THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Offices and premises; Price per m^2 in dispute; appeal dismissed.

RE: the 'appeal properties' as set out in the Schedule

APPEAL NUMBERS: CHG100091661, CHG100131475, CHG100090900, CHG100090905

BETWEEN:	ALR Music Limited Blanchflower Lloyd Baxter LLP United Agents LLP	Appellants
	and	
	The Valuation Officer for the City of London Corporation	Respondent

PANEL: Mr B Beyzade (Chairman)
Mr M Nwosu

CLERK: Mr A Johnson Tech IRRV

REMOTE HEARING ON: 13 May 2021

APPEARANCES: Mr H Edwardes of Altus Group (for the appellant)
Mr K Abbaas (for the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269]

Summary of decision

1. The appeals were dismissed. The Panel was satisfied that the rateable values (RV's) of the appeal properties were not unreasonable.

Introduction

2. This is not intended to be an exhaustive record of the proceedings. The absence of a reference to any statement or item of evidence placed before the Panel should not be construed as that statement or item of evidence being overlooked.

3. These appeals were brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. These appeals challenge the Valuation Officer's decision that the appellant's proposals were not well-founded.

4. The appellants' proposals sought alterations to the 2017 non-domestic rating list on the grounds that the RV's for each of the appeal hereditaments on the compiled date of 1 April 2017 were not reasonable. The RV's were:

Hereditament address	RV
1st FLR, 36-38 Lexington Street, London, W1F 0LJ	£36,500
2nd FLR, 36-38 Lexington Street, London, W1F 0LJ	£36,000
3rd FLR, 36-38 Lexington Street, London, W1F 0LJ	£38,500
4th FLR, 36-38 Lexington Street, London, W1F 0LJ	£38,500

5. The four appeals concerned different floors of the same building and, as they raised common arguments, they were listed for a hearing together. Prior to the hearing, the parties agreed in writing that the evidence in respect of one appeal could be considered in respect of each of them. At the commencement of the hearing, the parties' representatives agreed to consolidate the appeals. Therefore, the Panel consolidated the hearing of the four appeals into one in accordance with its general power under regulation 6 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, and was satisfied that all the evidence before it was admissible under Regulation 17A(1)(b) of those Regulations. The Panel were satisfied that there was sufficient factual nexus and that the cases raised common arguments and considered its overriding objective.

6. Mr Edwardes appeared on behalf of the Appellants 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 stated that he was instructed under a contingency based fee.

7. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO0* [2018] UKUT (LC), 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 Tribunals' rules om admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. It was therefore appropriate for the Panel to consider the ‘expert’ evidence and assess what weight, if any, to give it in the context of the issues before it.

Remote hearings

9. 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.

10. 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. The Panel were satisfied that the parties present at the remote hearing were able to fully participate in the proceedings and that it was just and equitable for a remote hearing to be held.

Issue

11. The issue in dispute was whether the valuation for the appeal properties following the challenge case decision notices were reasonable and in particular the price per m^2 to be adopted in the valuation of the appeal properties.

Evidence and submissions

12. As these four appeals concerned the same issue, the parties agreed to utilise the evidence bundle in respect of 4th FLR, 36-38 Lexington Street, London, W1F 0LJ but remained at liberty to refer to any piece of evidence from the bundles submitted to the Tribunal relating to the other floors if they considered it necessary. The evidence bundles included documents that had been exchanged by the parties as part of the challenge process, the appellant’s challenge submissions, the Valuation Officer’s initial response to the challenge and the Valuation Officer’s challenge case decision notice.

13. Built in 1929, the appeal properties were located on the first, second, third and fourth floors of 36-38 Lexington Street, London. The appeal properties were each valued at an unadjusted rate of £500 per m^2.

14. On behalf of the appellants, Mr Edwardes stated that the current RV’s were not reasonable and should be reduced. It was Mr Edwardes contention that the RV’s should be based upon a main space rate of £375 per m^2, which led to the following revised RV’s calculation:

Hereditament address	Proposed RV
1st FLR, 36-38 Lexington Street, London, W1F 0LJ	£28,750
2nd FLR, 36-38 Lexington Street, London, W1F 0LJ	£26,000
3rd FLR, 36-38 Lexington Street, London, W1F 0LJ	£28,750
4th FLR, 36-38 Lexington Street, London, W1F 0LJ	£28,750

15. In support of his contention, Mr Edwardes referred the Panel to rental evidence in the locality, which he had analysed as follows:

Address	RV	Rent	Rent effective from	Analysed rent £/m^2
4th Floor 25-26 Poland Street, London, W1F 8QN	£48,500	£43,000	1 Feb 2014	£413.74
4th Floor NTH, Noland House, 12-13 Poland Street, London, W1F 8QB	£29,750	£20,400	1 May 2015	£341.71
BST-3rd Floor Prestige House, 2-3 Great Pulteney Street, London, W1F 9LY	£183,000	£137,823	1 Jun 2015	£375.55
3rd & 4th Floors 14-15 D'Arblay Street, London, W1F 8DZ	£60,000	£54,450	13 Jan 2016	£450.24

16. Mr Edwardes had also analysed the rents in respect of the first, third and fourth floors of 36-38 Lexington Street to £587.16 £/m^2, £518.19 £/m^2 and £518.05 £/m^2 respectively. However, it was Mr Edwardes opinion that the effective dates for these rents (1 November 2017 for the first floor and 1 September 2017 for the third and fourth floors) were too far from the Antecedent Valuation Date (AVD) of 1 April 2015 and were not therefore reliable.

17. Mr Abbaas, on behalf of the Valuation Officer, argued that the rental comparisons used by Mr Edwardes were unreliable due to their location. Mr Abbaas said that the best evidence should be the rental information of the appeal properties and those of properties in the same street. These, he said, demonstrated that the current RV's were not unreasonable:

Address	RV	Rent	Rent effective from	Analysed rent £/m^2
1st and 2nd FLRS RR 46 Lexington Street, London, W1F 0LP	£25,500	£28,000	1 Apr 2014	£558.99
1st FLR 36-38 Lexington Street, London, W1F 0LJ	£36,500	£46,545	1 Sep 2017	£636.82
2nd FLR 36-38 Lexington Street, London, W1F 0LJ	£36,000	£30,780	6 Sep 2013	£427.20
4th FLR 36-38 Lexington Street, London, W1F 0LJ	£38,500	£33,880	12 Aug 2013	£439.60

18. Mr Edwardes referred the Panel to a number of properties within the locality which, he said, demonstrated that the RV’s of the appeal properties were unreasonable:

Address	**RV**	**Unadjusted £/m^2**
4th FLR 25-26 Poland Street, London, W1F 8QN	£45,000	£500.00
4th FLR Noland House, 12-13 Poland Street, London, W1F 8QB	£69,000	£475.00
BST-3RD FLR Prestige House, 2-3 Great Pulteney Street, London, W1F 9LY	£137,000	£375.00
3RD & 4th FLRS 14-15 D’Arblay Street, London, W1F 8DZ	£58,500	£475.00
1st & 2nd FLRS, RR 46 Lexington Street, London, W1F 0LP	£25,500	£510.70
3rd Floor 18 Brewer Street, London, W1F 0RD	£20,000	£525.00
1st-4th FLRS 38 Great Windmill Street, London, W1D 7LU	£26,250	£365.00
4th FLR NTH 1-2 Ramillies Street, London, W1F 7LN	£54,000	£365.00
3-4 Wardour Mews, London, W1F 8AJ	£78,000	£450.00

19. The Panel was also refereed to settlements that had been reached between the ratepayers and the Valuation Officer after the challenge decisions had been made in respect of the appeal properties:

Address	**RV**	**UAR (current)**	**UAR (historic)**
2nd FLR East, 14-16 Brewer Street, London, W1F 0SG	£4,750	£375.00	£550.00
3rd & 4th FLRS 14-15 D’Arblay Street, London, W1F 8DZ	£58,500	£475.00	£500.00
2nd FLR 29 Poland Street, London, W1F 8QR	£27,500	£475.00	£500.00
2nd FLR 10-11 D’Arblay Street, London W1F 8DT	£28,000	£450.00	£475.00
3rd FLR 10-11 D’Arblay Street, London W1F 8DT	£40,250	£450.00	£475.00
2nd FLR 26-28 Brewer Street, London, W1F 0SP	£25,250	£375.00	£500.00
(EXCL North West) 6th FLR Waverley House, 7-12 Noel Street, London, W1F 8QG	£206,000	£450.00	£475.00
1st FLR 26-28 Brewer Street, London, W1F 0SP	£82,500	£375.00	£500.00
2nd FLR Waverley House, 7-12 Noel Street, London, W1F 8GQ	£260,000	£450.00	£475.00
1st FLR Waverly House, 7-12 Noel Street, London, W1F 8QG	£375,000	£450.00	£475.00
Gnd & 1st Floors, 15 Noel Street, London, W1F 8GL	£265,000	£450.00	£475.00

Office 0.12 at Gnd Floor Waverley House, 7-12 Noel Street, London, W1F 8QG	£13,750	£472.59	£494.33
Office 0.03 at Gnd Floor Waverley House, 7-12 Noel Street, London, W1F 8QG	£17,000	£475.00	£499.00
Office 0.07 at Gnd Floor Waverley House, 7-12 Noel Street, London, W1F 8QG	£25,250	£475.00	£499.00
Shared Working Area at Gnd Floor Waverley House, 7-12 Noel Street, London, W1F 8QG	£19,500	£475.00	£499.00

20. Mr Abbaas argued that the comparisons and recent settlements (above) were too far removed from the appeal properties in terms of their location to be reliable. Mr Abbaas remained of the view that the best evidence was the rental evidence of the appeal properties and another in the same street.

Decision and reasons

21. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the RV of a non-domestic property, 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 based upon three assumptions. These assumptions are:

    (a) that the tenancy begins on the day by reference to which the determination is to be made;

    (b) 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) 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.

22. 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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014.

23. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). In respect of the subject appeal, the material day is 1 April 2017.

24. In consideration of the subject rent, the panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case sets out six propositions to

have regard to when considering the weighting of evidence and expert opinion:

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.

25. Having regard to the decision in *Lotus & Delta*, the Panel noted that the leases in respect of the appeal properties did not commence on or significantly close to the AVD, ranging from nineteen months prior to approximately two and a half years later. The Panel therefore determined that less weight should be placed upon this evidence.

26. The Panel was unable to place any significant weight upon the comparable properties put forward by Mr Edwardes or the settlements that had been agreed after the submission of the challenges in respect of the appeal properties. This was because the Panel found that they were not located within the locality or immediate locality of the appeal properties. Streets that were away from the street where the appeal properties were located did not fall within the same locality and were materially different. The Panel noted that the air conditioning uplift was revised.

27. The Panel placed most weight upon the rental evidence in respect of first and second floors RR 46 Lexington Street, London, W1F 0LP. This rent was £558.99 £/m^2, closest to the AVD and the property was located within the

same street as the appeal properties. This was the best evidence available to the Tribunal. This demonstrated to the Panel that the appeal properties were not over-valued. The appellants did not discharge the burden of proof on them to show that the appeal properties were overvalued. The Panel therefore dismissed the appeals and confirmed the Valuation Officer's decisions in relation to the RV's of the appeal properties.

Date: 11 June 2021

Appeal Numbers: CHG100091661, CHG100131475, CHG100090900, CHG100090905

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SCHEDULE

Appeals consolidated and heard together by the Tribunal on 13 May 2021

Appeal number	Appellant	Hereditament address
CHG100091661	ALR Music Limited	1st FLR, 36-38 Lexington Street, London, W1F 0LJ
CHG100131475	Blanchflower Lloyd Baxter LLP	2nd FLR, 36-38 Lexington Street, London, W1F 0LJ
CHG100090900	United Agents LLP	3rd FLR, 36-38 Lexington Street, London, W1F 0LJ
CHG100090905	United Agents LLP	4th FLR, 36-38 Lexington Street, London, W1F 0LJ