THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Office and premises; main space price; end allowance for poor layout; appeal allowed in part.*

RE: (Incl 1st Floor Front 10), 1st – 3rd Floors, 11 Duke Street, St James, London SW1Y 6BN

APPEAL NUMBER: CHG100104341

BETWEEN:	Thomas Dane Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr J Rockliff (Senior Member)
Mrs F Duggan

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 22 November 2021

APPEARANCES: Mr H Edwarde from Altus Group (Appellant's representative);
Mr C Cates (Valuation Officer's representative)

Summary of decision

1. Appeal allowed in part. The panel concluded that the 2.5% allowance for layout should be allowed and the main space price should be reduced to £625/m^2. The resultant rateable value was £71,500.

Introduction

2. This appeal has been brought in respect of the following: (Incl 1st Floor Front 10), 1st – 3rd Floors, 11 Duke Street, St James, London SW1Y 6BN which was entered in the 2017 rating list as 'Offices and premises' at rateable value £94,500 effective from 1 April 2017. However, the rateable value was subsequently reduced to £86,500 effective from 1 April 2017, based on a

revised unadjusted main space price of £725/m^2. The appellant was seeking a rateable value of £66,500 based on an unadjusted main space price of £575/m^2. A 5% allowance had already been allowed due to lack of heating and a further allowance of 5% and 10% had been allowed on the second and third floors respectively, due to a lack of a lift. There was no dispute over these allowances. A 19.5% allowance for disturbance caused by building work to a neighbouring property had been agreed between the parties and there was no dispute about this allowance.

3. The appeal property is a four storey, grade two listed property, brick built with a mansard roof on the top floor. The ground floor was a shop, but it was not included in this assessment, with office accommodation on the remaining floors. The appeal property also included the first floor of the neighbouring property, 10 Duke Street. The total area of the property was 160.16m^2. Duke Street was renown for having art dealers due to it being close to auction houses.

4. 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.

5. 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 position.

6. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Edwardes made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

8. The appeal to this Tribunal was made on 6 May 2021 following the Valuation Officer's Decision Notice of 7 January 2021 in respect of the appeal property.

9. Mr Edwardes had declared that his firm is on a contingency fee basis. 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 understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

requirements of his professional body regardless of whether or not the evidence supports his 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).

11. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

12. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

13. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, external and internal photographs and layout plans of the appeal property, and details and photographs of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, copies of correspondence that had passed between the parties and extracts of a number of judgments such as *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA.

19. The appeal property was held on a 15 year lease which commenced on 30 September 2011, subject to five yearly rent reviews. Effective from 30 September 2016 a stepped rent was agreed commencing at £90,000 and increasing by £5,000 for four years. Mr Edwarde had analysed this rent to an equivalent flat rent of £98,455 or £677.71/m^2.

20. However, he argued that the 2016 rent review was too far from the AVD to be reliable, he provided analysis from growth rate data and assumed 1% per month compounded growth going back to 1 April 2015 and had calculated the analysed rent at £565.56/m^2.

21. Mr Edwarde was unable to provide any other supporting rental evidence as the appeal property was a unique listed building and therefore he provided the following assessments in the immediate locality and were comparable in terms of construction and locality, some of which had been agreed with the VOA, which suggested that a tone of the list had been established. He argued that these assessments supported the main space price of £565/m^2 further supporting his proposed main space price for the appeal property:

Property	Main space price	Rateable value
Basement & Ground floor, 13 Masons Yard	£650/m^2	£69,500
Third floor, 14 Masons Yard	£603/m^2	£19,500
Second floor, 13 Masons Yard	£575/m^2	£32,750
Second floor, 14 Masons Yard	£575/m^2	£36,000
First floor, 13 Masons Yard	£575/m^2	£41,000
First floor, 14 Masons Yard	£575/m^2	£36,750
Basement (E) & Ground floor, 7-8 Masons Yard	£550/m^2	£54,000
Basement (W) first and second floors, 7-8 Masons Yard	£550/m^2	£73,000
Basement & Ground floor, 21 Masons Yard	£550/m^2	£70,500
Second floor, 20 Masons Yard	£550/m^2	£84,500
Third floor, 20 Masons Yard	£550/m^2	£78,000
First floor, 20 Masons Yard	£550/m^2	£87,500
(& 1 Duke Street) First Floor Century House, 2-4A King Street	£575/m^2	£122,000
(& 1 Duke Street) Second Floor Century House, 2-4A King Street	£575/m^2	£118,000
(& 1 Duke Street) Fourth Floor Century House, 2-4A King Street	£575/m^2	£112,000
(& 1 Duke Street) Third Floor Century House, 2-4A King Street	£575/m^2	£122,000
(& 1 Duke Street) Basement Part Rear East Basement Rear West and Ground Floor Century House, 2-4A King Street	£575/m^2	£179,000
Sixth floor, 32 Duke Street	£650/m^2	£132,000
Seventh floor, 32 Duke Street	£650/m^2	£91,000
Second Floor North, 32 Duke Street	£650/m^2	£144,000
Second Floor South, 32 Duke Street	£650/m^2	£123,000
First Floor North, 32 Duke Street	£650/m^2	£146,000
Fourth Floor North, 32 Duke Street	£650/m^2	£150,000
Fourth Floor South, 32 Duke Street	£650/m^2	£128,000
Fifth Floor North, 32 Duke Street	£650/m^2	£103,000
Fifth Floor South, 32 Duke Street	£682/m^2	£23,750
First Floor, 44 Duke Street	£603/m^2	£24,750
Second Floor Rear, 44 Duke Street	£632/m^2	£11,250
Second Floor Front, 44 Duke Street	£632/m^2	£13,250

22. Mr Edwarde was also seeking a 2.5% allowance for the layout due to part of the first floor extending into the first floor of 10 Duke Street. He also mentioned the appeal property being a listed building and therefore it could not be altered either internally or externally without having to obtain planning permission which was a disadvantage to a potential occupier.

23. He argued that the 2.5% allowance had previously been allowed, but the VOA removed the allowance from the 2017 rating list assessment. In support of this allowance continuing, he referred to the judgment of *Barnard and Barnard V Walker* [1975] LVC/231 where it was held that an allowance should continue into the next rating list.

24. Furthermore, he argued that some of the VOA's comparable properties which it had used to support the current assessment such as 103-105 Jermyn Street were not comparable as it was a modern building with air conditioning and was larger than the appeal property.

25. Based on the above, he was seeking a rateable value of £66,500 based on an unadjusted main space price of £575/m^2 and Mr Edwarde asked the panel to allow the appeal.

26. Mr Cates was representing the VOA as advocate and expert witness.

27. He contended that the allowance for the layout was removed as in the VO's opinion, there was no disadvantages associated with the layout of the appeal property and that by applying a 2.5% end allowance it reduced the value of all the floors whereas it was just the first floor that was on a different level. He also contended that there were potential tenants, possibly prestige clients, who would prefer a period property and would not consider a listed building to be a disadvantage. Furthermore, the appeal property would attract a premium rent and therefore a hypothetical landlord would not reduce the rent for it being a listed building and as the main space price increased from the 2010 rating list, this proved that there was demand for period properties in the locality and would therefore attract a premium rent.

28. He also contended that the appeal property could not be compared to those in Masons Yard as those properties tended to be art galleries and that Masons Yard had a disadvantage as there was a height restriction on traffic entering and leaving it.

29. In response to the rental evidence, Mr Cates suggested that it was unusual for there to be a stepped rent as a result of a rent review, but, after year four the rent was £105,000 per year. This was in line with the rateable value which was £108,024 before the adjustment for building works which further supported the unadjusted main space price of £725/m^2.

30. Whilst Mr Cates accepted the analysed stepped rent of £677/m^2, he disagreed with Mr Edwarde's adjustment of the rent back to the AVD. He also contended that the adjusted main space price, taking into account the lack of heating was £688/m^2 which was further evidence that the current rateable value was correct and, supported the removal of the allowance for poor layout.

31. Given all of the above, Mr Cates contended that the passing rent supported the current rateable value and he asked the panel to dismiss the appeal.

Decision and reasons

32. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

33. There is another important date for rating appeals and that is known as the 'material day.' This is the date on which the physical factors have to be taken into account. In this appeal the material day was 1 April 2017.

34. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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;
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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; and
>
> 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".

35. The Lands Tribunal judgment in *Lotus and Delta v Culverwell* provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighed.

36. To determine the appeal, the panel first considered the rent for the appeal property. Both parties accepted the rent analysed to £677/m^2. However, it noted that the lease was entered into some years before the AVD and the 2016 rent was a rent renewal.

37. There were complicating factors interpreting the September 2016 rent: to what extent did the stepped rent reflect the expectation that major building works were expected to begin on the next door property; and what movement had there been in rental levels for this type of property between the AVD and September 2016.

38. Mr Edwarde's evidence showed a graph indicating that rents had risen between AVD and September 2016, he contended by around 1% per month. Mr Cates did not accept that this analysis applied to the subject property although he did not propose any specific alternative analysis. The panel

therefore applied some weight to the passing rent and were inclined to the view that the rent would be lower at AVD that in September 2016, but in the absence of any further rental evidence it preferred to use the tonal evidence.

39. However, the panel was not persuaded by Mr Edwarde's argument to use the assessments in Masons Yard to support the tone of the list, as it concluded that the locality was not the same as the appeal property, as there was a restricted height for traffic in Masons Yard and that the appeal property would attract occupiers who wanted a prestige office in Duke Street.

40. The panel therefore concluded that the appeal property should be valued more highly than properties in Masons Yard, more in line with other properties in Duke Street and King Street. Having examined the tonal evidence for these properties the evidence presented by Mr Edwarde showed that the tone for those properties varied from £575/m^2 to £682/m^2. It was aware that 32 Duke Street had since been demolished and that there were no photographs of that property and therefore it was difficult for the panel to verify that it was a 'like for like' comparable property.

41. However, it had been valued on an unadjusted rate of £650/m^2. The panel also noted that Century House had been valued at £575/m^2, but the panel concluded that this value was too low compared to the passing rent for the appeal property. The first and second floors at 44 Duke Street were valued at £603/m^2 and £632/m^2 respectively. That property was on the same road and it was comparable in terms of style and prestige. The panel therefore concluded that the main space should be in between these two rates and therefore decided on an unadjusted main space price of £625/m^2.

42. Turning to the 2.5% allowance for layout, although Mr Cates suggested that the space adjacent to the opening that connected the original property and 10 Duke Street, could be used as a waiting room, the panel concluded that some of the space may not be able to be fully utilised. Whilst Mr Cates had also argued that it was unreasonable to apply an end allowance as it would apply to all floors, the panel noticed from the floor plan that the top floor had a wall that was at an angle and concluded that that could also be a disadvantage and that the end allowance should be awarded, especially as more than one floor appeared to suffer from disadvantages and allowed the appeal on both grounds, although not the unadjusted main space price that Mr Edwarde was seeking. The valuation is set out below:

Floor	Description	Area m^2	£ per m^2	Value
First	Office	88.71	593.75	52,672
First	Office	22.25	593.75	13,211
Second	Office	28.01	564.06	15,799
Third	Office	14.77	534.38	7,893
Third	Staff toilets		0.00	0.00
Third	Kitchen	4.42	534.38	2,362
			Subtotal	91,937
Less allowance for temporary disadvantage			-19.5%	17,928
Less allowance for layout			-2.5%	2,298
			Total	71,711
		Rateable value say		71,500

43. When one stand backs and looks and compares the new valuation, rateable value £89,639, before the allowance due to building works, is broadly comparable with similar sized assessments, such as (& 1 Duke Street St James) Fourth Floor, Century House, 2-4A King Street, St James, which has a total area of 194m^2 rateable value £112,000 and those assessments in Masons Yard which were very similar in size and had rateable values of between £73,000 and £87,500. This suggested to the panel that the new rateable value was reasonable compared to those other assessments.

Order

44. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £71,500 with effect from 1 April 2017.

    Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

45. As the ground of the appeal has been made out, a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal’s decision. The refund will take around six weeks to process.

Date: 17 December 2021

Appeal number: CHG100104341