THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; rental evidence for comparable properties; the evidence showed that the appeal property's existing assessment was unreasonable; appeal allowed in part.

RE: Unit 6 Royal Opera House, The Piazza, London, WC2E 8HD

APPEAL NUMBER: CHG100094055

BETWEEN:	Paperchase Products Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs S Nix (Senior Member) and Mr D Greensmith

HEARING: Remote hearing 1 on Thursday 10 June 2021

APPEARANCES: Mr H Edwardes of Altus Group on behalf of the appellant as expert witness
Mr S Carter of Altus Group on behalf of the appellant as advocate surveyor
Mr C Cates on behalf of the respondent as both advocate and expert witness

CLERK: Mrs A Keohane

Summary of decision

1 Appeal allowed in part. The appeal property's assessment was reduced to £380,000 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 is a 2017 rating list appeal. Unit 6 Royal Opera House, The Piazza, London, WC2E 8HD9 (the ‘appeal property’), was entered into the rating list as a ‘shop and premises’ at £417,500 RV with effect from 1 April 2017. The challenge proposal was submitted by Altus Group on behalf of the appellant and was received by the Valuation Officer on 3 May 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £292,500 RV was proposed with effect from 1 April 2017.

5 The Valuation Officer issued a challenge case decision notice on 2 November 2020, which stated that based upon the evidence available, the current rating list entry was considered to be reasonable with no alteration made to the rating list.

6 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 2 March 2021.

7 The property comprises a Grade II listed 19th Century building, that had been partly redeveloped in 1982. The appeal unit extends to $173m^2$, $85m^2$ in terms of zone A (ITZA) and has the benefit of air conditioning. The unit is situated in the North Eastern Piazza, provides ground floor retail accommodation, and is located in Covent Garden, opposite the Transport Museum and Covent Garden Market. Covent Garden Underground Station is nearby.

8 Mr Carter appeared on behalf of the appellant as surveyor advocate and Mr Edwardes as 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 on a contingency fee basis. He 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.

9 The panel accepted this expert witness evidence 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 panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

10 On 12 May 2021, Mr Edwardes submitted an application to include new evidence that could not reasonably have been acquired before the proposal was determined. The new evidence related to an email from the rating surveyor employed by Capco, the landlord of Unit 4. The details for this unit provided by

the Valuation Officer were not from a Form of Return (FOR) but via an unverified source described as ‘other rental information’ (ORI). The new evidence was the clarification of this unit’s rental details and an analysis of this. The Valuation Officer did not object to the inclusion of this new evidence within the two-week timescale set out in the Tribunal’s Directions. Mr Cates confirmed by email before the hearing that he had only just become aware of this evidence but did not object to it being presented. It was therefore added to the bundle for this appeal.

Preliminary issue

11 On the day of the hearing, Mr Edwardes submitted a revised valuation for the appeal property, higher than the one contended for at the challenge stage. This valuation was said to represent his opinion of the appeal property’s value, given as an expert. Mr Cates objected to the inclusion of this revised valuation. He considered he was disadvantaged, being unaware of which part of the appellant’s case was now being relied upon and whether it was different from the case originally exchanged with the Valuation Officer.

12 The panel considered it appropriate to determine whether the revised valuation should be accepted. Attention was therefore paid to the Upper Tribunal’s guidance in *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460, namely the three stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926, which should be undertaken before considering whether or not to impose a sanction.

i. Stage 1 – If panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

ii. Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

iii. Stage 3 - The panel must consider all the circumstances of the case including:

    i. The need for litigation to be conducted efficiently and at a proportionate cost;

    ii. A failure to grant a sanction may leave an inaccuracy being uncorrected;
    iii. The need to enforce compliance with rules, directions and orders (Para. 55). However, such matters are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice (para. 56)

13 In consideration of the above, the panel was not persuaded that the Valuation Officer had been unduly prejudiced by the revised valuation and that its late submission was a significant breach. The assessment was based on the evidence exchanged during the challenge process and after reviewing the new evidence, which had been in the possession of the Valuation Officer since 12 May 2021. The revised valuation was also added to the bundle.

14 This decision document 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. 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

15 The dispute related to the zone A price to be applied in the appeal property's assessment. Mr Edwardes sought a reduction based on a zone A rate of £4,500/m^2, Mr Cates contended that the existing rate of £5,250/m^2 was reasonable.

Evidence and submissions

16 Mr Carter gave an overview of the reasons for the appeal and introduced Mr Edwardes to give his expert statement. Mr Edwardes explained that within the appeal property, there were masked areas, and these were reflected in its valuation. Also included in the assessment was a temporary allowance of 7.5%, reflective of a temporary disadvantage, which ceased on 30 September 2018. Neither the masking nor the level of temporary allowance was in dispute.

17 The appeal property's rent had been agreed at £430,343 per annum (pa), following a rent review in December 2013. This analysed to £5,012/m^2, less than the zone A price on which its assessment was based. The Valuation Officer had suggested there had been market growth in the area between 2013 and the antecedent valuation date (AVD); however, to show the contrary, Mr Edwardes provided a graph of the historic growth trend for this area of London in the past decade; this indicated that rental growth had been minimal.

18 Mr Edwardes referred to several pieces of rental evidence and gave the prices/m^2 these had analysed to both with and without the masking allowance. He considered that none of these prices supported the zone A level adopted by the Valuation Officer. He also raised a number of queries with the Valuation Officer's rental information for Unit 7, Unit 8 and Unit 4.

19 Having regard to his evidence, Mr Edwardes sought a revised assessment of £357,500 RV for the appeal property, based on a zone A price of £4,500/m^2.

20 Mr Cates argued that the appeal property's assessment was reasonable, and the zone A price was fully supported by the available rental evidence. He considered the appeal property's rent, set in 2013 and which analysed to £5,012/m^2, did not show the zone A price adopted to be incorrect, when allowance was made for the increase in the rental market between 2013 and the AVD.

21 Mr Cates identified rental details for units within the Royal Opera House and considered that having regard to the 'basket of rents', set between October 2013 and September 2016, he was not persuaded that the appeal property's current assessment based on £5,250/m^2 was unreasonable. He therefore sought dismissal of the appeal.

Decision and reasons

22 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 affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

23 Firstly, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975) which indicated that the starting point in assessing the appeal property for rating purposes was the passing rent. The appeal property was let at an effective rent of £430,343 from 25 December 2013 following a rent review. This had been analysed to £5,012/m^2.

24 The panel examined the rental evidence for the comparable properties and found some of this information to be at variance. According to the Valuation Officer's rental schedule, Unit 7 was subject to a new lease from 1 July 2016 at a rent of £200,000 pa, which analysed to £2,177/m^2. The FOR stated this was a turnover rent, being 8% and rising to 10% after works in the locality had ceased. This turnover element had not been factored into the analysis. In addition, fit out costs were quoted of £775,000.

25 Mr Edwardes disputed these details. He provided the lease for Unit 7, effective from 5 July 2016, which showed the principal rent to be £400,000 pa with a one year rent free period. The 8% and 10% referred to by the Valuation Officer related to a landlord Marketing Contribution and an Estate Charge Contribution. Whilst the lease required the tenant to provide a turnover calculation, rent was not paid on that calculation. Mr Edwardes had analysed this rent to £3,945/m^2.

26 The Valuation Officer had provided three rents for Unit 8, one from 2013 and two from 2016. The two 2016 rents were effective from the same date and analysed to £1,988/m^2 and £3,090/m^2. The Valuation Officer had confirmed in an email that the correct rental analysis was £1,988/m^2, based on a rent of £200,000 pa. The FOR also identified a turnover element when the base rent was exceeded, fit out costs also applied.

27 Mr Edwardes provided the lease for Unit 8 for the 2016 letting, which confirmed it was not subject to a turnover rent but held under the same contractual provisions as Unit 7. The rental details were also contrary to those quoted on the FOR. He had analysed the rent of this property to £4,685/m^2 with the masking allowance and £4,583/m^2 without.

28 In the absence of a FOR for Unit 4, the Valuation Officer had obtained rental details from other sources, which indicated a rent of £435,000 pa, from September 2014; this analysed to £4,885/m^2. Mr Edwardes provided rental information obtained directly from the landlord's rating agent that confirmed the rent was correct, as was its effective date. It also showed that the rent was for a period of 10 years with a fifth-year review and a fifth-year break option. There was a three-month rent-free period at the start of the lease and a further three-month period if the break was not exercised. Ultimately, Mr Edwardes had analysed this rent to £4,654/m^2 with the masking allowance and £4,560/m^2 without.

29 There was some discussion over the content of the leases for Units 7 and 8 and whether the appeal property's lease was substantially different. The appeal property's headline rent was in excess of others and some clarity was sought over the reason for this. It was also discussed whether the appeal property's lease, originally taken out with the previous landlord, was more beneficial than that of Units 7 and 8, agreed with the new landlord. Mr Cates tried to establish whether the 8% and 10% contributions stated in the leases of Units 7 and 8 were also present in the appeal property's lease; if they were absent, it could be they were included within the appeal property's rent. The panel found nothing conclusive in these discussions and as the appeal property's lease was not available for scrutiny, no distinctions could be drawn.

30 In effect, the parties were relying on the majority of the same comparable properties; the Valuation Officer's decision notice referred to a 'basket of rents' which included rental details for Units 4, 6, 7, 8 and 10. Mr Edwardes was relying on his own analysis of the rents for 4, 6, 8 and 10, particularly where they were new lettings.

31 In consideration of the evidence, the panel viewed the rental analysis figures provided by Mr Edwardes, and noted that he had analysed some of the rents in different ways, producing varying prices/m^2. Mr Edwardes confirmed that the analysis of the appeal property's rent within the Valuation Officer's schedule (£5,012/m^2) was with the masking allowance. As this was how the Valuation Officer had analysed the rent of the appeal property it was likely the rents of other properties with the masking allowance had been analysed in a similar way. The panel therefore preferred to have regard to the prices/m^2 provided by Mr Edwardes with the masking allowance included where appropriate.

- The 2016 rental evidence for Units 7 and 8 submitted by the Valuation Officer appeared to be at variance with details within the leases. The rental details quoted were contrary, there was also no evidence that turnover rents were applicable, and the rent-free periods were either different to what was on the Valuation Officer's rental schedule or not shown at all. In addition, the panel was not persuaded that the 8% and 10% charges referred to as a landlord Marketing Contribution and an Estate Charge Contribution formed any part of the rating hypothesis. Given the doubts over the accuracy of the Valuation Officer's information, the panel viewed the calculations he provided with caution.

- Mr Edwardes had provided his own analysis of the 2016 rents for Unit 7 and Unit 8. The panel placed little weight to analysis of Unit 7 as the resulting price/m^2 was substantially lower than that of other units and appeared to be out of kilter. Mr Edwardes' analysis of Unit 8 at £4685/m^2 was accepted.

- The panel placed weight to the rental information provided by the Valuation Officer in relation to the 2013 rent for Unit 8. Accepting that it was a rent review, it was still considered to be good evidence. The rent had been set in October 2013, 17 months prior to the AVD, and analysed to £4,837/m^2.

- Whilst the appeal property's rent was also from a rent review, the panel considered it useful. The rent had been set in December 2013, 15 months prior to the AVD, and analysed to £5,012/m^2.

- Unit 10 was subject to a new letting in January 2014, some 14 months prior to the AVD and the rent analysed to £4,239/m^2. The remarks on the Valuation Officer's schedule stated that 'FOR status not to OMV'; however, the panel considered it reasonable to have regard to this rent as it had been included in the 'basket of rents' considered by the Valuation Officer.

- Unit 4 was subject to a new letting in September 2014. It was within the same Piazza as the appeal property and the rent was closest to the AVD. The Valuation Officer had analysed the rent to £4,885/m^2. Mr Edwardes had confirmed that the rent shown in the Valuation Officer's schedule was correct. However, the information from the landlord confirmed that rent free periods were included and there was no indication in the Valuation Officer's schedule of whether these had been reflected in the analysis. The panel therefore preferred Mr Edwardes' analysis of the rent which produced £4,654/m^2.

32 Having regard to the above, the panel noted that the rents set prior to the AVD (2013 and 2014) had analysed to £4,239/m^2, £4,837/m^2 and £5,012/m^2. The rent of Unit 8 set post AVD (2016) had analysed to £4,685/m^2. The letting of Unit 4 had been closest to the AVD and the rent had analysed to £4,654/m^2. There also seems little evidence to suggest that there had been significant market growth in the area between 2013 and the AVD. On balance, viewing the 'basket of rents' as a whole, there appeared little support for a zone A price of £5,250/m^2.

33 Upon consideration of the 'basket of rents', the panel was not persuaded that the £4,500/m^2 proposed by Mr Edwardes was correct. In the panel's view, the evidence overall demonstrated that an assessment based on a zone A price of £4,800/m^2 would not be unreasonable. The panel's valuation is as follows:

Floor	Description	Area	£/m^2	Value/£
Ground	Zone A	39.95	4,800.00	191,760.00
Ground	Zone B	44.71	2,400.00	107,304.00
Ground	Zone C	40.9	1,200.00	49,080.00
Ground	Remainder	6.12	600.00	3,672.00
Ground	Zone A (Masked)	5.69	3,200.00	18,208.00
Ground	Zone B (Masked)	17.2	1,600.00	27,520.00
Ground	Zone C (Masked)	17.2	800.00	13,760.00
Ground	Remainder (Masked)	1.97	400.00	788.00
Additional Items	Air Conditioning	173.7	7.00	1,215.90
			Sub Total	413,307.90
Allowance	Temporary Disadvantage until 30 September 2018	-7.50%		30,998.00
			Total	382,309.90
			Say	£ 380,000 RV

Order

34 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 6 Royal Opera House, The Piazza, London, WC2E 8HD at £380,000 RV with effect from 1 April 2017.

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

Date 8 July 2021

Appeal Number CHG100094055