THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; studio and premises; price per m^2 in dispute; rental evidence; lack of relevant comparable assessments; appeal allowed.

Re: 1st Floor, 94-97 Charles Henry Street, Birmingham B12 0SJ

APPEAL NUMBER:	CHG100090820	
BETWEEN	S4 Studio Ltd	Appellant
	and	
	Mr D Virk, Valuation Officer	Respondent

PANEL:	Mr S Kandola (Senior Member), Mrs F Higgin
CLERK:	Mrs L Horne
REMOTE HEARING ON:	Thursday 12 November 2020
APPEARANCES:	Mr S Thaw from S4 Studio Ltd, the appellant
	Mr D Sadiq from Colliers International, representing the appellant
	Mr C Cowper representing the Valuation Officer

Summary of decision

1 Appeal allowed. The Rateable Value (RV) of the appeal property is altered from £18,250 to £13,500 with effect from 1 April 2017.

Introduction

2 This was a 2017 rating list appeal. 1st Floor, 94-97 Charles Henry Street, Birmingham B12 0SJ, (the 'appeal property') had been entered in the 2017 rating list as 'Studio and premises', £18,250 RV with effect from 1 April 2017.

3 The challenge proposal was submitted by Colliers International on behalf of S4 Studio Ltd and was received by the Valuation Officer on 18 April 2019. It

had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £13,500 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 17 October 2019, which stated that based upon the evidence and information available, the rating list entry was considered to be reasonable and there would be no change made to the list.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 17 February 2020.

6 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.

7 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.

8 Mr Sadiq appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgement in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Sadiq's declaration of truth contained within the bundle, included a statement that he was instructed under a conditional fee arrangement. At the hearing, he confirmed that he was no longer instructed under this arrangement, and 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.

9 The appeal property is occupied by the appellant as a photography studio, and is located within a purpose-built 1960's industrial building, just outside Birmingham city centre. It has a total area of 218.86 m^2, and is presently valued at an unadjusted price of £85 per m^2.

10 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 it being overlooked by the panel.

Issue

11 The issue in dispute was the price per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice, rental and assessment summaries; appellant's challenge submission, photographs, and a copy of the subject lease.

13 The Valuation Officer had submitted a revised rental summary prior to the hearing. This reflected an alteration to his analysis, following confirmation that the appeal property was not subject to a full repairing and insuring (FRI) lease; the analysis of his two rental comparable properties had also been adjusted to reflect the true nature of those leases. Mr Sadiq confirmed that he had previously been made aware of Mr Cowper's revised analysis, and had no objection to it.

14 On behalf of the appellant, Mr Sadiq contended that the Valuation Officer's adoption tone of £85 per m^2 was excessive when compared to the rent actually paid by the tenant to occupy the appeal property: £15,000 per annum, with effect from 1 January 2017, based on the tenant being responsible for internal repairs only. His adjusted rent of £13,750 per annum was derived from adjustments of 5% for landlord's external repairs and 3.5 % for building insurance.

15 Mr Sadiq disputed the relevance of the Valuation Officer's rental and assessment evidence, due to the unique character of the appeal property and its location. In consideration of his knowledge of the locality, and in the absence of any other relevant evidence, he asked the panel to determine a revised RV of £13,500, with effect from 1 April 2017, based upon an unadjusted price of £62.50 per m^2.

16 In response, Mr Cowper stated that he agreed that the subject rent carried some weight. However, he argued that less weight should be attached to it than his rental evidence as it was post the antecedent valuation date (AVD) of 1 April 2015; in his opinion, the market for offices had declined between April 2015 and January 2017 (at a rate of 2% according to a CoStar report).

17 Mr Cowper submitted that the adopted price of £85 per m^2 was supported by rental evidence and comparable assessments, and he therefore asked the panel to confirm the RV of £18,250 with effect from 1 April 2017.

Decision and reasons

18 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where 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—
>
> (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.

19 In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April, 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

20 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.

21 Both parties had referred to 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.

22 As outlined above, the starting point is the consideration of the actual rent. In the subject appeal, a lease had been agreed for a term of three years with effect from 1 January 2017 at a rent of £15,000 per annum.

23 In the challenge notice decision, the Valuation Officer had analysed the rent at £69.09 per m^2, based upon the belief that it was a FRI lease. Following clarification that this was not the case, Mr Cowper adjusted the rent to £13,725, which he analysed at £63.21 per m^2. Mr Sadiq's adjusted rent was £13,750 (reflecting adjustments of 5% for landlord's external repairs and 3.5 % for building insurance).

24 Mr Cowper submitted that a further adjustment was required to reflect the length of time between the AVD and the effective date of the rent. In his opinion, office rents had fallen between 2015 and 2017. In response to a question from Mr Sadiq, he confirmed that this was based upon a CoStar report which had stated a decline of approximately 2% for the office property market in Birmingham. The report had not been presented in the bundle, and without more specific information, the panel could not attach any weight to it.

25 In consideration of the second proposition in *Lotus and Delta*, as there was no evidence presented to illustrate a difference in rental values in the locality between 1 April 2015 and 1 January 2017, the panel held that significant weight should be attached to the actual rent.

26 The third proposition advised consideration of comparable rents, and so the panel turned to the two pieces of rental evidence provided by the Valuation Officer:

27 Unit 11 Ardath Road, Birmingham B38 9PL, offices and premises of 234.85 m^2. The rent of £23,800 per annum was effective from 1 December 2013. Adjustments were required to reflect seven parking spaces at £150 per space and tenant internally repairing and insuring terms. The resulting analysis was £101.93 per m^2.

28 1st Floor, 383-387 Moseley Road, Birmingham B12 9DD, an education centre of 96.12 m^2. The rent of £9,000 was effective from 1 January 2014. Adjustments were required to reflect that rates were included in the rent, and that it was on a tenant's internal repairing basis. The adjusted rent was £5,361 which analysed at £58.70 per m^2.

29 The panel rejected the rental evidence for Unit 11 Ardath Road for the reasons outlined by Mr Sadiq. This property was located five miles south of the appeal property in Kings Norton. Mr Cowper submitted that it was a relevant comparable being located within a similar mix of residential/business/industrial properties. While the panel accepted Mr Cowper's contention that vacant and to let the appeal property was correctly valued as an office, the panel was not persuaded that Unit 11 Ardath Road, an office five miles away, was a reliable indication of the value of the appeal property in the B12 area of Birmingham.

30 Turning to 1st Floor, 383-387 Moseley Road, the panel noted that it was located less than half a mile away from the appeal property, and as such, appeared to be a suitable comparable in terms of location. Although described as an education centre, it had been valued as an office vacant and to let. The panel noted that it was half the size of the appeal property, and it had been described as being inferior to it.

31 It appeared to the panel that the Valuation Officer's initial rental analysis of £90.19 per m^2 may have influenced the decision to include 1st Floor, 383-387 Moseley Road as rental evidence in support of £85 per m^2. However, following confirmation of the lease terms, this had been corrected to £58.70 per m^2. The panel found this to be a significant decrease, which did not support the Valuation Officer's case for a tone at £85 per m^2.

32 The panel next referred to the Valuation Officer's assessment summary. This comprised five properties in addition to the appeal property, two of which were on Charles Henry Street, and three on Moseley Road. The adopted values ranged from £75 per m^2 to £85 per m^2, on properties of 56.2 m^2 to 2,282.4 m^2, which appeared to the panel to be fairly wide ranging.

33 Mr Cowper contended that in the absence of any challenges to the tone on the comparable assessments, £85 per m^2 for the appeal property was fair and reasonable. There were no further details provided in respect of the comparable assessments and so the panel was unable to establish their suitability for comparison with the appeal property.

34 2nd Floor 94-97 Charles Henry Street, was another studio from the same building as the appeal property, smaller at 150.96 m^2, and not subject to a rent. Mr Sadiq disputed the Valuation Officer's contention that the lack of a challenge demonstrated that the tone of £85 per m^2 had been accepted.

35 As advised in the fourth proposition from *Lotus and Delta*, the panel held that the comparable assessments were relevant, but to a lesser degree.

36 In consideration of the fifth and sixth propositions in *Lotus and Delta*, the panel decided to attach the greatest weight to the actual rent, rather than the Valuation Officer's rental or comparable assessments.

37 The panel concluded that the appellant's representative had demonstrated that at £18,250 RV, the valuation of the appeal property was not reasonable. The panel therefore determined an alteration to £13,500 RV, based upon Mr Sadiq's proposed unadjusted price of £62.50 per m^2.

38 The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

39 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £13,500 with effect from 1 April 2017.

Date: 25 November 2020

Appeal Number: CHG100090820