VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Offices and Premises; accuracy of rateable value; rental and comparable evidence considered; Allowance; 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: Bst – 4th Floors, 22 Grafton Street, London W1S 4EU

APPEAL NUMBER: CHG100094960

BETWEEN:	Cardi Gallery Ltd	Appellant
	and	
	Andrew Ricketts	
	(Valuation Officer)	Respondent

PANEL: Ms L Sharkey (Senior Member)

Ms J Morton

CLERK: Mr L Bertie

REMOTE HEARING ON: 10 June 2021

APPEARANCES: Mr P Willmore of Rupert David Ltd for the Appellant.

Mr J McKinney for the Valuation Officer.

Summary of decision

1. Appeal dismissed.

Introduction

2. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £238,000 from 1 April 2017, with a description of Office and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage, the Valuation Office Agency (VOA) refused to reduce the RV. The appeal was received against the Valuation Officer's (VO) final Decision Notice on 5 March 2021 in respect of the appeal property . The VO's decision was to treat the appellant's proposal as not well founded and the entry of £238,000 RV with effect from 1 April 2017 was deemed as correct. The appellant sought a lower rateable value of £191,000 with effect from 1 April 2017.

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. Mr Willmore appeared on behalf of the Appellant as both surveyor-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 Willmore's 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 the evidence supported the client's case.

6. The Valuation Officer's representative, Mr McKinney, advised the panel that he appeared as an advocate for the case but was an expert on general valuation matters.

7. 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.

8. As a preliminary matter, Appellant's representative raised new evidence during the presentation of his case that neither the Respondent or panel were aware and therefore it was addressed as a preliminary issue. Mr McKinney, for the respondent, informed the panel that the appellant's representative had failed to comply with the Tribunal's Standard Directions, specifically, an

allowance on another property had been agreed for being unlifted but this had not been discussed during the discussion period. Consequently, Mr McKinney sought exclusion of the agreement.

9. The panel needed to identity the area of non-compliance against the Direction in accordance with the Denton Test as reaffirmed by the Upper Tribunal (Lands Chamber) in *Simpson Malt Limited & Others v Mr Craig Jones & Others (VOs) [2017] UKUT 0460 (LC) UTLC Case Nos: RA/7-10/2017, RA/15/2017, RA/21/2017, RA/22/2017 and RA/28/2017*.

10. The agreement in question was, in fact agreed on 28 May 2021 but no contact had been made with the respondent two weeks before the hearing date by the appellant's representative. Therefore, the panel held (in accordance with stage 1) of the Denton Test that there had been a breach of the Directions; and it considered that the breach was serious or significant and therefore, relief from sanctions was not granted and the representative's evidence was not admitted as the panel believed that respondent would have been disadvantaged by the late submission .

11. 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.

12. The property comprises a mid-terraced 1880's Grade II listed office building of brick and masonry construction. The building is arranged over six floors and provides office accommodation throughout. The subject hereditament is the whole building at 22 Grafton Street, London, W1S 4EX. The property is located on Grafton Street close to its junction with Dover Street within a mixed commercial area of Mayfair. Green Park and Piccadilly Circus underground stations are located close to the property. The area of the subject property is 446.46 m^2 with a base rate of £675 per m^2.

Issue

13. The issue between the parties concerned the RV of the appeal property and specifically, the discount that should apply for the lack of a lift to the 4th floor. The Appellant sought an allowance of 10% to £236,000 RV effective from 1 April 2017 . Mr McKinney for the VO sought to defend the existing RV of £238,000 which was based on no allowance to be applied.

Evidence and Submissions

14. It was the contention of the appellant's representative in his challenge, that the appeal property was not of the same quality as other comparable properties locality and the £m^2 should be reduced from £675m^2 to £550 m^2. Moreover, a 10% allowance was warranted for the lack of a lift to the 4th floor . However, at the hearing, the appellant's representative accepted that based on rental evidence, the current £/m^2 figure of £675 as being reasonable but would only be pursuing a 10% allowance for lack of a lift to the 4th floor, reducing the rateable value to £236,000.

15. The VO representative considered that rental evidence of older and similar properties in the locality supported the current £m^2. However, although he accepted from the appellant's plan that there is no lift to the 4th floor, he contended that the rent passing on the appeal property would take into account any disadvantages or advantages at the appeal property. Moreover, as

no rental or assessment evidence had been submitted to support an allowance for the lack of a lift to the 4th floor of the building, he sought a confirmation of £238,000 Rateable Value effective from 1 April 2017 and a dismissal of the appeal.

Decision and reasons

16. 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.

17. In line with the decision in *Lotus and Delta v Culverwell (VO) [1976] RA 141*, the panel noted the rent passing on the appeal property was £550,000 p.a. effective from 1 March 2015. This rent showed an analysed rate of £1349 m^2 with an adopted rate of £675 m^2. The panel considered that this rent was persuasive evidence that the £m^2 adopted of £675 was not excessive.

18. In addition the panel further noted that, in accordance with *Lotus and Delta v Culverwell (VO)* [1976] RA 141' *the rents of comparable properties in the locality should be given weight'.* The basket of evidence, which included the rents on a number of comparable properties, was in the opinion of the VO representative, indicative that the base rate of £675.00 per m^2 for the subject property, was not excessive. Mr McKinney had provided details of a number of comparable properties in the locality of the appeal property throughout the course of the challenge process to support the existing rate of £675 per m^2 for the subject property. These comparable properties at 1ST FLR 42 ALBEMARLE STREET LONDON W1S 4JH, showed a rent on this property was agreed at £58,029 per annum on the 1st September 2015. This was a lease renewal with a 5 year term and full FRI terms. This rent analyses to £731/m^2; 23 GRAFTON STREET LONDON W1S 4EY. The rent on this property was agreed at £325,000 per annum on the 1st September 2015. This was a new letting with a 10 year term, 5 year rent review and a 4 month rent free period. It was allowed 3 months for fit out and the remaining 1 month as an incentive. The rent analyses to £895/m^2; 5TH FLR 17 ALBEMARLE STREET LONDON W1S 4HP. The rent on this property was agreed at £55,000 per annum on the 26th March 2015. This was a lease renewal with a 5 year term and full FRI terms. The rent analyses to £731m^2 ; 1ST FLR 10 DOVER STREET LONDON W1S 4LQ. The rent on this property was agreed at £72,500 per annum on the 6th March 2015. This was a new letting with a 5 year term and a 4 month rent free period. We have allowed 2 months for fit out and the remaining 2 months as incentive. The rent analyses to £690/m^2 ; 1ST FLR 49 ALBEMARLE STREET LONDON W1S 4JR. The rent on this property was agreed at £105,000 per annum on 1st December 2015. This was a new letting with a 10 year term, 5 year rent review and a 10 month rent free period. It allowed 2 months for fit out and the remaining 8 months as incentive. The rent analyses to £863/m^2. All of these properties had an adopted rate of £675/m^2.

19. The panel gave more weight to the Valuation Officer's rental analysis and assessments of comparable properties in the locality of the appeal property, which supported a basic rate of £675/m^2 based on its age and location. The panel considered that the "basket of rents" was a good guide as to the 'rent that might reasonably be expected' for the subject hereditament.

20. In addition, the panel found no substance in the argument put forward by the appellant's representative that an allowance was warranted on the appeal property as the analysis of this rent of £1349/m^2 highlighted that, this rent was reflective of the amount one would pay for a property in this locality. The panel considered that when the appellant first signed up the lease on the building in March 2015, both parties would've taken into account the advantages and disadvantages of the property including the fact that there is no lift to the 4th floor.

21. The panel also gave significant weight to the assertion of the Valuation Officer's representative that unlifted properties in the locality did attract an allowance ie 23 Grafton Street , but only where there was either no lift in existence in the building or where the lift finished at the first floor. In the current appeal it was clear that the appeal property did have a lift from the ground floor which stopped at the third floor and therefore no allowance was warranted for the appeal property.

22. The panel was mindful that the onus of proof is on the appellant to demonstrate that a reduction was warranted. In this instance, the appellant had failed to convince the panel that a lower Rateable Value than that contended for by the Valuation Officer's representative was appropriate.

23. The appeal was therefore dismissed.

Date: 7 July 2021

Appeal number: CHG100094960