VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Office and Premises; accuracy of rateable value; rental and comparable evidence considered; 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: Part 1st Floor, 2-6 Hampstead High Street, London, NW3 1PR

APPEAL NUMBER: CHG100108164

BETWEEN:	First Urban Properties Limited	Appellant
	(Represented by Altus Group)	
	and	
	David Jackson	Respondent
	(Valuation Officer)	

PANEL: Dr H Freeman (Senior Member)

Miss L Westwell

CLERK: Mr L Bertie

REMOTE HEARING ON: 19 February 2021

APPEARANCES: Mr P Barney of Altus Surveyors on behalf of the appellant

Mr C Cates on behalf of the Valuation Officer

Summary of decision

1. Appeal dismissed.

Introduction

2. This was a 2017 Rating List appeal. The rateable value (RV) of the appeal property was £92,000 with effect from 1 April 2017. As this was a compiled list appeal, the material day was also 1 April 2017. The appeal was received on 19 November 2020 against the Valuation Officer's (VO) Challenge Decision Notice of 20 October 2020 in respect of the appeal property. The VO's decision was to treat the Appellant's proposal as not well-founded and no change was made to the assessment.

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. 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.

6. Mr Barney 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 Barney'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.

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

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

9. 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.

10. The subject property comprises a first floor office above a retail unit within a mixed use 1960s building with residential premises on the 2nd and 3rd floors. It is situated, close to public transport links with Hampstead tube station. The area of the subject property is agreed by the parties to be 262 m^2.

Issue

11. The issue between the parties concerned the RV of the appeal property and specifically, the rate per m^2 that should apply. Mr Barney, for the Appellant, sought a reduction to £87,000 RV based on an unadjusted base rate of £330.00 per m^2. Mr Cates, for the VO, sought to defend the existing RV of £92,000 which was based on the existing unadjusted base rate of £350.00 per m^2.

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). 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.

13. In his challenge, Mr Barney had given details of the rent passing on the subject property, which was £88,000 pa effective from 27 March 2015 and related to a five-year lease agreed on a review. He had analysed this rent to £331.55 per m^2 which he argued indicated that the adopted rate of £350.00 per m^2 is excessive and should be reduced to £330.00

14. In line with the decision in Lotus and Delta v Culverwell (VO) [1976] RA 141, Mr Cates suggested that although the rent on the subject property should be taken as a starting point, the rents of comparable properties in the locality should be also be given weight. The basket of evidence, which included the rent on the subject property, and the rent on four comparable properties, was in his opinion, indicative of a base rate of £350.00 per m^2 for the subject property.

15. Mr Barney highlighted 3rd Floor, 32 Hampstead High Street NW3 1QD which was 390.08 m2 in size with an RV of 148,000. This had been let on 1 April 2015 at £150,000 pa as a new letting with a 5 year term inclusive of 4 car parking spaces and 3 months’ rent free for fit out. This rent had been analysed at £331.55 m^2 by Mr Barney with an addition of 5% for comfort cooling . This rent had been analysed by Mr Cates at £365 per m^2 with an adopted rate of £400 m2.

16. Mr Cates had provided details of 3 comparable properties in the locality to support the existing rate for the subject property. The first of these was 3rd Floor 6A Hampstead High Street, NW3 1PR 88.00 m2 in size RV £25,750 which had been let on 28 November 2014 at £31,000 pa as a new letting on a 5 year terms . This rent had been analysed at £398.20 m2; 3 Marty’s Yard NW3 1QW , 47.90 m2 in size RV £16,750 which had been let on 1 November 2014 as a new letting with a 3 year term. This rent had been analysed at £459.29 m2; First Floor 6A Hampstead High Street, NW3 1PR 61.40 m2 in size RV £19,500 which had been let on 1 January 2014 at £21,000 pa as a renewal letting on a 5 year term . This rent had been analysed at £376.61 m2. These properties all had adopted rates of £350 m2. Mr Cates

stated that based on the evidence available to the Respondent, the rate of £350.m2 was reasonable for the appeal property.

17. The panel considered that in line with the decision in Lotus and Delta v Culverwell (VO) [1976] RA 141 although the starting point in determining a rateable value would start with the rent passing on the appeal property, the rents of comparable properties in the locality should be also be given weight and from the basket of rents provided by the Respondent, it noted that rents were being agreed between January 2014 and April 2015 at between £331.55 and £459.29 per m^2. The panel noted that it was agreed by the parties that the property market was increasing between this period which generally showed the analysis of higher figures above the tone of £350 m2 for most of the comparable properties during this period.

18. Mr Barney argued various points regarding the more attractive outlook of 3 Marty's Yard, a ground and first floor office and 3rd Floor, 32 Hampstead High Street which were ' stand alone' offices compared to the appeal property which was situated above retail premises. The panel noted these points but considered that from the photographs , there did not appear to be much difference between Marty's Yard and the appeal property in terms of their visual appearance. Moreover, the difference in nature of 3rd Floor, 32 Hampstead High Street as a block of offices was reflected in its higher basic rate.

19. In conclusion, the panel was therefore of the opinion that the current rate of £350 adopted by the Respondent was not excessive and was supported by the basket of rental evidence provided by both parties of comparable properties in the locality and more weight should therefore be attached to this evidence .

20. Consequently, the appeal was dismissed.

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DATE:26 February 2021