VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Office and Premises; accuracy of rateable value; rent passing on subject property and comparable properties; found that weight of evidence supported a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed.

RE: 2nd Floor, 20 Conduit Street, London, W1S 2BQ

APPEAL NUMBER: CHG100119777

BETWEEN:	Conduit Business Solutions Ltd (Represented by Altus Group)	Appellant
	and	
	David Jackson (Valuation Officer)	Respondent

PANEL: Mrs N Yang (Senior Member)
Mrs C Parkes

REMOTE HEARING: 22 September 2021
CLERK: Mr J N Massey
APPEARANCES: Mr S Carter (advocate) and Mr D Hill (expert witness) of Altus Group for the Appellant.
Mr K Abbaas for the Valuation Officer.

Summary of decision

1. Appeal Allowed. Rateable Value (RV) £54,000 confirmed with effect from 1 April 2017.

Introduction

2. 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.

3. 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.

4. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via a Microsoft Teams conference call using audio/video-link. Due to limitations caused by his broadband connection, Mr Abbaas joined without using his camera. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

5. This was a 2017 Rating List appeal. 2nd Floor, 20 Conduit Street, London, W1S 2BQ (“the appeal property”) had been entered in the 2017 rating list as ‘Offices and Premises’ at a RV of £59,500 with effect from 1 April 2017

6. The challenge proposal was submitted by Altus Group on behalf of Conduit Business Solutions Ltd and was received by the Valuation Officer on 21 August 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £54,000 was proposed with effect from 1 April 2017.

7. The Valuation Officer issued a challenge case decision notice on 15 January 2021, which stated that based upon the evidence and information available, the rating list entry of £59,500 RV was considered to be reasonable and there would be no amendment.

8. 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 received by the Tribunal on 14 May 2021.

9. Mr Hill appeared on behalf of the Appellant as expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) Mr Hill’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.

10. 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.

11. 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.

Issue

12. The issue between the parties concerned the rate per m² that should apply. Mr Carter, for the appellant, sought a reduction to £54,000 RV based on an unadjusted base rate of £500.00 per m². Mr Abbaas, for the VO, sought to defend the existing RV of £59,500 which was based on the existing unadjusted base rate of £550.00 per m².

13. All relevant factual information regarding the subject property, including its net internal area (NIA) of 108.48m^2 was not disputed by the parties.

Evidence and submissions

14. The subject property comprised office accommodation on the second floor of an office building arranged over six floors, providing retail space on the ground floor and basement level and office accommodation above. It had been let on a new lease with effect from 1 March 2016 at an annual rent of £62,500.

15. A combined evidence bundle had been submitted containing a copy of the evidence provided with the appeal, which included the VO's challenge decision, the Appellant's challenge submission and correspondence between the parties in respect of the challenge. An expert witness report by the Appellant and additional photographs of the subject property and comparable properties from the Respondent were also included in the bundle.

16. Mr Hill referred to the passing rent on the subject property which he had analysed at £576 per m^2, and contended that although this should be a starting point in determining the correct rate for the subject property, it was agreed almost a year after the AVD so the weight to be attributed to it is reduced.

17. In support of a reduction, Mr Hill made reference to three rents agreed on offices in 54 Conduit Street, which he believed was the most comparable building to the subject building:

Address	Area m^2	Effective date of rent	Analysed Rent (per m^2)	Adopted value (per m^2)	Rateable Value (RV)
1st Flr, 54 Conduit Street	72.08	23/10/15	£499.46	£550	£39,500
5th Flr, 54 Conduit Street	70.31	21/6/16	£490.65	£550	£38,500
4th Flr, 54 Conduit Street	70.87	21/6/16	£518.08	£550	£40,000

18. He contended that these were new lettings, agreed between 7 months and 15 months after the AVD. He accepted that less weight should be given to the rents agreed in June 2016 due to their remoteness from the AVD, but considered that most weight should be attributed to the rent for 1st floor agreed in October 2015.

19. The Respondent was of the opinion that the rental evidence on Conduit Street supports the current price of £550 per m^2 for the subject property, and had provided details of rents agreed on Conduit Street to support this.

Address	Area m^2	Effective date of rent	Analysed Rent (per m^2)	Adopted value (per m^2)	Rateable Value (RV)
1st Flr, 20 Conduit Street	105.1	13/7/14	£529.16	£550.00	£57,500
5th Flr, 5 Conduit Street	52.62	17/11/14	£443.80	£603.63	£30,250
5th Flr, 7-8 Conduit Street	118.6	25/12/14	£548.00	£605.00	£68,000
4th Flr, 7-8 Conduit Street	140.6	1/7/15	£799.26	£605.00	£81,000
3rd Flr, 42 Conduit Street	56.79	1/10/15	£680.30	£550.00	£28,000
1st Flr, 54 Conduit Street	68.65	1/10/15	£499.45	£605.00	£39,500
2nd Flr, 20 Conduit Street	108.48	1/3/16	£484.86	£550.00	£59,500
5th Flr, 54 Conduit Street	66.97	1/6/16	£490.61	£605.00	£38,500
4th Flr, 54 Conduit Street	69.4	1/6/16	£518.05	£605.00	£40,000

Decision and reasons

20. 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.

21. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(1) 'Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly 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 property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an 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 differing 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 be clearly more difficult to reject the evidence of the actual rent.'

22. Having considered the evidence and arguments from both parties, the panel noted that the rent on the subject property was a new letting almost a year after the AVD. The Appellant stated that the rent agreed of £62,500 pa did not include repairs and insurance and had analysed it at £576 per m^2. The Respondent had analysed the rent on the basis that repairs and insurance were included in the rent, and had adjusted it to £54,062 pa, which was analysed at £484.86 per m^2. As no copy of the lease had been provided to confirm the terms, and due to the remoteness of the rent from the AVD, the panel concluded that little reliance could be placed on this rent in determining the correct RV for the subject property.

23. Both parties had provided details of rents for similar properties in support of their cases. Mr Abbaas placed most weight on the rent of £55,615 agreed on a lease renewal on 13 July 2014 for 1st Floor, 20 Conduit Street, which he had analysed to £529.16. The panel accepted that rents agreed on a similar sized office in the same building provided the best indication of the value of the subject property. Mr Hill had remarked that a lease renewal would attract less weight than a new letting, and referred to its agreement 9 months prior to the AVD. Mr Hill also argued that the offices on the first floor of the subject building benefitted from air conditioning, whereas the subject property did not, and this would be reflected in the rent. The panel was of the opinion that due to the number of adjustments required, the rent for 1st Floor, 20 Conduit Street was of little assistance.

24. The panel considered the evidence for 5th Floor, 5 Conduit Street. It had been identified by Mr Hill that the rent for this property was inclusive of service charges, and he had obtained details of the charges for 2015, 2016 & 2017 and stripped the average from the rent, which he had then analysed to reach £437 per m^2. The Respondent had also carried out a similar adjustment and analysed the rent at £443.80 per m^2, although Mr Abbaas was of the opinion that the service charges appeared to be higher than was normal and may include an element of rent.

25. Mr Abbaas had referred to the rents on two properties 7-8 Conduit Street which had been agreed both before and after the AVD at levels which he argued supported the current rate of £550 for the subject property. Having considered the details provided by the parties, and photographs, the panel considered that 7-8 Conduit Street was a more modern purpose-built office, with double frontage and air conditioning and had been refurbished to a more modern standard than the subject property. It therefore did not consider that the units at 7-8 Conduit Street were comparable to the subject property.

26. Mr Abbaas had referred to the rent agreed for 3rd Floor, 42 Conduit Street, six months after the AVD, which had been analysed at £680 per m^2, which he considered supported the current rate of £550 per m^2 for the subject property. Mr Hill stated that the new occupier of 3rd Floor, 42 Conduit Street was already in occupation of the 2nd floor, which he argued signified that they were a special purchaser and would have overpaid to acquire adjoining premises. Although Mr Abbaas was of the opinion that the rent agreed would have reflected the value to the occupier, who would negotiated the rent based on prevailing rents for similar properties, the panel considered that the rent agreed was not an open market rent and it was therefore unable to place much weight on it.

27. The panel went on the consider the rents provided by the Appellant for 54 Conduit Street. The panel considered that this was the most comparable building in terms of its age and quality of accommodation. The rents for 4th and 5th Floor had both been agreed over a year after the AVD and the panel was of the opinion that they held little weight for this reason. It did however give weight to the rent for 1st Floor, 54 Conduit Street, which had been agreed only 6 months post AVD and was analysed at £499.46 per m^2.

28. Having considered both parties' rental evidence and analysis for properties on Conduit Street, the panel concluded that the rate of £500.00 per m^2 sought by the Appellant is fair and reasonable and confirmed the RV at £54,000 from 1 April 2017.

29. The appeal is therefore allowed.

Order

30. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for 2nd Floor, 20 Conduit Street, London, W1S 2BQ to £54,000 with effect from 1 April 2017, within 2 weeks of the date of this Order.

31. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date: 19 October 2021
Appeal number: CHG100119777