THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *Hairdressing salon and premises; main space price; appeal dismissed.*

RE: 6 Lansdowne Mews, London W11 3BH

APPEAL NUMBER: CHG100135819

BETWEEN:	Hand Made Hair Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs A Fielder (Senior Member)
Mr J Rogers

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 25 January 2022

APPEARANCES: Mr R Shepherd from Altus Group (Appellant's representative);
Mr S Carter from Altus Group (Expert witness);
Mr C Cates (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The panel concluded that the main space price of £500/m^2 and the resultant rateable value of £155,000 was correct.

Introduction

2. This appeal has been brought in respect of the following: 6 Lansdowne Mews, London W11 3BH which was entered in the 2017 rating list at rateable value £155,000 effective from 1 April 2017. It had originally been described as an office, however, during the discussions, the VO agreed to change the description to 'Hairdressing Salon and premises'.

3. The appeal property is a three storey property consisting of a hair salon on the ground and first floors with ancillary office space on the second floor. It had an area of 313.40m^2. It was a mews style former residential property located within the Royal Borough of Kensington and Chelsea close to Notting Hill.

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 position.

6. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal to this Tribunal was made because Mr Carter disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

8. The appeal to this Tribunal was made on 25 August 2021 following the Valuation Officer's (VO) Decision Notice of 28 April 2021 in respect of the appeal property.

9. There was a preliminary issue in that Mr Carter objected to the LO's inclusion of a comparable property that had not formed part of the VO's decision notice. He accepted that the evidence formed part of Altus' evidence bundle when the appeal was submitted to the Tribunal, however, Mr Carter explained that the comparable property formed part of the subsequent decisions the VO had with a different member of Altus' staff, after the VO had issued its decision notice. It was only when he was going through the evidence bundle the day before the hearing that he realised it had been included as part of the VO's Regulation 17 evidence. Mr Cates accepted that he should have made a formal application to the Tribunal to include the evidence.

10. The panel therefore considered this matter in light of the Upper Tribunal decision in *Simpsons Malt Ltd and Other v Jones* (VO) UKUT [2017] 460 and had regard to *Denton v TH White Ltd* [2014] 1 WLR 3926 which dealt with the non-compliance to directions. This laid out the three stage test which the panel had to consider.

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Stage 1 – If panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

Stage 3 - The panel must consider all the circumstances of the case including:

a) the need for litigation to be conducted efficiently and at a proportionate cost;

b) a failure to grant a sanction may leave an inaccuracy being uncorrected; and

c) the need to enforce compliance with rules, directions and orders (para. 55); However, such matters must never be allowed to assume a greater importance than doing justice (para. 56).

11. The panel considered these three stages in light of the events.

12. The panel found that the breach was significant as Mr Carter was prejudiced as it prevented him from examining the Forms of Return (FOR) and verifying the rental evidence for that property. Furthermore, Mr Cates should have been aware of the correct process for including additional evidence and the panel decided to exclude that part of the evidence bundle.

13. Mr Cates then asked for an adjournment so that he could make a formal application to the Tribunal to include the new evidence. The panel considered the adjournment request and decided to proceed with the hearing of the substantive issues. The Tribunal's consolidated practice statement states that the overriding objective of the Tribunal is to deal with cases fairly and justly. In doing so it will amongst other things:

    a) deal with appeals proportionately to the importance of the case, the complexity of the issues, the costs of the case and the resources of the parties including the Tribunal;
    b) avoid unnecessary formality and being flexible in the proceedings;
    c) deal with the parties fairly allowing them to participate so far as is practical in the proceedings;
    d) use the special expertise of the Tribunal effectively; and
    e) avoid delay, so far as it is compatible with the proper consideration of the issues.

14. The panel concluded that the appeal was not complex and the clerk had already allocated time for the appeal to be heard. Given the above objectives the panel decided to hear the appeal.

15. Mr Carter had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson*

(VO) [2018] UKUT 0253 (LC), Mr Carter's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

16. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

17. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

18. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

19. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, external and internal photographs and layout plans of the appeal property, and details and photographs of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, copies of correspondence that had passed between the parties, a copy of a lease between John Frieda and the appellant company dated 6 March 2018, invoice for one month's rent dated 31 December 2020 and extracts of a number of judgments such as *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA.

20. The appeal property was held on a 10 year lease which commenced on 1 August 2014 at a rent of £109,823.00 per year, subject to five yearly rent reviews although the rent did not increase at the last rent review. The rent had been analysed to £354.00/m^2.

21. Mr Shepherd argued that the 2014 rent was agreed only eight months before the AVD and therefore it was strong evidence that the RV was incorrect and to support his argument he provided the following assessment in support of the main space price of £354/m^2:

Property	Analysed rent	Unadjusted main space price	Rateable value
9B Ladbroke Grove	£469.85/m^2	£500/m^2	£63,500

22. He argued that some of the VO's comparable properties were not comparable in terms of location as 10A Ledbury Mews North was a 15 minute walk from the appeal property and 10 Lambton Place was nearly half the size of the appeal property. Part Ground and First Floors, 5-7 Hillgate Street and First

Floor, 86-87 Campden Street, he considered that the rent was too far from the AVD to be reliable.

23. Although 9B Ladbroke Grove was the most comparable property, and the rent analysed at £469.85/m^2, he argued that the appeal property was not as valuable as it was a mews style property and there was no passing trade. On the outside of the appeal property it did not state or look like it was a hairdressing saloon. Furthermore all of the comparable properties were located in Notting Hill which he argued was a more valuable location.

24. Based on the above, he was seeking a rateable value of £110,000 based on an unadjusted main space price of £355/m^2 and Mr Shepherd asked the panel to allow the appeal.

25. Mr Cates was representing the VOA as advocate.

26. He contended that the VO held two forms of return (FOR) dated 1 September 2013 stating that the tenant was Atelier Create Ltd for a ten year term at a rent of £250,000 per year which analysed to £805.85/m^2. On the second FOR, for the appellant company, it was stated that they had carried out refurbishment works amounting to £210,339. Whilst there was no dispute over the analysis of the rent, the VO did not consider the lease to be reliable as it referred to rent effective from August 2014 and he believed Atelier Create Ltd and the appellant company were connected parties as they shared directors.

27. He also suggested that as the appeal property was owned by John Frieda and inferred that the appellant knew him or was assisting him by accepting a lower rent for the appeal property and that it was not an open market transaction.

28. Due to these inconsistencies, Mr Cates suggested that less weight should be applied to the rent for the appeal property and preferring to use the basket of rents in the locality, he had provided the following comparable properties:

Property	Analysed rent	Unadjusted main space price	Rateable value
10A Ledbury Mews North	£578.19/m^2	£510/m^2	£83,000
10 Lambton Place	455.14/m^2	£510/m^2	£81,000
9B Ladbroke Grove	£469.85/m^2	£500/m^2	£63,500
57 Portobello Road	£349.52/m^2	£500/m^2	£40,750
3 Pembridge Mews	£327.23/m^2	£500/m^2	£38,000
Part Ground and First Floors, 5-7 Hillgate Street	£504.53/m^2	£450/m^2	£36,750
First Floor, 86-87 Campden Street	£504.53/m^2	450/m^2	£49,250

29. In its decision notice, the VO suggested that less weight should be applied to the rent for 57 Portobello Road as the ratepayer had been in situ since 1969 and 3 Pembridge Mews as the ratepayer had been in situ since 2003. The leases for Part Ground and First Floors, 5-7 Hillgate Street and First Floor, 86-87 Campden Street commenced on June and July 2016 respectively, which the VO considered were too far from the AVD to be reliable. It also rejected Mr Carter's comparable property of 9B Ladbroke Grove as the latest rent was a rent review.

30. However, even though the tenancies were either too far from the AVD or did not fulfil the rating hypothesis, as a new tenant coming fresh to the scene, Mr Cates contended that the basket of rental evidence suggested that the unadjusted rate of £500/m^2 was correct and the resultant RV of £155,000 was reasonable and he asked the panel to dismiss the appeal.

Decision and reasons

31. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

32. There is another important date for rating appeals and that is known as the 'material day.' This is the date on which the physical factors have to be taken into account. In this appeal the material day was 1 April 2017.

33. The term 'rateable value' is defined in 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;
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> 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; and
>
> 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".

34. The Lands Tribunal judgment in *Lotus and Delta v Culverwell and Leicester City Council* provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on

other comparable properties may also be relevant. All of the evidence can then be weighed.

35. Firstly, the panel considered the rent for the appeal property. Although there was a tenant/landlord relationship, it was clear that Mr Wood, one of the directors of Hand Made Hair Ltd and Atelier Create Ltd, the previous tenant had the opportunity to negotiate a new tenancy for Hand Made Hair Ltd without the need for it to be advertised for rent on an open market. No evidence was presented by the appellant to show that the lease was an open market transaction, for example, no lettings particulars had been produced. The rating hypothesis is for a new tenant coming fresh to the scene and there were doubts that this was the situation for the appellant company. Due to these doubts about the reliability of the rent for the appeal property, the panel then tested the rent with the other comparable properties.

36. The only other comparable property presented by Mr Shepherd was 9 Ladbroke Grove. The rent was £60,000 and had been analysed at £469.85/m^2. This property was half the size of the appeal property and did suggest that the 2014 rent for the appeal property was correct. The VO had valued the appeal property at £500/m^2.

37. Mr Shepherd had argued that the analysed rent could then be adjusted to reflect the lower value of the locality of the appeal property and the disadvantages of it being a mews property and the lack of passing trade although no evidence was presented to the panel to prove that these disadvantages would be enough to reduce the value of the appeal property down to £355/m^2.

38. Mr Cates had contended that as the property has now been deleted from the valuation list this suggested to the panel that a lower rent may have been agreed with the tenant knowing this.

39. The panel then considered the VO's comparable properties. The rents given ranged from £25,000 to £98,500 per year. The two rents given for the appeal property were £250,000 in 2013 and £109,8256 in 2014.

40. The panel noted that all of the VO's comparable properties were smaller than the appeal property or they were lease renewals and therefore applied less weight to the majority of them. However, it noted that the rent for First Floor, 86-87 Campden Street was £65,000. This was a new letting with a new tenant coming fresh to the scene although it was just over a year from the AVD.

41. It also found the most comparable properties to be 10A Ledbury Mews North and 10 Lambton Place which was over three floors and therefore similar in construction to the appeal property, although they were half the size. From the photographs they did appear to be in comparable mews type locations. The unadjusted rate of these were £578.94/m^2 and £455.14/m^2 respectively. 10 Lambton Place was a new letting in November 2010. Following a rent review in August 2015 and the rent was £72,500. 10A Ledbury Mews North was a new letting in January 2015 and was let at a rent of £98,500 per year. This was close to the AVD and fitted the rating hypothesis. These rents cast

doubt on the reliability of the rent for the appeal property as they were significantly more than the appeal property.

42. Mr Shepherd had suggested that 10A Ledbury Mews North was not comparable in terms of location. He provided no evidence to show how the rents for that particular locality differed. He had also analysed the rent for 10 Lambton Place to £455.14/m^2 which supported his argument for a reduction to the RV for the appeal property. The panel noted that these properties were in postcode W11 2 which was not in the same VO scheme as the appeal property which suggested that they were not in the same locality.

43. Given all of the above, the panel was disappointed that there was very little convincing evidence to support either parties' arguments. However, it noted that the appeal property was in valuation scheme 335357 which ranged in values between £500/m^2 to £550/m^2 for properties within the W11 3 and W2 4 postcode areas for offices and properties occupied for alternative uses. These values would have been obtained from analysis of the basket of rents in those postcode areas.

44. No arguments or evidence was presented by Mr Shepherd to show that the appeal property should not be placed in that scheme. Whilst evidence had been provided to show that some of the analysed rents were less than the scheme, this was not found to be compelling. It is for the appellant to prove his case and the panel was not persuaded by Mr Shepherd's arguments and it dismissed the appeal.

Date: 7 February 2022

Appeal number: CHG100135819