VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Office and Premises; accuracy of rateable value; rent passing on subject property and comparable properties; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.

RE: 2nd & 3rd Floors, 7 St Johns Road, Harrow, HA1 2EE

APPEAL NUMBER: CHG100087509

BETWEEN:	Macalvins Limited (Represented by Altus Group)	Appellant
	and	
	Andrew Corkish MRICS (Valuation Officer)	Respondent

PANEL: Dr J Johnson (Senior Member)
Miss E F Blois

REMOTE HEARING: 13 January 2021
CLERK: James Massey
APPEARANCES: Mr O Hamblin of Altus Group for the Appellant.
Mr J Balogun for the Valuation Officer.

Summary of decision

1. Appeal dismissed. Rateable Value (RV) £54,000 confirmed with effect from 1 April 2017

Introduction

2. This was a 2017 Rating List appeal. The RV of the appeal property was £54,000 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The appeal was received on 14 October 2020 against the Valuation Officer's (VO) Decision Notice of 14 August 2020 in respect of the appeal property and sought a reduction in its RV to £32,750. The VO's decision was to treat the Appellant's challenge as not well-founded.

4. Mr Hamblin 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), he declared in open tribunal that he was instructed under a conditional fee arrangement.

5. Mr Hamblin 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.

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

7. 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.

8. 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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

9. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

10. As a preliminary matter, Mr Balogun had questioned Mr Hamblin with regards to an amended valuation which had been sent to him prior to the hearing, and within the exchange that took place during the Challenge stage. Mr Hamblin confirmed that he was now seeking a revised unadjusted rate of £115.00 per m^2 rather than £95.00 per m^2 and was no longer seeking an allowance of 17.5% due to disruption to the subject property caused by neighbouring building works.

11. The issue between the parties concerned the rate per m^2 that should apply. Mr Hamblin, for the appellant, sought a reduction to £45,000 RV based on an unadjusted base rate of £115.00 per m^2. Mr Balogun, for the VO, sought to defend the existing RV of £54,000 which was based on the existing unadjusted base rate of £140.00 per m^2.

12. All relevant factual information regarding the subject property, including its net internal area (NIA) of $357.75m^2$ ($376.44m^2$ ITMS) was not disputed by the parties.

Evidence and submissions

13. The subject property comprised office accommodation over two floors of a four-storey purpose-built office building, located close to Harrow town centre. It had been let on a new lease with effect from 1 May 2013 at an annual rent of £99,000.

14. Mr Hamblin referred to the passing rent on the subject property which had been analysed at £251.83 per m^2. He also commented on the lease renewal for 1st Floor, 7 St Johns Road, which had been agreed on 1 April 2014 and analysed to 164.81 per m^2. Due to the fact that these two renewals, one for the subject property, and another in the same building were two years and one year prior to the AVD respectively, he stated that little weight should be applied to these in determining the correct RV for the subject property, and rents agreed on similar offices in Harrow should be considered.

15. Mr Hamblin considered that the rent of £439,782 pa agreed on 5-7th Floors Kings House on a new letting with effect from 1 August 2015, which the VO had analysed at £114.39 per m^2, supported the rate sought for the subject property of £115 per m^2. More similar in size to the subject property was Ground Floor Left, 59-65 Lowlands Road, HA1 3AW. The rent for this 366.48m^2 office was agreed on a new letting at £54,672 pa from 1 August 2014. Taking into account a rent-free period of 9 months and allowing 6 weeks for fitting out, Mr Hamblin had analysed this rent at £108.83 per m^2, which he considered supported a reduction in the rate per m^2 applied to the subject property. Mr Balogun considered that little weight should be assigned to this evidence as no information had been provided as to the amount spent on the fitting out of the subject property, and he considered that the analysed price per m^2 calculated by Mr Hamblin would need to be adjusted to reflect these costs.

16. Mr Hamblin also referred to a rent renewal on Ground Floor Right Rear, 59-65 Lowlands Road, HA1 3AW at £40,000 pa with effect from 1 May 2015 submitted as evidence by the Respondent. This had analysed at £142.01 per m^2. He argued that whilst this was a clean rent with no adjustments required, agreed very close to the AVD, it was inflated as a result of the occupier being a registered charity and eligible for mandatory charitable relief.

17. Mr Hamblin considered that the rent for 1st Floor, Healthaid House which was a new letting in February 2015 and had devalued to £116.31 per m^2 provided a good indication of rents passing on similar properties to the subject property at the AVD. Mr Balogun was of the opinion that this property was not comparable to the subject property as it was adjacent to a large warehouse, which although not included in its assessment, would affect its value.

18. Mr Balogun relied chiefly on the passing rent on the subject hereditament and that of the first-floor offices in the same building to support the current valuation of the subject property at £140 per m^2. He agreed with Mr Hamblin that little weight should be placed on the rental evidence for 2nd Floor (Middle) Kirkland House and 3rd Floor (Rear) Kirkland House. The former hereditament, although in the same size band as the subject hereditament was much smaller and therefore not comparable and the rent for the latter was agreed between connected parties. He was of the opinion that the rent renewal on Ground Floor Right Rear, 59-65 Lowlands Road, HA1 3AW at £40,000 pa with effect from 1 May 2015 provided a clear indication that the current assessment of the subject property at £140 per m2 was fair and reasonable.

Decision and reasons

19. 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 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

20. The panel had regard to the Lands Tribunal judgment of Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(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 1976 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 value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on 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.'

21. Having considered the evidence and arguments from both parties, the panel concluded that the rents passing on the subject property and the First-Floor offices in the same building provided the best indication of the value of the subject property. Although these reflected rents agreed on renewals, rather than new leases, and were some time before the AVD, the panel was of the opinion that they were indicative that the current assessment of the subject property at £140 per m^2 was not unreasonable.

22. Although Mr Hamblin considered that the rent agreed on 5-7th Floors Kings House on a new letting with effect from 1 August 2015, which analysed at £114.39 per m^2, supported the rate sought for the subject property of £115 per m^2, the panel noted that this assessment had a total floor area of $3183.3m^2$ and at nearly nine times the size of the subject property, did not consider this to be comparable. The panel also considered that the rent agreed for 1st Floor, Healthaid House on a new letting in February 2015 would have been affected by the large warehouse to its rear, as argued by Mr Balogun, and was therefore not comparable to the subject property.

23. The panel considered that the rent renewal agreed with effect from 1 May 2015 on Ground Floor Right Rear, 59-65 Lowlands Road, HA1 3AW, analysed at £142.01 per m^2 provided a clear indication that the value applied to the slightly larger subject hereditament was fair and reasonable. Although Mr Hamblin had argued that this rent was inflated as a result of the occupier being a registered charity and eligible for mandatory charitable relief, the panel considered that such relief would be applicable at whatever property the charity chose to rent, and there was no evidence before it that the charity would have agreed above the market rent for the subject property.

24. Having considered both parties' rental evidence and analysis for properties in the subject building and in the locality, the panel concluded that the unadjusted rate of £140.00 per m^2 of the subject property was fair reasonable. The appeal is therefore dismissed.

Date: 1 February 2021
Appeal number: CHG100087509