VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; 2017 Rating List; Challenge against the compiled list entries; Serviced offices; rental evidence; comparable evidence; tone of the list; Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeals allowed in part.

RE: Room 115 on the 1st Floor, Room 220 on the 2nd Floor, Room 301 on the 3rd Floor and Room 401a on the 4th Floor at 1 Berkeley Street, London W1J 8DL

APPEAL NUMBERS: CHG100110645 (1 to 4)

BETWEEN:	I W Group Services Ltd	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

BEFORE: Gary Garland (President)

CLERK: David Slater (Acting Registrar)

ON: Thursday 14 July 2022

APPEARANCES: Damien Clarke from Colliers (Appellant's representative)
James Pullen from Colliers (Expert Witness)
Christopher Cates (Valuation Officer's representative who appeared as Advocate only)

Summary of decision

1. The appeals were allowed in part and the following valuations were determined based on the settlements reached in respect of 16 Berkeley Street;

   Room 115 - £20,500 RV with effect from 1 April 2017
   Room 220 - £41,500 RV with effect from 1 April 2017
   Room 301 - £64,000 RV with effect from 1 April 2017
   Room 401a - £67,500 RV with effect from 1 April 2017

Introduction

2. These appeals, which were consolidated and heard together, arose from a single challenge covering 101 properties which were used as serviced offices. The proposal (challenge document) was served on the Valuation Officer on 12 July 2019. The proposal challenged the accuracy of the compiled list entries and in particular the basis of assessment. Having considered the merits of the proposal, the Valuation Officer decided that it was not well founded. On behalf of the Appellant Company, Colliers International submitted 4 appeals to the tribunal on 11 May 2021. All four appeals were lodged on the grounds that the valuation for the hereditament was not reasonable. The four appeal properties were rooms on separate floors. Rather than appeal all 101 entries, the Appellant Company had opted to appeal single rooms on the 1st, 2nd , 3rd and 4th Floors. The existing challenged entries and survey areas in brackets were as follows;

   Room 115 - £21,250 RV (22.66m²)
   Room 220 - £42,750 RV (47.76m²)
   Room 301 - £65,500 RV (77.06m²)
   Room 401a - £69,500 RV (81.50m²)

3. The appeal properties were housed within 1 Berkeley Street which was described as a refurbished 1980's office building located in Mayfair at the

junction of Berkeley Street and Piccadilly. The nearest underground station was Green Park.

4. The serviced offices were in a mixed use building. The building had nine floors with the ground floor occupied for retail space. The other eight floors contained office accommodation. The offices had a Category B fit out and benefited from air conditioning, raised floors and recessed lighting.

5. 1 Berkeley Street had its own unique valuation scheme and the matrix prices ranged from £900 to £990 per m²

6. The Appellant Company, I W Group Services (UK) Ltd traded as Regus and held a lease in respect of Part 1st to 5th Floors in the building. The lease was on a full repairing and insurance basis and commenced on 29 September 2000. This lease came to an end on 24 March 2019. When the rent was reviewed with effect from 29 September 2015, the rent was agreed at £2,257,500 per annum.

7. The material day for the purposes of these appeals was 1 April 2017.

8. Mr Pullen appeared for the appellants as an expert witness and conceded that he was on a contingency based fee. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC). He accepted that his duty to the tribunal as an expert witness overrides any duty to those instructing him. I accepted his expert witness evidence on this basis as to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the tribunal's Procedure Regulations and was allowable due to the tribunal's rules on the admissibility of evidence (regulation 17 (2)) (a) where the tribunal can admit evidence whether or not it would be admissible in a civil trial in England.

9. On 12 July 2022, 2 days before the hearing, Mr Clarke made a late application as he wished to refer to new comparable evidence, as he was aware of settlements reached in respect of properties at Berkeley Square and 12 Hay Hill. Mr Clarke was candid enough to concede that he was aware of this evidence several weeks ago and accepted that he should have made an

application for new evidence to be admitted four weeks before the hearing date. In his defence, he stated that he expected to be able to settle the appeals by agreement with the respondent but the Valuation Officer had not been prepared to discuss the matter with him. After Mr Clarke's application was received by the tribunal, a copy was forwarded to the respondent to comment and the Valuation Officer duly objected to the request being granted.

10. As I was not satisfied that Mr Clarke had good reason for not complying with the timelines within the tribunal's directions, which was a serious breach which would have caused prejudice to the respondent if his new evidence had been admitted, I decided to reject the application. I can understand Mr Clarke's frustration if he thought that the appeals were capable of settlement, without recourse to a hearing, if only the respondent would converse with him but any complaints about the Valuation Officer's conduct would need to be taken up with the Valuation Office Agency. From the tribunal's perspective, our directions were important and parties were expected to comply with them. With the benefit of hindsight, Mr Clarke accepted that he should have submitted his application earlier and therefore my decision to reject his application was accepted with good grace and humility, as a lesson for the future.

11. This hearing was conducted via Microsoft Teams.

12. Mr Clarke raised two preliminary issues, before substantive valuation issues could be addressed. The first issue related to the total net internal area for the Appellant's demised premises, in other words the total floor areas it occupied, which he had used in his rental analysis. As survey areas were agreed for the individual hereditaments, I did not think it was necessary for Mr Clarke to produce an internal lay out plan to prove his survey measurements.

13. Mr Clarke said he had endeavoured to contact Mr Cates over the previous four months with a view to discussing and possibly settling the appeals. However, Mr Cates had not responded to his communications. Mr Cates implied that once the appeals had been lodged with the tribunal, the time for discussing the merits of the challenge was at an end. I expressed the view that it was unreasonable for the Valuation Officer to ignore Mr Clarke's communications merely because appeals were now with the tribunal. If appeals were capable

of resolution, following discussion, it would save money for the public purse from unnecessary litigation and avoid wasting valuable judicial time.

14. The other preliminary issue related to the fact that, according to Mr Clarke, the rent passing reflected Category B fit out. A copy of the lease was forwarded to the tribunal and Mr Cates, during the hearing, to show at clause 5.1.2 that the assumption was that at the relevant review date the premises were fully fitted out and equipped (including carpets and floor boxes) for immediate occupation and use by the incoming tenant.

15. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the submissions presented by the parties were fully considered before I came to my decision. Consequently, the absence of a reference to any statement should not be construed as it having been overlooked.

Issue in dispute

16. The main issue in dispute related to the weight that should be attached to the actual rent passing following the rent review.

17. On behalf of the Appellant Company, Mr Clarke sought revised entries based on a basis of assessment of £625 per m² which was in line with his analysis of the actual rent. Mr Clarke's proposed entries were as follows;

    Room 115 - £14,000 RV
    Room 220 - £29,750 RV
    Room 301 - £48,000 RV
    Room 401a - £50,500 RV

18. Mr Cates defended the Valuation Officer's existing entries. In his assessment(s) the Valuation Officer had adopted a matrix price of £990 and an adopted rate of £945 per m² for Room 115. £945 (matrix) and £897.75 per m² (adopted) for Room 220, and £900 (matrix) and £855 per m² (adopted) for Rooms 301 and 401a respectively.

Decision and reasons

19. When determining rating appeals, where competing rental and comparable evidence is available, it is always wise to refer to the Lands Tribunal's judgment in *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 and in particular the six propositions enunciated by JH Emlyn Jones which were as follows:

    1. Where the hereditament which is the subject of consideration is actually let that rent should be the starting point.
    2. The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s19(6) of the General Rate Act 1967 the more weight should be attached to it.
    3. Where rents of similar properties are available, they too are properly to be looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject hereditament.
    4. Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the valuation officer. In subsequent proceedings on that list therefore they can properly be referred to as giving some indication of that opinion.
    5. In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the different types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.
    6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would clearly be more difficult to reject the evidence of the actual rent.

20. On behalf of the Appellant Company, Mr Clarke advocated that the correct starting point was the actual rent. In fact, Mr Clarke's case effectively began and finished there. He argued that the appeal building had reached the end of its economic life and that the rateable value determination(s) should be based on the actual rent.

21. Mr Clarke had analysed the actual rent on a discounted cash flow basis, in accordance with the VOA's Rating Manual Practice Note 1 – Rental Adjustment adopting a yield of 7% over the three and half year term before the lease expired. Whilst the Valuation Officer agreed with Mr Clarke's analysis of the rent, his survey measurements were queried. Mr Clarke appeared to have used the total floor areas in his analysis, rather than dividing the rent by the total floor area for the rooms which would be lower, as it would not include landlord's common parts. The Valuation Officer also contended that office rents usually reflected only a Category A fit out and therefore to reflect a normal tenant's Category B fit out, like partitioning, an upward adjustment of 8% was appropriate. Hence why a copy of the lease was required to try and resolve the degree of fit out.

22. I decided to reject Mr Clarke's valuation approach for a number of reasons. The level of rent set was as a result of a rent review. Although the level of rent was agreed close to the antecedent valuation date, it was not a new letting which the statutory hypothesis assumed with the hypothetical tenant coming fresh to the scene. The rent also reflected the right to occupy the whole of the ratepayer's premises whereas what I was looking to value were the individual rooms.

23. Mr Clarke's valuation approach which was to effectively divide the rent by his client's total net internal floor area (NIA) therefore appeared flawed, His straight line valuation approach took no account of quantum and also his NIA was greater than the sum total of all of the serviced office assessments which suggested he had included core areas/common parts which meant that his proposed basis of assessment was too low.

24. No indirect rental evidence relating to comparable properties was presented by Mr Clarke. In response, Mr Cates referred to the rental evidence detailed in the Valuation Officer's challenge decision notice relating to three properties which were 11 and 16 Berkeley Street plus the 4th floor at 180 Piccadilly. Both rents relating to the Berkeley Street properties were set following lease renewals whilst the rent for 180 Piccadilly resulted from new letting(s). However, again the areas demised were much greater than the agreed areas for the appeal

hereditaments. I was not convinced that a straight line devaluation of the rents for much larger demised areas was a reliable indicator of the level of rent for an individual room that a hypothetical landlord could realistically expect to achieve.

25. The Valuation Officer had valued the appeal properties at a matrix price of £900 per m². The matrix price was uplifted by 10% for properties where the survey area was between 0 and 25m² (£990 per m²) and 5% where the survey area was between 26 and 50m² (£945 per m²). As the appeal properties did not have a raised floor its absence was reflected by a 5% allowance in the adopted rate.

26. I was informed that settlements were agreed by the Valuation Officer with the ratepayers for 16 Berkeley Street at an unadjusted rate of £875 per m². Where the survey area was between 0 and 25m² it was usual practice to uplift the base rate by 10% to reflect reverse quantum. Similarly, where the survey area was between 26 and 50m² the uplift was 5%. No uplift was made for properties with survey areas over 51m².

27. Given what I have said previously about the unreliability of the rental evidence put before me, I found the settlement evidence relating to 16 Berkeley Street to be compelling. I therefore decided to adopt the unadjusted rate that had been agreed of £875 per m² for 16 Berkeley Street for my valuation(s). To the unadjusted rate, I applied the agreed uplifts to reflect reverse quantum, where the room was less than 50m². I was informed by Mr Pullen that these offices benefitted from raised floors which the matrix price assumed. As the appeal rooms did not benefit from a raised floor, I made a downward adjustment of 5% to reflect this in my valuation. Mr Cates, having earlier confirmed that the Valuation Officer had applied the same adjustment in his valuation, albeit he was starting from a higher matrix price. My valuations were calculated as follows;

Property	Area	Unadjusted rate	Adopted rate	RV after rounding
Room 115	22.66	£962.50	£914.38	£20,500
Room 220	47.76	£918.75	£872.81	£41,500
Room 301	77.06	£875.00	£831.25	£64,000
Room 401a	81.50	£875.00	£831.25	£67,500

28. In view of the foregoing, the appeals were allowed in part.

Order

29. 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 VO to reduce the entries in the rating list to £20,500 RV for Room 115 and £41,500 RV for Room 220, £64,000 RV for Room 301 and £67,500 RV for Room 401a at 1 Berkeley Street, London W1J 8DL with effect from 1 April 2017.

30. Under regulation 38(9), the VO must comply with this order within 2 weeks of the date of its making.

Refund of appeal fee(s)

31. As the ground of the appeal(s) has been made out, the appeal fee(s) will be refunded in full. This will take approximately 6 weeks to process.

President

Date 19 July 2022

Appeal numbers: CHG100110645 (1 to 4)

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.