THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; self-catering holiday unit and premises; rent passing on the subject property; rental analysis and assessments of comparable properties; correct price per single bed space; end allowance sought for layout disabilities; it was determined that the current assessment was not unreasonable, but an end allowance should be adopted; appeal allowed in part and appeal dismissed.

RE: 32-38 Lexham Gardens, London W8 5JE

APPEAL NO: CHG100151518 and CHG100151517

BETWEEN: Lexham Properties Ltd Appellant

and

Ms D Bunyan (Valuation Officer) Respondent

PANEL: Mr F J Stuart (Senior Member)
Mr P Phelps

CLERK: Mrs H Beresford

REMOTE HEARING: 12 April 2022

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors (on behalf of the Appellant)
Mr A Byfield (Respondent's representative)

Summary of decision

1. Appeal CHG100151517 was allowed in part; the subject property's assessment was reduced to £855,000 Rateable Value (RV) with effect from 1 April 2017 to reflect poor connectivity. Appeal CHG100151518 was dismissed; the subject property's assessment remained unaltered at £550,000 RV with effect from 1 February 2018, as it was not considered unreasonable.

Introduction

2. This appeal has been brought in respect of the following: 32-38 Lexham Gardens, London W8 5JE, which was entered in the 2017 Rating List as self-catering holiday unit and premises at £950,000 RV, effective from 1 April 2017.

3. The appellant's Challenges to the Valuation Officer (VO) were made on 19 December 2019. The appeals to this Tribunal were made on 15 November 2021, following the VO's Decision Notices of 16 July 2021, in respect of the subject property (hereditament). The first appeal is a compiled list appeal, so the material day is 1 April 2017.

4. The second appeal is a material change of circumstance (MCC), so the material date is 24 September 2019, the date on which the VO received a confirmation under regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as stated in an acknowledgement served by the VO under regulation 4D(1) of those Regulations). The VO agreed at Challenge stage that half of the appeal property could not be occupied due to works being undertaken to make good the water damage which had been caused to one side of the building. As such, the area identified was reduced to an RV of nil. The only issue before the tribunal was the RV to be adopted for the remaining space with effect from 1 February 2018. The VO had adopted an RV of £550,000 from this date.

5. The subject property is a Victorian Stucco fronted building which consist of two large adjacent former residential buildings that is now operating as serviced apartments called 'The Lexham'. There are thirty serviced apartments, ten of which have one bedroom and twenty have two bedrooms. Each apartment has its own kitchen and en-suite facilities.

6. The subject property had been valued as at 1 April 2017 on the basis of £8,000 per single bed space. The property had 90 single bed spaces. Mr Bacon had originally argued for a reduction to £3,500 per single bed space, which amounted to an RV of £310,000 with effect from 1 April 2017 reduced to £183,000 with effect from 1 February 2018.

7. Mr Bacon was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. Mr Bacon explained that he was representing the appellant in this appeal on a conditional fee basis. However, he declared that he understood and accepted that his duty was 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 supported his client's case.

9. 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). I therefore considered the "expert" evidence and attached such weight to it as it 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 when coming to its 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. There were two issues in dispute, namely:

i) the correct rate to be applied to the subject property's assessment; and
ii) whether or not an end allowance was warranted to reflect poor layout.

Evidence and submissions

12. The panel had been provided with a bundle of evidence, which comprised the challenge submission, VO Decision notice and the representative's appeal submission. The panel had also been provided with alternative valuations for the comparable properties based on fair maintainable trade (FMT) which had been submitted by Mr Byfield prior to the hearing.

13. Having regard to the comparable assessment he had cited, 6 Knaresborough Place, London SW5 0TG, and its valuation calculation based on FMT referred to by Mr Byfield; Mr Bacon had altered his stance prior to the hearing and now sought an RV of £166,800 with effect from 1 April 2017 and £83,400 with effect from 1 February 2018. This was based on the following calculation of value per double bed unit (DBU). The subject property had 80 DBU's.

FMT Knaresborough Place £400,000/24 DBU's = £16,667/DBU
This was applied to Lexham Gardens 80 x £16,667 = £1,333,333
This was adjusted by 12.51% to give an RV of £166,800.

14. Mr Byfield argued that 6 Knaresborough Place was not comparable to the subject property as it was not of the same quality and comprised 16 studios available to let whilst the subject comprised superior quality one and two bedroom apartments, in effect he argued that Mr Bacon had not compared like with like.

15. Mr Byfield had based his valuation of the appeal property on the rent passing on the subject property as no FMT was available. He argued that there had been a 2017 rent on the property of £1,200,000 which had been reduced to £600,000 to account for the damage to the property. In taking this approach Mr Byfield referred to the judgement in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. He had also referred to three comparable properties which he believed supported his case. He stated that he had provided the alternative valuations prior to the hearing to further support his case, however he believed the property should be valued on a single bed space (SBS) basis of £10,000/SBS using the various relativities as outlined in the evidence bundle.

16. Mr Byfield had conceded that an end allowance of 5% should be adopted for poor interconnection between what had previously been two separate dwellings, but this was only available for the period when both halves of the subject property were in use because the issue ceased to exist once half the property was uninhabitable.

17. Accordingly, Mr Byfield proposed an assessment of £855,000 RV with effect from 1 April 2017, and £555,000 with effect from 1 February 2018.

Decision and reasons

18. 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".

19. 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).

20. 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 appeals, the material day is 1 April 2017 for the compiled list appeal and 24 September 2019 for the MCC appeal.

21. Mr Byfield had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* 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.

22. Firstly, the panel addressed the rent. Whilst no lease had been provided it noted that in an email conversation referred to by Mr Byfield, Harry Lee of Lexham International Limited had been asked whether the 2017 rent had been £1,200,000 Mr Lee had neither confirmed or denied this but had responded "We had argued for a rental reduction to £600,000 per annum due to the closure of half of the 30 apartments due to the damages to the apartments which rendered them uninhabitable". The panel noted that on the form of return dated 31 March 2022 it stated that the rent paid for the year ending 31 July 2018 was £597,134. The panel found that this information corroborated Mr Byfield's assertion, however the panel were aware that this rent was somewhat remote from the AVD and therefore only moderate weight could be attached to it.

23. In support of his proposed valuations, Mr Byfield had referred the panel to three comparable properties. The panel noted that whilst 45-47, Beaufort Gardens, London SW3 1PN, and Flats 1 to 12 at 5, Maddox Street, London, W1S 2QD, were serviced apartments like the subject property, it found that these two properties were too far away from the subject property to be useful. With respect to 36-37, Kensington Gardens Square, London W2 4BQ the panel found that as well as being somewhat remote from the subject property, this property comprised studios rather than serviced apartments. Therefore, no significant weight was attached to these comparable properties.

24. Mr Bacon had cited one comparator, which was 6 Knaresborough Place, London SW5 0TG. This property was situated at close proximity to the subject property and had an RV of £74,000, it comprised sixteen studio apartments available to let. The panel noted that the subject property comprised twenty, two-bedroom apartments and ten, one-bedroom apartments. As such the panel did not consider this property to be directly comparable to

Lexham Gardens. It also noted that there were significant differences in the style and quality of the accommodation on offer at this property. The panel was therefore unable to attach any significant weight to this evidence.

25. The panel was aware that no evidence of FMT was available at AVD for the subject property. Prior to the hearing Mr Byfield had provided alternative valuations based on FMT and revenue per accommodation in respect of all four comparable properties which had been cited in order to estimate the FMT and RV for the subject property. In light of this information, Mr Bacon argued that due to the lack of reliable rental evidence for the appeal property the valuation should be made based on, or having regard to, FMT and in particular, the FMT for Knaresborough Pace as he believed this was the only useful comparator which supported an RV of £166,800 with effect from 1 April 2017 and £83,400 with effect from 1 February 2018. The panel were not persuaded by this argument it found the valuations to be heavy on analysis and not supported by any substantive evidence. Furthermore, as the comparable properties cited had not been considered by the panel to be particularly helpful, the analysis provided was of little assistance.

26. The panel therefore turned to the judgement in *Lotus and Delta v Culverwell (VO) and Leicester City Council* and found the rental evidence to be the starting point in ascertaining the valuation.

27. In appeals of this nature, the legal burden of proof rests on the appellant to show that the current RV is incorrect. Considering the evidence before it and the parties' respective evidential burdens in this appeal, the lack of supporting evidence was considered by the Tribunal to be significant and ultimately determinative; Mr Bacon had not produced convincing or credible evidence. Unfortunately, the panel was unable to accept his argument that the RV of the subject property should be reduced, as he had failed to present sufficient evidence to support his proposed RV.

28. The 2017 compiled list appeal was allowed in as so far as it had been conceded by the VO, and a 5% end allowance was adopted for poor interconnection between the two former dwellings for the period up to 1 February 2018, when half of the property became uninhabitable and was given a nil valuation for that half.

Valuation subtotal £900,000

no interconnection – 5% £45,000

= RV £855,000

29. Accordingly, the panel determined that an assessment of £855,000 for the 2017 compiled list was not unreasonable, this appeal was therefore allowed in part. The MCC appeal was dismissed and an RV of £555,000 was adopted.

Order - Appeal CHG100151517

30. 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 £855,000 with effect from 1 April 2017.

(If the appeal was successful (either in part or full) 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: 28 April 2022

Appeal Numbers: CHG100151518 and CHG100151517