VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Accuracy of the RV in the Rating List; Office and premises; Tone. Appeal dismissed.

APPEAL NUMBER:	CHG100396919	
RE:	3rd Floor, The Steward Building, 12, Steward Street, London E1 6FQ (the "subject property")	
BETWEEN:	Bacardi Global Brands Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Wednesday 13 November 2024	
BEFORE:	Ms N Carman, Presiding Senior Member Mr A Hussain, Senior Member	
CLERK:	Mrs S D Morgan	
APPEARANCES:	Mr T Bosley – Appellant's representative (Altus Group) Mr G Singh – Valuation Officer's representative	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed. The assessment for the subject property was confirmed at £450,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. 3rd Floor, The Steward Building, 12, Steward Street, London E1 6FQ (the subject property) had been entered into the 2017 rating list as 'office and premises' at a RV of £450,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by Altus Group on behalf of Bacardi Global Brands Ltd and was received by the Valuation Officer on 2 July 2019. It had been made on the grounds that proposer disputes the RV in the Rating List. The Valuation Officer issued a challenge case decision notice which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

4. 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 lodged by the appellant's representative on behalf of the appellant and received by the Tribunal on 10 September 2021.

5. Mr Bosley 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 Bosley explained that he was instructed on a contingency fee basis and he declared that he understood and accepted his duty 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 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).

7. Mr Singh appeared on behalf of the Valuation Officer acting as advocate only.

8. This statement of reasons is not and does not purport to be a verbatim record of proceedings.

Preliminary issue

9. Comments were made about certain pieces of evidence being introduced in the evidence pack. However, it would seem that the evidence in question was mentioned at some stage during the process. After some discussion, there was no objection from either party regarding the additional evidence. The panel was therefore happy for the evidence to be admitted, and the case continued.

Background

10. The evidence bundle before the panel comprised of the evidence disclosed and exchanged during challenge. It included comparable assessments, location plans, photographs of the subject property and their skeleton arguments.

11. The subject property is an office and premises situated on the third floor of a 7-storey office building situated close to Liverpool Street and opposite Spitalfields Market. The building was completed in 2015 and is of a modern high specification, featuring active chilled beam air conditioning, raised access flooring, roof terraces and a gym. It measured 904m^2.

12. The unadjusted main space price of £500/m^2 was in dispute. The appellant's representative contended for a main space price of £450/m^2 with a proposed revised figure of £405,000 RV. The Valuation Officer's representative believed the existing assessment was fair and reasonable.

Relevant Case Law

13. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

"(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—

(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

(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.

(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.

Discussion

14. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

15. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

16. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day was 1 April 2017.

17. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. 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 weighted.

18. The rent on the subject property commenced from 10/2/2016, effective from 10 months post-AVD. It was for a term of 10 years at £664,697 pa which devalued to £424/m^2. There was 23 months' rent-free period with a rent review on 10/2/2021. The rent on the 4th-6th floors of The Steward Building was effective from only 1-month post-AVD and devalued to £399/m^2. The appellant's representative contended that both pieces of evidence should carry significant weight in accordance with *Lotus & Delta v Culverwell (VO)*, with one pertaining to the subject assessment itself and the other being in such close proximity to AVD. The appellant's representative believed the evidence clearly showed the subject property was overvalued.

19. The appellant's representative also referred to the less prominent position of the subject property compared with landmark building which provided similar office accommodation yet were valued at lower rates. He also referred to 2010 unadjusted rates for his comparable properties which ranged between £360/m^2 and £385/m^2 to show that they were all of a similar level in 2010 Rating List with a bigger variance in the 2017 List of between £440/m^2 and £500/m^2. The appellant's representative provided the following comparable properties with their unadjusted rate in the 2017 List.

- The Steward Building 12 Steward Street, London - £500/m^2
- 201 Bishopsgate. London - £440/m^2
- 1 Principal Place, London - £500/m^2
- 20 Primrose Street, London - £440/m^2
- 1-10 Bishops Square, London - £470/m^2

20. Number 1 Principal Place was a new state of the art landmark office tower occupied by Amazon, which was valued the same as the subject property. The appellant's representative believed that the subject property should be valued at a lower rate in comparison to this property and that £450/m^2 for the subject property was more appropriate. He sought a revised RV of £405,000 with effect from 1 April 2017.

21. In response to the Valuation Officer's arguments, the appellant's representative disagreed with his adjustments and analysis of the rental evidence, in particular the treatment of the lease incentives which the Valuation Officer's representative had taken over the length of the lease. He did not believe this was the correct method to determine the rental value of the property. His approach of amortising the lease incentives equivalent to 21 months' rent free up to the 5th year, with the remainder discounted over the next 5 years of the lease was, in his opinion, a more sensible approach.

22. The appellant's representative also disagreed with the Valuation Officer's method of uplifting their analysis by 8% to account for fit-out. He contended that every fit-out was bespoke to the specific occupier and would not add any value if on the market vacant and to let. Evidence supports that prospective tenants will pay more for a blank canvas to fit-out as they see fit, rather than move into space that is not fitted out as they would like or to their standard.

23. The Valuation Officer's representative's analysis for the subject property was £575.44/m^2 and when adjusted for fit out and tone to AVD it devalued to £559.32/m^2. The lease contained an upwards only rent review in the 5th year with no tenant's option to break. A rent-free period of 23 months was granted at the start of the lease. Deducting 3 months for

fit out and taking 20 months' rent free as an incentive, analysed over the 10-year term using DCF at 7% equated to £575/m^2.

24. In relation to the 4th-6th Floors of The Steward Building, the Valuation Officer had analysed the rent of £1,252,270 pa to £569.67/m^2 and £609.09/m^2 when adjusting for fit out and tone back to AVD. This was the closest letting to AVD in the subject building. The lease contained an upwards only rent review clause in the 5th year, with no tenant's option to break. A 24-month rent free period was granted at the start of the lease. Deducting 3 months for fit out and analysing over the 10-year term using DCF at 7% equated to £570/m^2. Adjusting for rental growth equated to £564/m^2. As this was agreed very close to AVD, it was considered the best evidence of rental values at that date.

25. The rent of £692,995 pa referred to by the Valuation Officer's representative for 1st Floor of The Steward Building, which measured 891m^2, was for a term of 10 years from 1/4/2016, with no tenant's option to break. A rent-free period of 12 months was granted at the start of the lease. Taking 3 months for fit out and analysing the remaining rent-free period over 5 years using DCF at 7% resulted in a figure of £644/m^2. As this was agreed a year post AVD, adjusting to reflect rental growth by say 1% per month calculated to £567/m^2. This figure sat well with the analysis on the 4th - 6th Floor lease which was agreed very close to AVD. The Valuation Officer's representative was of the opinion that the rental evidence in the subject building itself was the best evidence and clearly supported the adopted rate of £500/m^2 for the subject hereditament.

26. In relation to fit out costs, the Valuation Officer's representative contended that these could be substantial. Whereas rents in the market reflect the un-fitted state of the premises, the basis of valuation for rating is of the property as fitted out and it is necessary therefore to adjust market rents to reflect the fit out necessary to make the premises capable of occupation. This principle of an uplift to reflect the fit-out is supported by case law including *Merchant Investors Assurance Co Ltd v Sercombe* (VO) 1983 265 EG990; *Edma Jewellers v Moore* (VO) 1975 LT RA 343; *Specialeyes v Felgate* (VO) RA 387 1992; and *Dorothy Perkins Retail Limited v Casey* (VO) [1994] RA 391. The Valuation Officer's representative had adjusted the rents by applying an 8% uplift to reflect the fit out, based on market information on the costs of carrying out a tenant fit out. Included in his evidence was a fit-out appendix. The panel considered the Valuation Officer's approach to fit out costs was reasonable and was supported by case law.

27. The panel noted that there was a difference between the parties in relation to the analysis of the rental evidence, in particular the treatment of the lease incentives which the Valuation Officer's representative had taken over the 10-year length of the lease, whilst the appellant's representative had taken it over a 5-year period. The panel preferred the approach used by the valuation officer's representative as this took account of the rent-free period of 23-24 months at the start of the lease and it was noted that there was no break clause in the 5th year. This was further supported by the extract from the market report (Guide to rents and rent-free periods - Carter Jonas, Q1 2015) which showed the typical rent-free period for a 10-year lease in City Fringe East to be 22-25 months, and 11-13 months for a 5-year lease.

28. Having noted the comments made on the rental and comparable properties submitted by both parties, the panel found that the rental evidence for properties in the same building to

be the most relevant, particularly the evidence supplied for the 4th – 6th Floors of The Steward Building, which was the closest to AVD. The panel placed greater weight on this rental evidence when comparing assessment evidence for other office accommodation in the locality. It found that £500/m^2 that had been applied to various office accommodation in The Steward Building appeared fair and reasonable.

29. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the cases before the panel, it concluded that he had failed to produce sufficient evidence to justify his claim for the assessment to be reduced. Consequently, the panel was satisfied that the grounds for this appeal were not substantiated, and the appeal was dismissed.

Disposal

30. In view of the above findings and conclusions, the panel is satisfied that the appeal for 3rd Floor, The Steward Building, 12, Steward Street, London E1 6FQ should be dismissed.

Date issued to parties: 19 December 2024

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.
