THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; studio and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed.

RE: Unit G First Floor, 2 Leswin Place, London, N16 7NJ

APPEAL NUMBER: CHG100123499

BETWEEN:	Katie Scott	Appellant
	and	
	Mr A Ricketts, Valuation Officer	Respondent

PANEL: Mrs B Knight (Senior Member)
Mr J Percival

CLERK: Mrs L Horne

REMOTE HEARING ON: Friday 21 January 2022

APPEARANCES: Ms K Scott, the appellant
Mr S Berkley from Knight Frank, representing the appellant
Mr C Cates, representing the Valuation Officer

Summary of decision

1 Appeal allowed. The Rateable Value (RV) of the appeal property is altered from £17,000 to £10,500 with effect from 26 February 2018.

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 This is a 2017 rating list appeal. Unit G First Floor, 2 Leswin Place, London, N16 7NJ, (the ‘appeal property’) had been entered in the 2017 rating list as Office and premises at a RV of £19,750 with effect from 26 February 2018.

5 The challenge proposal was submitted by Knight Frank on behalf of the appellant, Katie Scott, and was received by the Valuation Officer on 9 September 2019. It sought a reduction in RV from £19,750 to £10,250 with effect from 26 February 2018 on the basis that the property was in use as a workshop and had been incorrectly valued as an office.

6 The Valuation Officer issued a challenge case decision notice on 6 May 2021, which stated that the rating list was unreasonable based upon the evidence and information available. An alteration to £17,000 RV and a change of description to Studio and premises was confirmed with effect from 26 February 2018.

7 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 27 August 2021.

8 Mr Berkley 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), 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 case.

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 it saw fit.

10 The appeal hereditament is a first floor unit located within a mews development constructed in the 1940s. It is a commercial site located in amongst a residential area in Stoke Newington. The present valuation of £17,000 RV is based upon an adopted price of £200 per m^2.

11 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 it being overlooked by the panel.

Issue

12 The issue in dispute was the price per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice, and appellant's challenge submission.

14 Prior to the hearing, Mr Berkley submitted a revised valuation of £10,500 RV, based upon an adjusted price of £119.80 per m^2. This reflected the addition of heating. Mr Cates raised no objection to the revised valuation.

15 The case for the appellant was that the appeal property had previously appeared in the 2017 rating list with the description of Workshop and premises at £10,250 RV. That assessment had been deleted as the previous tenant had used the property as living accommodation (without permission). Mr Berkley disputed the Valuation Officer's approach in valuing the appeal property as a refurbished office space when it entered the list on 26 February 2018. He contended that the works undertaken were works of repair, apart from the addition of heating which he had reflected in his revised valuation.

16 On behalf of the Valuation Officer, Mr Cates submitted that the appeal property had been refurbished to a standard of a basic business unit/studio akin to other refurbished former industrial properties in the locality. He cited rental evidence of comparable properties and the increased rents at 2 Leswin Place post the 2017 refurbishment in support of £200 per m^2 for the appeal property.

Decision and reasons

17 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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.

18 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).

19 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 26 February 2018.

20 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

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 1967 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 differing types of evidence depending on the one hand 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.

21 In the subject appeal, a new lease had been agreed with effect from 1 September 2018 at a rent of £20,000 per annum. This rent analysed at £235.28 per m^2. As outlined above, the starting point is the consideration of

the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements need to be taken into account when deciding the weight to attach to it. As the subject rent had been agreed three years after the AVD, the panel attached little weight to it.

22 The panel turned to the rental evidence from 2 Leswin Place scheduled in the challenge decision:

Address	Total area	Effective from	Analysed rent/m^2
Unit C	80 m^2	14 March 2013 11 March 2020	£193.08 £368.00
Unit B	131 m^2	12 October 2013	£112.22
Unit E	151 m^2	1 January 2015 19 April 2017	£127.73 £227.00
Unit F	95 m^2	1 September 2017	£289.47
Unit G (appeal property)	85 m^2	1 September 2018 1 March 2020	£235.28 £368.00

23 Mr Cates argued that the rents post 2017 refurbishment showed significant increases, and he rejected Mr Berkley's view that this was due to a natural rising market.

24 Mr Berkley highlighted the January 2015 rent in respect of Unit E as being the most relevant evidence in terms of the use, specification, and proximity to AVD. Unit E was located on the ground floor, as opposed to the appeal property which was located on the first floor (without a lift). Mr Cates argued that little weight should be attached to this transaction which was a renewal for a two year term only.

25 The panel found that there was insufficient compelling AVD evidence from within 2 Leswin Place. It was clear that rents had risen post AVD, whether due to refurbishment, a natural rising market, or a combination of both. However, the panel was solely concerned with the level of rent that could have been achieved for the appeal property as at 1 April 2015, taking into account the physical state of the property as at the material date of 26 February 2018.

26 Rental evidence in respect of comparable assessments had been scheduled by the Valuation Officer in support of his adopted price of £200 per m^2:

Address	Total area	Effective from	Analysed rent/m^2
Unit G1-A Ground Floor Stamford Works, Gillett Street, London N16 8JH	161 m^2	1 April 2015	£260.00
Unit 5J 1st Floor, Stamford Works	44.45 m^2	1 April 2015	£224.97
Studio 3 at 32 Indigo Mews, Carysfort Road, N16 9AE	92.45 m^2	1 December 2013	£196.86

27 Mr Cates submitted that Stamford Works was a good comparable located one mile away from the appeal property in Dalston. He described both as being close to mainline stations, local amenities and both areas had undergone a significant period of regeneration prior to the AVD. He described Indigo Mews as a poorer location, some distance from local amenities.

28 Mr Berkley disputed the relevance of the Valuation Officer's rental comparables as he submitted that they were different in character and location. He contended that the best evidence was drawn from the assessments within 2 Leswin Place:

Property	Description	Unadjusted rate	Indicative rate
Unit A, Ground Floor	Store and premises	£234.29	£234.29
Unit B, Ground Floor	Store and premises	£125.00	£125.00
Unit C, Ground and 1st Floor	Store and premises	£137.50	£137.50
Unit D, Ground Floor	Workshop and premises	£125.00	£125.00
Unit E, Ground Floor	Store and premises	£125.00	£125.00
Unit F, 1st Floor	Workshop and premises	£137.50	£119.80
Unit G, 1st Floor (appeal property, prior to challenge)	Office and premises	£235.00	£235.00
Unit H, Ground Floor	Workshop and premises	£137.50	£140.94
Unit HQ, 1st Floor	Workshop and premises	£137.50	£119.80

29 Mr Berkley highlighted that the appeal property was the only unit at 2 Leswin Place to have been valued as an office. Unit A appeared to be valued at the same rate, but was described as a store and premises; he assumed that the rate applied was an error. With the exception of Unit A, the values applied ranged from £119.80 to £140.94 per m^2 which Mr Berkley stated supported his contention that the subject property should be valued as an industrial unit, in line with industrial values.

30 The approach of the Valuation Officer in entering the appeal property into the list as an office was disputed by Mr Berkley. He described the basic fit out as follows:

- A bare, polished concrete floor.
- Plastered and painted walls.
- Exposed timber and steel truss.
- Wall mounted radiators.
- Plug sockets situated within the perimeter skirting.
- Strip lighting suspended from the ceiling.
- Double glazed windows.
- Wooden door opening out onto the courtyard with a protective metal railing.
- Open kitchenette fitted to the rear.
- A single WC.

31 In summary, Mr Berkley submitted that the appeal property provided basic studio space commensurate with the age and use of the building. The property did not benefit from the following features commonly found in an office:

- Fully accessible raised floor;
- Underfloor trunking;
- Air conditioning;
- Suspended ceiling;
- Partitioning, meeting rooms;
- Server room;
- Lift.

32 It appeared to the panel that the Valuation Officer had partly conceded that the appeal property was not in the nature of a traditional office with the above features, given the change of description to Studio and premises. Mr Berkley had referred to the requirement to value having regard to the actual use of the property and the physical nature of the property. The panel upheld his argument that the present use as an artist's studio falls into the wider use class of Workshop and premises.

33 The panel then turned to the issue of the price per m^2 which had been attributed to the appeal property when it re-entered the rating list on 26 February 2018.

34 The Valuation Officer altered the list to include a new entry with the description of Office and premises at a RV of £19,750, based upon an adopted price of £235 per m^2. Following the challenge submission, the Valuation Officer revised the description to Studio and premises and altered the RV to £17,000, based upon an adopted price of £200 per m^2. Mr Cates contended that the appeal property should be valued as a basic office/studio, not a pre-1950s industrial property, following the refurbishment that had taken place in 2017.

35 Mr Berkley referred to the original 2017 list assessment of the appeal property as a Workshop and premises at a RV of £10,250, based upon an unadjusted price of £137.50 per m^2. He argued that there had not been any significant refurbishment works, but rather general works of repair, with the exception of the addition of heating.

36 With reference to the emails between the parties included in the bundle, it seemed to the panel that the Valuation Officer had assumed a greater level of refurbishment than had actually taken place, based upon information contained within letting particulars. Those particulars had referred to a new roof, however, Mr Berkley received confirmation from the landlord that no major structural improvements had been made to the block containing units E, F and G aside from decoration and lighting and general repairs to keep the property weather-proof.

37 The panel upheld Mr Berkley's assertion that works of decoration, and replacement of windows and lights were works of repair. Under the rating hypothesis, the property was assumed to be in a reasonable state of repair. The addition of heating was an improvement, and therefore the panel was in agreement that this should be reflected in the assessment.

38 It was significant to the panel that the most similar unit within 2 Leswin Place, Unit F, situated adjacent to the appeal property had undergone similar repair works at the same time. The only difference was that Unit F benefitted from an air conditioning cassette. Despite the Valuation Officer being aware of the refurbishment, there had been no action taken to increase the price per m^2 adopted for Unit F, or indeed any of the other units at 2 Leswin Place.

39 Ultimately the panel found that the Valuation Officer had attached too much weight to the evidence of increased rents post AVD, which was of more relevance to the next rating list. It was significant that Mr Cates had referred the issue to the revaluation team, but had not sought to alter the 2017 rating list for any of the other units at 2 Leswin Place. Indeed there had been a number of Valuation Office caseworkers involved with this particular appeal, and none had sought to review the other assessments within 2 Leswin Place. The panel noted the fourth proposition in *Lotus and Delta*:

> 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.**

40 The panel rejected the Valuation Officer’s approach in attaching more weight to the evidence of comparable assessments at Stamford Works and Indigo Mews. The panel decided that more weight should be attached to the evidence of comparable assessments within the subject development which were valued at a lower price per m^2.

41 In consideration of the evidence and arguments raised, the panel determined that the valuation of the appeal property at £17,000 RV was unreasonable. The panel was satisfied that Mr Berkley had demonstrated that an unadjusted price of £137.50 per m^2 was consistent with comparable units at 2 Leswin Place.

42 A revised valuation of £10,500 RV was determined by the panel, based upon Mr Berkley’s proposed adjusted price of £119.80 per m^2. The appeal is therefore allowed, and the appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

43 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £10,500 with effect from 26 February 2018.

Date: 10 February 2022

Appeal Number: CHG100123499