THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Offices and premises; Price per m^2 in dispute; Appeal dismissed.

RE: 3rd Flr, 37 Upper Brook Street, London W1K 7QL

APPEAL NUMBER: CHG100113084

BETWEEN:	Hadcliffe Properties Limited	Appellant
	and	
	The Valuation Officer	Respondent

PANEL: Mr M Smith (Chairman)
Mr D Greensmith

CLERK: Mr A Johnson Tech IRRV

ON: 11 August 2022

APPEARANCES: Mr S Carter from Altus Group (advocate for the Appellant)
Mr D Hill from Altus Group (expert witness for the Appellant)
Mr A Powell (representing the Respondent)

REMOTE HEARING

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was dismissed. The panel was satisfied that the rateable value (RV) of the subject property was not unreasonable.

Introduction

2. This decision notice is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in such a manner. The parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant had challenged the Valuation Officer's (VO) decision that the appellant's proposal was not well-founded.

4. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the RV for the subject property on the compiled date of 1 April 2017 was not reasonable. The RV was £56,000.

5. Mr Carter and Mr Hill appeared on behalf of the appellant (as advocate and expert witness respectively). Mr Hill stated that he was instructed under a contingency based fee. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO0* [2018] UKUT (LC), the panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

6. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

7. Part way through the hearing the clerk to the Tribunal temporarily lost his connection to the remote hearing. Proceedings were briefly adjourned for approximately five minutes until the connection was re-established. Once the clerk had successfully re-connected, the hearing proceeded without further interruption.

Preliminary issues

First preliminary issue – further rental evidence from the appellant's representative

8. At the commencement of the hearing Mr Powell, on behalf of the VO, raised an objection to evidence which he had received from the appellant's representative after the VO had issued his initial response. This evidence took the form of additional rents which had not been included within the appellant's proposal.

9. Mr Powell argued that this submission breached regulation 9(8) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (the 'regulations') because it did not address any of the information the VO had provided in accordance with his initial decision which had been issued in accordance with regulation 9(7) of the regulations. Mr Powell also argued that the additional rents were in breach of regulation 9(10) because they were known by the proposer or could reasonably have been acquired before the proposal was made.

10. In reply, Mr Carter argued that the additional rents had been submitted during the Challenge period and were in response to the VO's initial response. This was permissible because regulation 9(8) was wide enough in scope to allow for the additional rents to be submitted. Mr Carter further argued that his position was supported by a decision of the Tribunal's Vice-President, Mr A Clark, in respect of *Intocast UK Limited v Mrs J Moore (Valuation Officer)* [CHG100105215] which was issued on 20 January 2021.

11. The panel retired to consider the matter and, after doing so, it decided to exclude the additional rents which had been submitted by the appellant. In reaching this decision, the panel had regard to regulations 9(7), 9(8) and 9(10) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009:

> *9(7)* *On receipt of the proposal, the VO must if it considers it reasonable to do so provide the proposer with any information the VO holds that relates to the particulars of the grounds of the proposal.*
>
> *9(8)* *Before the proposal is determined, the proposer in response to the information provided under paragraph (7) may provide the VO with further evidence*
>
> *9(9)* *…….*
>
> *9(10)* *Before the proposal is determined, the proposer may provide the VO with further evidence relating to the grounds of the proposal if that evidence was not known to the proposer and could not reasonably have been acquired by the proposer before the proposal was made.*

12. The panel understood Mr Carter's argument that the drafting of regulation 9(8) was wide enough in scope to allow additional rents to be submitted given that the proposer may "*…provide the VO with further evidence to support the grounds of the proposal*". However, the panel found that the entirety of regulation 9(8) should be read in the context and intentions of the regulations as a whole.

13. The legislative provisions of the Check, Challenge and Appeal procedure expect the proposer (i.e. the appellant) to submit all of the information he wishes to rely upon when submitting his proposal to the VO. Once it has been

submitted, the proposer is not entitled to submit additional evidence in the manner Mr Carter had contended during the Challenge period. The intention of regulation 9(8) is to provide the proposer with an opportunity to respond to the information provided by the VO, which had been issued in accordance with regulation 9(7) to reflect the VO's considered opinion which is based upon the evidence submitted within the proposal. Any additional (new) evidence would therefore be prejudicial to the VO.

14. Regulation 9(8) is not intended to give the proposer opportunities to submit additional evidence during the Challenge period (in this case, additional rents) in support of the initial submission. If regulation 9(8) was so intended there would be no requirement for regulation 9(10) which limits the inclusion of new evidence to circumstances where it was not known or could not be reasonably acquired at the time the proposal was submitted.

15. The panel found that the additional evidence provided by the appellant, after the proposal was submitted which was intended to bolster the appellant's proposal, as opposed to being a response/rebuttal of the VO's evidence.

16. The panel also found that the circumstances of *Intocast UK Limited v Mrs J Moore (Valuation Officer)* [CHG100105215] differed from the circumstances of this appeal. In the *Intocast* appeal the additional evidence was not known to the proposer and could not reasonably have been acquired without information from the VO. In this appeal the panel was satisfied that the additional rental evidence was reasonably acquirable prior to the submission of the proposal and would therefore fall foul of regulation 9(10) even if the panel had reached a different conclusion in respect of regulation 9(8).

Second preliminary issue – photographs

17. On 9 August 2022 Mr Hill submitted photographs of 36 and 37 Upper Brook Street which he sought to enter into evidence. When asked, Mr Powell did not raise any objection. The panel therefore accepted the inclusion of the photographs in this appeal.

Issue

18. The issue in dispute was whether the valuation for the subject property was reasonable and, in particular, the price per m^2 to be adopted.

Summary of evidence and submissions

19. The subject property comprised third floor office accommodation of some $83m^2$ within a Georgian Grade II listed building which had been built in 1734. The building itself is located on the south side of Upper Brook Street in Mayfair and is in close proximity to Marble Arch and Bond Street underground stations.

20. Having excluded the rents referred to above, the panel considered an evidence bundle which included all of the documents exchanged between the parties as part of the challenge process together with the photographs of 36 and 37 Upper Brook Street which had been accepted by agreement of the parties.

21. Mr Hill argued that the RV of £56,000 (based upon a tone of £675 p/m^2) was excessive and he proposed a revised RV of £49,250 (based upon £595 p/m^2). In support of this contention he presented rental evidence relating to four properties which had been included within the proposal document.

22. Mr Hill also argued that the listed status of the property meant that it was, unlike other properties in the locality, incapable of being altered in order to accommodate a commissionaire reception in a multi-occupied building. Mr Hill highlighted, amongst other things, the period façade of the building, the sash windows, the lack of air conditioning and the one person 'coffin' lift which had retained its original lift and mechanism. Mr Hill also pointed out that the subject property lacked modern features such as air conditioning and a modern lift which, he said, made it less desirable to a prospective tenant.

23. Mr Powell argued that the RV of £56,000 (£675 per/m^2) was not unreasonable and was in line with the majority of office assessments in Mayfair. Those with a commissionaire reception had been assessed at £750 p/m^2. The commissionaire reception accounted for a difference of £75 p/m^2. Mr Hill also presented rental evidence in respect of other offices and premises in the locality to support his argument.

24. Mr Powell also argued that, whilst the listed status of the property had not been raised before the hearing, any perceived disadvantages did not, in his opinion, materially impact the tone of value which had been adopted.

Decision and reasons

25. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the RV 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 based upon three assumptions. These assumptions are:

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

26. This was an appeal against an entry in the 2017 rating list and so the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the subject property is 1 April 2017.

27. The Panel was also guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. Whilst it was not found necessary to list them, this case set out six propositions to have regard to when weighing the evidence and expert evidence.

28. The appellant held a long term leasehold interest in the whole building (which contained the subject property) from December 1954 with a fixed rent of £300 per annum, with no reviews. This meant there was no passing rent for consideration in accordance with the rating hypothesis. Given this, the panel considered the rental evidence put forward by the parties.

29. In doing so, the panel found the strongest and most reliable evidence had been provided by the VO, which better fitted the rating hypothesis. In particular, the new lettings of 2ND Flr, 130 Mount Street (10 years from 1 May 2015, analysed to £986 p/m^2), 3RD Flr, 130 Mount Street (6 years from 1 December 20, analysed to £1,190 p/m^2), 2ND Flr, 36 Upper Brook Street (5 years from 25 April 2015, analysed to £712 p/m^2) and Bst RR, 43 South Audley Street (10 years from 1 October 2014, analysed to £810 p/m^2). These were close to the AVD and were persuasive in showing that an adopted rate of £675 p/m^2 was not excessive. The panel also noted that neither Mr Carter nor Mr Hill provided rebuttal evidence to cause the panel to doubt the veracity of the VO's rental evidence.

30. The analysis of the rental evidence from the appellant ranged from £423 p/m^2 to £595 p/m^2 and whilst the panel found the evidence useful in the task at hand, they were not found to outweigh the rents provided by the VO. Primarily, as they were not in respect of new lettings.

31. The panel found that it was unable to place any significant weight upon Mr Hill's argument that, as a Grade II listed building, the rental value of the subject property was materially reduced, such that a lower RV was justified. Whilst the panel understood Mr Hill's argument that a hypothetical tenant would be more attracted to properties with modern features (such as air conditioning, double glazing and a modern lift), this was anecdotal and no convincing evidence was produced to substantiate this point to warrant a departure from the adopted rate of £675 p/m^2.

32. After full consideration of the evidence presented by the parties, the panel found that the appellant had not discharged its legal and evidential burden of proof to demonstrate that the adopted rate of £675 p/m^2 was unreasonable. After full consideration of the evidence before it, the panel was not persuaded by the appellant's arguments and it dismissed this appeal.

Date: 17 August 2022

Appeal Number: CHG100113084

Right of 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.