THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Offices and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

Re: 1st Floor, 42 Gloucester Avenue, London NW1 8JD

APPEAL NUMBER: CHG100120951

BETWEEN: Elements Talent Consultancy Ltd — Appellant

and

Mr A Ricketts (Valuation Officer) — Respondent

PANEL: Ms L Hussein-Venn (Senior Member)
Ms J Morton

CLERK: Miss K Hendry IRRV (Tech)

REMOTE HEARING on Wednesday 17 February 2021

APPEARANCES: Mr S Cosstick of Aitchison Raffety for the appellant
Mr C Cates for the Valuation Officer

Summary of decision

1. Appeal is allowed in part. The panel determined the rateable value (RV) of £159,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 1st Floor, 42 Gloucester Avenue, London NW1 8JD which was entered in the 2017 rating list as "offices and premises" at rateable value £181,000 effective from 1 April 2017.

The appellant’s challenge proposal to the Valuation Officer was made on 27 August 2019. The Valuation Officer issued a challenge decision on 1 July 2020 which stated that the rating list entry was considered to be reasonable, and therefore there would be no amendment made. The appellant’s appeal to the Valuation Tribunal for England (VTE) was received on 30 October 2020 and made on the grounds that the Rateable Value is excessive.

3. Following the challenge, the parties agreed a 7.5% allowance for the disturbance caused by works at 44 Gloucester Avenue. The RV was reduced to £168,000.

4. 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.

5. 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.

6. Mr Cosstick appeared on behalf of the appellant as both 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 Cosstick’s declaration of truth included a statement that he was not instructed under any conditional fee arrangement. 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. 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 its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

8. The issue for the panel to determine was the correct rateable value to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

9. The appellant’s representative, Mr Cosstick, had provided the Tribunal with both parties' submissions.

10. Mr Cosstick was seeking a revised rateable value of £133,000 and relied on the following evidence:

   a) The rent on the appeal property was reviewed from 23 January 2017 to £192,763 with the assumption of a 5 year term. This analyses to approximately £490/m^2. However, given this was almost two years post the antecedent valuation date (AVD) of 1 April 2015, Mr Cosstick confirmed he was placing little weight on this rent. However, in his opinion it does provide an indication that the current value of £500/m^2 is excessive.

   b) Having regard to the comparable evidence in the locality, he suggested a revised rate of £425/m^2 based on the following:

      - 32-34 Jamestown Road, London NW1 7BY (5,688/m^2)
        RV £2,380,000 with an unadjusted rate of £425/m^2.

      - 3rd Floor, Camden Wharf, 28 Jamestown Road NW1 7BY (68/m^2)
        RV £24,750 with an unadjusted rate of £425/m^2.

      - 2nd Floor, Camden Wharf, 28 Jamestown Road NW1 7BY (914/m^2)
        RV £350,000 with an unadjusted rate of £425/m^2.

      - The Iceworks, 34-36 Jamestown Road, NW1 7BY (1781/m^2)
        RV £760,000 with an unadjusted rate of £425/m^2.

      - The Lockhouse, 33B Oval Road NW1 7EA (1506/m^2)
        RV £555,000 with an unadjusted rate of £425/m^2.

11. Mr Cosstick also sought a 5% discount on the main space to reflect the inferior air-handling system. This was given in the 2010 list, but not reflected in the 2017 list. Mr Cosstick referred to the tribunal decision (521023392655/537N10) in respect of the 2010 list:

> "16 On examining this evidence, the panel found that the analysis of the rental evidence basically supported a value of £380m^2. However, Mr Willmore informed the panel that the subject property only had air cooling units and not full air conditioning and an allowance should be made to reflect this. When questioned the VO agreed that without full air conditioning the base rate of £380 per square metre should be adjusted by deducting a 5% allowance since the base rate assumed full air conditioning".

12. The Gnd & Mezz Floors at 42 Gloucester Avenue has been given 5% discount for the same system.

13. To support the rateable value in the 2017 list, the Valuation Officer relied upon the following evidence:

a) The comparable properties put forward by Mr Cosstick are offices in Camden Town which historically have been valued lower than those situated on Gloucester Hill. Mr Cates expressed that in his opinion they are not reliable comparisons as Primrose Hill is viewed to be more upmarket than Camden Town.

b) The only rental information the VO has for the appeal property was an undated letting advert provided in the appellant's submission. It states the property is on the market at £53.50/sq ft. This equates to approximately £575/m^2. The VO asked to see a copy of the lease but the representative was told they do not have permission to share this information.

c) Two comparable properties from nearby offices situated on Primrose Mews have been provided below. They both have rents close to AVD. These are considered to be inferior properties to the appeal property given the difference in age, as well as a lack of air-conditioning and lifts. They reflect that an adopted rate of £425/m^2 is too low.

   - 6 Primrose Mews 1A Sharpleshall Street, London, NW1 8YL (41.5m^2)
     RV £14,750 with an unadjusted rate of £400/m^2.
     Analysed rent £385.22 w.e.f. 1 March 2015

   - 7 Primrose Mews 1A Sharpleshall Street, London, NW1 8YL (41.1m^2)
     RV £14,750 with an unadjusted rate of £400/m^2.
     Analysed rent £404.51 w.e.f. 24 September 2014.

d) Forms of Return were received for the other floors (Gnd & Mezz, and 2nd-3rd Floor) of the appeal property which analyses at a value of £611/m^2. However the rent is three years after the AVD. This supports the current tone of £500/m^2.

Decision and reasons

14. After due consideration of all of the evidence submitted by the parties, the panel determined that the appeal should be allowed in part.

15. In deciding this appeal the panel was governed by rating legislation laid down by Parliament which defines Rateable Value: Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, defined that the Rateable Value of a non-domestic property shall be taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

    i. The first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

ii. 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;

iii. The third assumption is that the tenant undertakes to pay all the 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

16. For the 2017 rating list the 'day by reference to which the determination is to be made' is the AVD of 1 April 2015. Economic factors must be assumed to be as they were at that date for the purposes of estimating Rateable Value. Apart from the statutory assumptions as to reasonable repair, matters affecting the physical state of the hereditament, and the physical state of its locality, are taken to be as they actually were at the "material day". In determining any appeal under the above hypothesis, it is necessary to have regard to matters referred to in Paragraph 2 (7) of Schedule 6 to the Act, those being, broadly, the physical nature of the property and its locality, as they stood at the 'material day'. This date is determined in accordance with the grounds of the proposal giving rise to the appeal. The material day for the purposes of this appeal is 1 April 2017.

17. In order to determine the correctness or otherwise of the assessment of the appeal property, the panel looked at the evidence available.

18. The panel found authoritative guidance in the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* (1976) RA 141, regarding the weighting of evidence. In all cases, the passing rent on the appeal property should be used as the starting point in its consideration of the rateable value. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it.

19. With this in mind, the panel was informed that the rent at the appeal property was a review which came into effect from 23 January 2017, at £192,763 with the assumption of a five year term. Mr Cosstick mentioned that the appellant sought an extension to the lease whilst waiting for new offices to become available. In his opinion the landlord was in a strong position to command a higher rent which equated to an analysed rent above £500/m^2.

20. However, those details could not be confirmed by the Valuation Officer as the lease had not been provided on the grounds that the representative did not have permission to share this information. The panel held that the rent carried very little weight as it was after the AVD of 1 April 2015.

21. The panel referred to comparable evidence put forward by both parties and found that 500/m^2 was not excessive for the appeal property. Mr Cosstick had put forward comparable properties which all reflected a rate of £425/m^2 but these were located in Camden Town, and the panel considered them not to

be comparable with Primrose Hill. From the comparable properties put forward by Mr Cates, it was clear to the panel that £425/m^2 was too low for a modern office building in comparison with the two properties at £400/m^2 that were older, had a lack of air-conditioning and elevators. The panel had noted that Mr Cosstick himself had said that perhaps a value of £425/m^2 was too low. The panel found no evidence for them to adopt a range between £425/m^2 and £500/m^2.

22. It was also noted that the other two floors of the appeal property had a rate of £500/m^2, and although challenges had been submitted, Mr Cosstick confirmed that they were not subject to an appeal. However, the panel did not attach much weight to this, especially as it was noted that the rent used to analyse the figure of £611/m^2 was three years after the AVD.

23. The panel considered the 5% allowance for the interior air conditioning and determined that it should apply to the appeal property for the 2017 list given that nothing had changed. It was noted by the panel that the other floors within the building had been given this allowance, and it therefore seemed an error that it had not been applied to the appeal property. They also received it in the 2010 list. The panel had regard to the 2010 tribunal decision in which the Valuation Officer agreed that without full air conditioning the base rate should be adjusted by deducting a 5% allowance.

24. This equated to a revised base rate of £475/m^2. Therefore the revised valuation was £159,000 RV with effect from 1 April 2017 as follows;

Floor	**Description**	**Area/m2**	**£/m2**	**Value £**
First	Office	170.53	475.00	81,002
First	Office	211.86	475.00	100,634
Total Area:		382.39		
Total:				**181,635**
Adjustments made:				
Works at 44 Gloucester Avenue		7.50%		-13,623
Layout		5.00%		-8,401
				-22,024
			TOTAL:	**159,611**
			SAY:	**159,000**

25. Accordingly, the appeal has been allowed in part.

Order

21. 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 Valuation Officer to alter the appeal property's entry in the 2017 Rating List to £159,000 RV with effect from 1 April 2017.

22. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

23. The ground of appeal, namely that the rating valuation was not reasonable, has been made out. Consequently, the appeal fees paid are to be refunded in full.

Date: 24 February 2021

Appeal number: CHG100120951