THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rating appeal; Accuracy of RV in 2017 Rating List; Offices & Premises; John Laing and Son v Kingswood Assessment Committee 1949 42R &IT 15; Westminster City Council v Southern Railway Co, Railway Assessment Authority and W H Smith & Sons Ltd [1936]; *B & Q and Others v Assessor for Central Scotland* – LTS/VA/1997/2-13 and 28*; Break out area; Rateability; Paramount Occupation; Decision: Appeal Allowed.*

Re: Main Office, 1st Floor, 18 Barnes Wallis Road, Fareham, Hants, PO15 5TT

APPEAL NO: CHG100105867

BETWEEN:	JDI Property Holdings Ltd	Appellant
	And	
	Valuation Officer	Respondent

PANEL: Ms J Routledge (Senior Member)
Mr S Bamawo

CLERK: Mr G Wayman

REMOTE HEARING: 30 November 2020

APPEARANCES:

Mr O Hamblin of Altus Group representing the appellant
The Respondent Valuation Officer was represented by Mr D Sinden

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Summary of decision

1. The appeal is allowed and a revised Rateable Value (RV) of £45,500 is confirmed from 20 January 2018.

Introduction

2. This was a 2017 Rating List appeal. The RVof the appeal hereditament was entered into the 2017 Rating List at £93,500 with effect from 20 January 2018, with a description of Offices and Premises. This was an appeal against this entry so the material day was 20 January 2018. The Valuation Officer's (VO) decision was to treat the appellant's proposal as not well founded and the entry of £93,500 RV was deemed as correct.

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 Hamblin appeared on behalf of the appellant 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 Hamblin's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

6. Mr Hamblin in his declaration 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.

7. The VO's representative, Mr Sinden, said that he appeared as an advocate rather than expert.

8. 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).

9. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. 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.

Issue

11. The issue before the panel was whether or not the area described as communal break out area / café should be included in the Rating List.

Decision and reasons

12. 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).

13. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 20 January 2018 (material day) for this appeal.

14. The panel was informed that following a previous check made against the assessment the Valuation Office Agency (VOA) decided to split the main building, Unit 18, with effect from 20 January 2018,

15. Mr Hamblin stated that when the split was undertaken, a large area of the 1st floor main office was held liable to the landlord, JDI Property Holdings Ltd, although much of this area is communal and is used as either break-out space, a communal 'serve yourself café' and shared toilets for use by multiple tenants of the building.

16. It was Mr Hamblin's opinion that the area of 384.82 m², currently described as office in the current valuation, is actually used as a communal break-out area, corridor, fire exit and shared toilets.

17. This area is not rented to any external party. It is an area which all the tenants of Unit 18 have access into and through, to either consume their own food and drink or get to another part of the building.

18. In the event of a fire, there is a spiral staircase to the rear with access to the rear car park. All tenants of Unit 18 have access through this area. It was Mr Hamblin's opinion this area should be removed from the list.

19. It was the VO's opinion that the area should not be removed from the list. The VO had not seen the leases but did have information on the tenants and rents being paid and considered there was a connected relationship between the landlord (JDI) and the tenants. The VO had requested copies of the leases at the challenge stage in order to establish who had paramount control, but this was not forthcoming.

20. The VO stated that in the event that the parties were connected one of the options was to remerge the property. However, in order to enact this option the VOA would need to see the leases in order to take a view on the relationship between the parties.

21. The VOA was also reluctant to remove the break out area from the Rating List as it was not certain that the landlord (JDI) could at any time state that no one could use the area as break out space. The landlord could want it back and only allow the other tenants to use the space as access only. The panel took note of the actual arrangements on the material day and could not speculate what might happen in the future.

22. The VO also pointed out that in relationship to the whole of the appeal property the break out area was a disproportionate large piece of office space to take it out. Without the VO examining the leases it was not clear that the other occupiers have rights to use the break out space.

23. The VO contended that if the area under dispute was not rateable it would look like the occupiers benefited from the use and in the VO's opinion this would justify an increase in value.

24. It was clear to the panel that the issue surrounding this appeal revolved around the rateability of the area described as communal break out area / café, which was 384.82 m² in size. The leading case of *John Laing and Son* v *Kingswood Assessment Committee* 1949 42R &IT 15 was referred to regarding the four ingredients needed in order to be satisfied that a property is rateable .

25. The ingredients were:-

    (i) there must be actual occupation or possession
    (ii) it must be exclusive for the particular purpose of possession
    (iii) the possession must be some value or benefit to the possessor
    (iv) the possession must not be too transient

26. The panel noted that all the occupiers were collectively in occupation of the area, they all benefited from this area and the use of the area was not too transient. However, the main dispute was did anyone have paramount control (exclusivity) of this area.

27. Mr Hamblin in his submissions referred the panel to a leading case on exclusive possession *Westminster City Council v Southern Railway Co, Railway Assessment Authority and W H Smith & Sons Ltd* [1936]. The panel found within this case it is stated:

    "The general principle applicable to the cases where persons occupy parts of a larger hereditament seems to be that if the owner of the hereditament (being also in the occupation by himself or his servants) retains to himself general control over the occupied parts, the owner will be treated as being in rateable occupation, if he retains to himself no control the occupiers of the various parts will be treated as in rateable occupation of those parts"

28. The panel found that the test laid down by Lord Russell of Killowen in that case was 'does the person sought to be rated have the enjoyment of the premises to the substantial exclusion of all other persons'.

29. Mr Hamblin also referred the panel to the decision of *B & Q and Others v Assessor for Central Scotland* – LTS/VA/1997/2-13 and 28. Which considered the rating of a car park within a retail park and it was held that the assessment of the car park amounted to double counting and therefore whilst spaces were capable of being assessed the value of the spaces were reflected in the rents paid by the tenants of the retail warehouses.

30. Mr Hamblin presented this case as it was similar to this appeal in that the occupiers all contribute to the upkeep of the communal break out area.

31. To further support his case Mr Hamblin presented the Valuation Tribunal for England (VTE) decision of Link House Investments Ltd v VO (Appeal Nos 178029430801/537N10 & 178030204744/212N10). He pointed out that it was very similar to the appeal before the panel. However, even though the panel noted the content of this decision it placed little weight on it as previous VTE decisions are not binding on this panel.

32. The panel found that it was the VOA who initiated the split of the premises known as Unit 18. Therefore, the VOA would have been satisfied that there were separate occupiers within the premises and separate hereditaments. With the VOA assessing each individual occupier separately it would suggest that there is an arms-length agreement which means they have their own right of occupation of their own office suites.

33. The panel found that JDI had some links to the other occupiers by investing money in them however, no evidence was before the panel to suggest that JDI had any control over the other occupiers. Even though there were no leases before the panel the evidence showed that each occupier was paying rent for their own individual office suites which again suggested that they had a legal right to occupy.

34. It was accepted that all occupiers do have use of the area under dispute no evidence was presented to suggest that this was not the case. There was no evidence before the panel to prove that JDI had paramount control over the area in dispute. It was clear from the photographic evidence that the area was used as a communal break out area where all the occupiers can congregate and eat their own food and drink or use the coffee station.

35. The panel also noted that this is the area all the occupiers have to go through to access their offices or to another part of the building they also access the shared toilets and fire exit from this area. It was noted that all the occupiers can access this area at any time whilst the building as a whole is open.

36. The panel took account of the VO's concerns on the size of the communal break out area compared to the whole floor. However, the panel having considered the evidence before it and the case law decided that there was no exclusivity of the area in dispute and that it was not in the paramount control of one person. The panel could not find any requirement for a communal break out area (common area) to be of a maximum size.

37. The panel further found that the area under dispute did not meet all the four requirements of rateable occupation as outlined in *John Laing and Son* v *Kingswood Assessment Committee.* Therefore, the communal break out area of 384.82 m² should be excluded from the Rating List.

38. The VO argued that one of the options was to remerge the property however, the panel did not consider this option as the original split was initiated by the VOA. Therefore, if this is now not the position the VOA should take steps to rectify it.

39. The VO also suggested that if the communal area was excluded from the list it may justify an increase in value of the individual office suites. However, as there was no evidence of value on these suites before the panel this argument was not considered.

40. Therefore, having concluded that the communal area of 384.82 m² should be excluded from the overall valuation the panel allows the appeal and confirms a revised RV of £45,500 with effect from 20 January 2018.

Order:

41. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the appeal property's entry in the Rating List to £45,500 Rateable Value with effect from 20 January 2018. The Valuation Officer must comply with this Order within two weeks of its making.

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

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Dated: 17 December 2020