he was confident in their ability and confident in the information provided. He considered the fact that the rental evidence and the leases' details showed differing amounts illustrated the necessary adjustments had been made.

24. He stated that the price per m² illustrated the high demand for these types of premises and he considered that the appellant's representative had not proven that the RV of £69,000 was unreasonable. He requested the panel dismiss the appeal.

Decision and reasons

25. The panel first considered the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
3. Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
4. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.

26. The panel considered the starting point was the rents passing on the appeal property. It agreed that the 2019 rent being four years after the AVD was too remote but considered that 2013 rent to be of assistance. The panel was informed that the leases within Canterbury House did not meet the requirements of the Rating Hypotheses as they were not FRI leases. Whilst the appellant's representative considered the rental analyses taken from the information provided by the managing agents was not reliable as it required adjustment, the panel had been persuaded by the Valuation Officer that the figures had been adjusted to accord as the figures on the lease and those to be analysed were different.

27. The panel had been provided with a copy of a previous Valuation Tribunal decision relating to Trowbray House, Weston Street in which it was held that that the rental evidence for the appeal hereditament could not be relied upon as it required considerable adjustment to accord with the rating hypotheses. However, a previous Valuation Tribunal decision is not binding on another panel and it is for the panel to decide how much weight to place upon that decision. The panel considered that in the Trowbray House decision other rental evidence from offices within the locality had been provided to establish a level of value for the locality whereas in this instance the only rental evidence was taken from the within the Kennington Business Park. The panel therefore placed minimal weight upon the previous decision and considered the rental evidence that was available provided assistance.

28. The panel considered that the analysed rental evidence for the third floor showed values greater than the price adopted for the 1st and 2nd floors and therefore a higher price per m² should be adopted for the third floor.

29. The panel had been provided with settlement details where a reduction of 26% had been applied to a units on the 1st and 2nd floor and one unit on the 3rd floor. The panel considered that a blanket percentage reduction was not appropriate in all cases as all evidence should be taken into account and weighted accordingly.

30. The panel considered that the rental evidence provided by the Valuation Officer for the third floor showed adjusted rental levels, once analysed, of between £513.33 per m^2 and £610.23 per m^2. The panel considered that this supported the £525 per m^2 adopted by the Valuation Officer for offices on the third floor.

31. The panel had not been persuaded by the appellant's representative, that £525 per m^2 and an RV of £15,000 was unreasonable. The panel therefore confirm RV £15,000 and dismiss the appeal.

Date: Tuesday 4 May 2020

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