THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; The Valuation for the hereditament is not reasonable; Rental evidence; Base rate £/m^2; Material Change in Circumstances (MCC) end allowance; Tone and comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal part allowed.

Re: 4th & PT 5th FLR Herald House, Lambs Passage, London EC1Y 8LE (the appeal property).

APPEAL NUMBER: CHG100117177

BETWEEN:	Catholic Herald Ltd	Appellant
	and	
	The Valuation Officer	Respondent

PANEL:	Miss Alison Griffiths	(Chair)
	Mrs Fiona Duggan	(Member)

CLERK:	Mr Duncan Adamson IRRV (Hons)
REMOTE HEARING 2	13 September 2021
PARTIES PRESENT	Mr Stewart Carter of Altus - Appellant's representative (Advocate and Expert Witness)
	Mr Christopher Cates - Respondent's representative

Summary of decision

1. The appeal was part allowed. The current unadjusted rate was reduced from £350/m^2 to £320/m^2 and the end allowance was increased from 5% to 7.5% for the period 1 April 2017 to 31 December 2018 giving a rateable value of £38,750 from 1 April 2017.

Introduction

2. The appeal was brought in respect of Catholic Herald Ltd located on the 4th and part 5th floor of Herald House in Lambs Passage, London. These are offices and premises situated between Moorgate, Barbican and Old Street Stations in an early 1900's building of traditional construction over 4/5 floors.

3. The challenge submission date was 8 August 2019 with the challenge being completed on 22 December 2020.

4. The appellant sought a reduced rateable value of £34,250 based on a base rate of £290/m^2 with a Material Change of Circumstances (MCC) end allowance reduction of 10% due to building works in respect of the redevelopment of the YMCA building in the vicinity.

5. The respondent contended that the current rateable value assessment of £43,500 at a rate of £350/m^2 with a 5% end allowance was reasonable based on the evidence and information available.

6. 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.

7. 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.

8. Mr Stewart Carter appeared on behalf of the appellant in a dual role as advocate and as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his 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 cases.

9. 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 they saw fit.

10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

11. The unadjusted rate (UAR) £/m^2 to be used for the property valuation effective from 1 April 2017 and consideration of the application of a percentage reduction of the rateable value due to building works causing a material change of circumstance for the period 1 April 2017 to 31 December 2018.

Evidence and submissions

12. The evidence bundle comprised of the documents exchanged between the parties as part of the challenge process: Valuation Officer’s challenge case decision notice; lease agreements and summaries; appellant’s challenge submission; photographs and location plans of the appeal property and comparable assessments and email exchanges between the parties.

13. The appellant stated that he had inspected the property, a converted late 19th century old school that only provided very basic office accommodation comprising 5 separate offices and a car parking space. There are no lifts, no air conditioning and no double glazing which, coupled with its high domed ceilings, made the property draughty and difficult to heat properly. This meant that there were few properties to compare against as the appeal property was quite unique and may be described as quirky. The respondent had submitted details of eight comparable properties but in the appellants opinion these were quite different to the appeal property in that they were generally superior quality buildings providing better quality office accommodation.

14. The appeal property was let on a renewal agreement on a five year stepped rent lease on a full repairs and insurance basis from 1 March 2015 at £49,240 p.a. The rent increased to £75,000 from 1 August 2018 to 28 February 2020.

15. The appeal was against the current unadjusted rate of £350/m^2 and sought £290/m^2 based on an annual equivalent rent over the period of five years across the main space area less the RV for the car parking space giving a devaluation figure of £289.96/m^2. The appellant felt that this was a good starting point for the valuation of the property.

16. Further, the current rateable value is subject to a 5% end allowance because of adjacent building works on the YMCA building on Errol Street. These works were ongoing on 1 April 2017 and were expected to be complete by late 2019.

17. The appellant stated that, because of the nature and type of the appeal property as described, noise from the works resonated throughout Herald House much more than it would do so in a modern building and dust from the works came through the windows as they were only old style sash windows and not double glazed. For these reasons, he stated that a 10% allowance would be more appropriate and contended that this is supported by end allowances for other such building disturbance works in the locality that had been given at a rate higher than 5%.

18. The respondent did not agree that the current rental agreement was a good starting point for the appeal property valuation as it was a renewal and therefore not tested on the open market. This meant that certain liabilities were rolled over from one rental period to the next without being subject to their effect on the rental market. This had been the only evidence given by the appellant and he felt that it was not good evidence. The location of the building was important and he stated that a base rate of £350/m^2 was appropriate and in line with other office and premise valuations in the vicinity of the appeal property.

19. Further, in respect of the MCC allowance, he stated that Herald House is in central London and therefore almost always subject to works disturbances and most of the appeal property is actually quite a way from the works. The initial demolition and foundation works were probably the most disruptive but were not constant, they were at the start of the project covering only a short period. For these reasons, he argued that the 5% allowance remains appropriate.

Decision and reasons

20. The main issue in dispute concerned the level of value to be adopted for the appeal property.

21. The term ‘rateable value’ is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

"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".

22. In respect of an appeal against an entry in the 2017 rating list, 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 (SI 2014 No. 2841).

23. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

24. The appellant had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 and the panel noted that this Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

25. The panel were presented with rental evidence of properties classed as Office and premises in the locality and deemed to be comparable to the appeal property by the respondent:

Address	Area	ITMS	Date of rent	Rent	Adjusted rent	Analysed rent	UAR	RV
3rd floor, 1-3 Dufferin St	532.5	532.5	27/3/14	£230,560	£230,560	£432.98	£350	£186,000
29 Bunhill Row	88.8	80.42	3/6/15	£37,500	£35,626	£443	£350	£28,000
21- 22 Bunhill Row	67.8	64.41	11/2/15	£12,290	£16,685	£259.04	£332.50	£22,500
2nd floor, 17 Dufferin Street	32.1	32.1	1/8/14	£17,252	£14,922	£464.86	£367.5	£11,750
3rd floor, 17 Dufferin Street	60.9	60.9	1/8/14	£25,498	£22,056	£362.17	£350	£21,250
4th floor, East,1-3 Dufferin Street	147.93	147.93	27/3/14	£69,400	£63,501	£498.32	£350	£51,500
2nd floor, 14 Baltic Street	64.95	61.7	7/12/14	£24,000	£24,000	£388.98	£350	£21,500
3rd floor, 14 City Road	53.76	48.38	25/3/15	£18,800	£18,800	£388.59	£350	£16,750

26. The panel found that the RV’s for 3rd and 4th floor 1 – 3 Dufferin Street were based on the same UAR as the appeal property and in a similar location. However, the analysed rent was higher and this was reflected in the quality of the accommodation being far superior offering comfort cooling, lifts and a commissionaire.

27. 29 Bunhill Row had been let on a 5 year basis but may have been between connected parties and includes an element of domestic living accommodation.

28. 17 Dufferin Street had benefitted from a refurbishment in 2007 and had a lift and was double glazed whereas the appeal property had not had any recent refurbishments.

29. The Baltic Street rent was a renewal for 3 years and not on a full repairs and insurance (FRI) basis. It was also some distance away and smaller than the appeal property.

30. The premises at 14 City Road were on a renewal basis for 2 years and, again, not on an FRI basis.

31. The panel found 21 -22 Bunhill Row to be a reasonable comparator in that the rent was agreed at a similar time to the appeal property and close to the AVD. The building was similar in construction but provided more superior premises than the appeal property.

32. In general, the panel found that the comparable properties submitted did not necessarily give useful evidence for the valuation of the appeal property.

33. The panel noted both parties' comments in respect of the building and its location and found that it had a poor layout and poor facilities i.e. no lift or air conditioning and, generally, it suffered from a lack of sound-proofing and insulation due to its single glazed sash windows. In all, it was of unusually poor quality.

34. The panel found that it was clear from the photos provided that the passage of lorries and the like were close to the appeal property and that the access road to the appeal property would have been compromised by such activity. The main site entrance is directly adjacent to the appeal property.

35. In appeals of this nature the burden of proof rests on the appellant to prove his case. The panel concluded that the appellant had produced sufficient evidence to justify the appeal to be part allowed. The appeal sought a UAR of £290/m^2 based on the annual equivalent rent on the appeal property but the panel felt that this would be too low and not reflective of all of the evidence provided.

36. In respect of the end allowance, the panel were presented with evidence of end allowances currently allowed for properties with works being undertaken in their vicinity:

Address	**Allowance**
2nd floor, Farringdon Place, 20 Farringdon Road	10% overall for Crossrail and access
4th floor, 102 – 108, Clerkenwell Road	12.5% for adjacent building works
Grd floor, 175, Goswell Road	15% for redevelopment works
1 Golden Lane	7.5% for opposite building works
2nd floor, 26 – 28 Ely Place	5% for rear building works
1st floor, Cannon Street	7.5% for building works

37. The panel found that the type of construction, location and lack of facilities at Herald House meant that there would be some considerable effects of building works on the property and noted that, generally, higher %age end allowances had been granted for other properties.

38. For these reasons, the panel decided that it would be more appropriate for the unadjusted base rate to be £320/m^2 with an end allowance of 7.5% in respect of the disturbance caused by the building works in the vicinity of the appeal property.

Order

39. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of 4^{th} & PT 5^{th} FLR Herald House, Lambs Passage, London EC1Y 8LE to £38,750 and award a material change in circumstances end allowance reduction of 7.5% with effect from 1 April 2017.

40. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 25 October 2021

Appeal number: CHG100117177