THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Studio and Premises; mode and category of occupation; comparable evidence; the appeal property was incorrectly valued on an office basis and should be valued in line with its mode or category of occupation at the material day; appeal allowed.

RE: Lgnd & Grd Floors, 33 Britton Street, London, EC1M 5UG

APPEAL NUMBER: CHG100101379

BETWEEN:	A B C Imaging	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

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

CLERK: Mrs A Keohane

REMOTE HEARING ON: Thursday 10 June 2021

APPEARANCES: Mr M Morrison of Altus Group on behalf of the appellant as expert witness, accompanied by Mr S Carter of Altus Group as surveyor advocate.
Mr C Cates on behalf of the respondent as both advocate and expert witness

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Summary of decision

1 Appeal allowed. The appeal property's assessment was reduced to £91,000 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. The hearing was conducted via Microsoft Teams and the panel was satisfied that all parties were fully able to participate in the hearing.

4 This is a 2017 rating list appeal that has been brought in respect of Lgnd & Grd Floors, 33 Britton Street, London, EC1M 5UG, (the 'appeal property'). The appeal property had been entered into the rating list as 'Offices and Premises' at £197,000 RV with effect from 1 April 2017.

5 The challenge proposal was submitted by Altus Group on behalf of the appellant and was received by the Valuation Officer on 3 June 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 £91,000 RV was proposed with effect from 1 April 2017, with a change of description to 'Workshop and Premises' to reflect the mode and category of the appeal property's occupation.

6 The Valuation Officer issued a challenge case decision notice on 4 November 2020, which stated that based upon the evidence and information available, the current rating list entry would be amended to show the appeal property as 'Studio and Premises' with the assessment remaining at £197,000 RV.

7 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 was not reasonable. The appeal was received by the Tribunal on 3 March 2021.

8 The appeal property is situated within a mixed-use building of late 1990s frame construction, arranged over seven floors. The subject is approximately 675m^2 in size and is located on the ground and lower ground floors; in parts, the headroom is only 2.2m. The property is occupied by A B C Imaging as a printing studio and is located close to Farringdon Station in the centre of Clerkenwell.

9 Mr Carter appeared on behalf of the appellant as surveyor advocate and Mr Morrison as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Morrison'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 or not the evidence supported the client's case.

10 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.

11 This 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. Consequently, the absence of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked.

Issue

12 The issue is whether the appeal property should be valued in line with its mode or category of occupation at the material day (1 April 2017). The rating representative sought an assessment of £91,000 RV based upon an unadjusted price of £130/m^2 to reflect its workshop/studio use. The Valuation Officer considered the current entry of £197,000 RV, reflecting an unadjusted price of £425/m^2 on an office basis was reasonable.

Evidence and submissions

13 The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with the rating representative’s expert witness report. The bundle included: the challenge document and supporting evidence; the Valuation Officer’s initial response; email exchanges; rental and assessment evidence for comparable properties; photographs of the appeal property and properties cited as comparable; the rating representative’s revised valuation; the definition of rateable value, and the Valuation Officer’s challenge case decision notice.

14 Mr Carter gave a background to the case and explained that the appeal property’s description had been changed by the Valuation Officer to ‘Studio and Premises’ following the challenge proposal; however, as it remained valued on an office basis it had not been valued in line with its mode or category of occupation in accordance with the findings of the Lands Tribunal in *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* RA-480-1993 (LT) and the subsequent Court of Appeal decision in *Williams (VO) v Scottish & Newcastle Retail Ltd and another* [2001] EWCA Civ 85.

15 Mr Carter introduced Mr Morrison as expert witness. Mr Morrison confirmed that at the material day, the appeal property had been adapted for and was in use as a printing studio and premises; photographs were provided showing the internal area of the appeal property and its attributes as at the material day. To facilitate its use as a printing studio, the property had some industrial lighting, pressed tin flooring, three phase power for printing machinery, and industrial vents. The layout plan also showed that the lower ground area identified as a warehouse on the plan had roller shutters and ramps to enter.

16 The property was held on a leasehold basis and the rent agreed in September 2014, on an office basis, was £195,000 per annum (pa). Notwithstanding this agreement, the appeal property was not occupied as an office but as a studio/workshop; consequently, the rent, together with the evidence for offices as provided by the Valuation Officer, did not represent the most reliable evidence.

Mr Morrison submitted details of assessments for workshop premises on Britton Street and considered the appeal property should be valued in line with these.

17 On behalf of the Valuation Officer, Mr Cates explained that he was in attendance as advocate and due to his experience, as an expert on rating matters. He confirmed that the description of the appeal property had been changed to 'Studio and Premises' following the challenge proposal; however, he considered that the rent of the subject property, agreed in September 2014 on an office basis, and the rental evidence of comparable office assessments within the locality supported the appeal property's current assessment. He argued that, when viewed vacant and to let, the appeal property could be occupied as an office with only a minimal amount of works. He therefore sought dismissal of the appeal.

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—
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> (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> (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;
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> (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 as set out in Schedule 6 to the Local Government Finance 1988) 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, as this was a compiled list appeal, the material day is 1 April 2017. One of the factors to be given consideration under Schedule 6 para 2(7), was the mode or category of occupation of the subject property.

21 The description of the appeal property had been amended to 'Studio and Premises' to reflect the use to which it was put at the material day. However, the panel accepted that the description ascribed to a property was not determinative of the value to be applied in its assessment.

22 There was discussion at the hearing over the correct description for the appeal property. The appellant initially sought a description of 'Workshop and Premises, it had been altered by the Valuation Officer to 'Studio and Premises'; however, Mr Cates considered it to be a 'Business Unit and Premises' and its current occupation could be viewed as broadly within an office type use. Mr Morrison disagreed as he believed that whatever the description, the property was occupied as a studio/workshop, in effect an industrial use at the material day. Mr Cates confirmed that Valuation Office schemes did not exist to specifically accommodate 'Studios and Premises' or 'Business Units and Premises'.

23 In determining the mode or category of occupation the appeal property was in at the material day, the panel had to consider the appeal property physically as it stood or *rebus sic stantibus*. As outlined in the Lands Tribunal and Court of Appeal decisions in the *Williams* cases, there were two strands to the *rebus sic stantibus* or reality principle, namely, the use to which a property was put, in effect, its mode or category of occupation and that its physical state was the same as at the material day. It was also determined that only the possibility of minor alterations should be allowed for on the occasion of its hypothetical letting, furthermore the cost of alterations was not a factor. Within the *Williams* decisions reference was also made to *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960] R&IT 389, in which it was indicated that only two assumptions were permitted namely, that the hereditament was vacant and to let and its mode or category of occupation by the hypothetical tenant must be conceived as the same mode and category as that of the actual occupier.

24 The panel found the rating representative's evidence to be persuasive and concluded that the appeal property's mode and category of occupation at the material day, was as a 'Studio and Premises' and its valuation should reflect this. It considered it inappropriate to value the appeal property as an office for the following reasons:

(a) The legislation required consideration of the actual mode or category of occupation as at the material day. At the material day, the appeal property was in use as a 'Studio and Premises, which the panel considered to be akin to industrial use and not a broadly office type use as argued for by the Valuation Officer.
(b) The floor plan showed an area identified as a warehouse with roller shutters and ramps to enter.
(c) The Court of Appeal in the *Williams* case had referred to the criterion of 'minor alterations' only being contemplated when considering a property's use. In the panel's opinion, having regard to the photographs of the property it appeared that more than minor alterations would be necessary to facilitate office use; given the appeal property had pressed tin flooring, phase three power to facilitate the use of large machinery, industrial lighting to areas, and large industrial vents.
(d) Whilst the appeal property's lease was drafted in a way that allowed the landlord to receive an office level of rent; this was not determinative of

the property's mode and category of occupation; given that the appellants had been able to occupy the property for an industrial use.

25 Having determined the mode or category of use, the panel then considered the value of the appeal property to the occupier. In accordance with the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, the starting point was the actual rent. In this case, Mr Morrison had argued that the appeal property's rent should not be the deciding factor. The panel accepted this, as it considered that the levels of rent agreed by occupiers could reflect a variety of different factors; in this case it had been suggested that the appellant had paid this level of rent as the subject provided all of the space required for the needs of the business. It was arguable whether another occupier, in the same mode or category of occupation, would pay this level of rent for industrial use in the locality.

26 After due consideration, the panel decided that the appeal property should not be valued in accordance with its rent or the assessments of office properties in the locality. The property was in a different mode or category of occupation at the material day, and to facilitate office use would require more than minor alterations, which would offend the *rebus* principle. As it had been confirmed that no separate Valuation Scheme existed for 'Studios and Premises' the panel had regard to the assessments for properties valued as workshops on Britton Street as provided by Mr Morrison. These were:

- Bst 27 Britton Street. This was a converted property also occupied by a print company. It was of 105m^2 and valued on a workshop and premises basis at an unadjusted rate of around £130/m^2
- 29 Britton Street. A workshop and premises of 120.18m^2, valued using an unadjusted rate of £165/m^2.
- 49 Britton Street. A workshop and premises of 196.41m^2 valued using an unadjusted rate of £130/m^2. This property appeared to have been refurbished as office space and the Valuation Officer's decision notice indicated that this assessment was to be reviewed.
- The Goldsmiths Centre at 42 Britton Street. These were workshops/studios of varying sizes, giving a total area of 2752.10m^2. This building was of mixed age construction and used under flexible terms. The unadjusted rates started from £90/m^2.

27 Due to the size and nature of The Goldsmith Centre, the panel was not convinced it provided good evidence. However, having regard to the remaining comparable assessments and noting that Bst 27 Britton Street was put to a similar use to the appeal property, the panel accepted that the £130/m^2 adopted by Mr Morrison was not unreasonable. The panel therefore confirmed the following:

Floor	Description	Area (m2)	Price (£/m2)	Total Value (£)
Ground	Mezzanine Workshop	190.09	143.00	27182.87
Ground	Conference Room	47.86	157.30	7528.38
Lower ground	Workshop	436.80	130.00	56784.00
			Total	91495.25

Say £91,000 RV with effect from 1 April 2017

Order

28 As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £91,000 RV with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

29 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 (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Date 1 July 2021

Appeal Number CHG100101379