THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; school and premises; accuracy of rateable value; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed.

RE: 1-2 Bear Gardens, London SE1 9ED

APPEAL NUMBER: CHG100172397

BETWEEN:	Bell Educational Services Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr D Greensmith (Presiding Senior Member)
Miss L Moses (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 22 November 2022

APPEARANCES: Mr L Hatchwell from Colliers International (on behalf of the Appellant)
Mr R Abiodun (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed. The current entry in the Rating List for 1-2 Bear Gardens, London SE1 9ED (subject property) is to be reduced to £60,500 rateable value (RV) with effect from 6 March 2018.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 29 February 2020, in respect of the subject property. The challenge was in respect of the entry in the rating list at £139,000 RV effective from 6 April 2018. The appellant sought a revised assessment of £60,500 RV with effect from 6 March 2018. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 11 August 2021. The appellant made an appeal to this Tribunal against the decision notice which was received on 10 December 2021, on the grounds that the existing RV was not reasonable and the effective date was incorrect.

3. Mr Hatchwell 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 Hatchwell stated that he was instructed under a 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 his client's case.

4. The subject property is a school and premises located in a nine storey building consisting mainly of an aparthotel. It has its original façade but is essentially a new structure. The subject property is located on the ground and lower ground floors and has its own entrance and is self-contained. The practical completion date is 6 March 2018 after which there was a period when fitting out works were completed and the school was occupied from 6 April 2018.

5. This Tribunal decision document is not and does not purport to be a verbatim record of 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 item of evidence, should not be construed as it having been overlooked.

Issue

6. The issue between the parties is the RV of the appeal property specifically the method of valuation and the effective date.

Evidence and submissions

7. Mr Hatchwell submitted a bundle of evidence which included details of the appeal property and comparable properties, the issues in dispute, photographs and a skeleton argument including legislation and case law.

8. With reference to his comparable properties and the subject property he asked the panel to confirm a revised rateable value of £60,500 from 6 March 2018.

9. Mr Abiodun referred the panel to the challenge application and decision.

10. In consideration of the comparable properties admitted into evidence, Mr Abiodun asked the tribunal to confirm the RV of £139,000 with effect from 6 April 2018.

Decision and reasons

11. 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 to 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, paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

12. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

- Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

- 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
section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

- 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.

- 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 be properly be referred to as giving an indication of that opinion.

- In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to 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.

- In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

13. Mr Hatchwell drew the panel's attention to the effective date of 6 April 2018 which the VO stated was the date given to him by Mr Hatchwell. He submitted that the relevant date was 6 March 2018 as the date of the material change in circumstances occurred on that date. The 6

April 2018 was the date the subject property was open to students but the completion date, with the exception of non-rateable items such as telephone wires and IT equipment was 6 March 2018. This, he submitted, determined that the correct date the subject property should be entered into the list as a school was 6 March 2018.

14. He referred the panel to the comparable properties which were also schools or places of higher education:

    - Londinium School of English which is on the first floor of Trident Life House where the base price was £320/m^2 after an end allowance of 20% for planning restrictions.

    - EF Language School 74 Roupell Street which was valued based on the contractors method and had a base price of £165/m^2 giving an RV of £190,000.

    - 80 Kennington Road which is a sixth form college although listed as "medical and dental school and premises" is smaller than the subject property. This was also valued using the contractors method where the base rate of £200/m^2 was adopted giving an RV of £66,334 with an ITMS of 339.4m^2.

15. Mr Hatchwell submitted that the majority of public and independent schools were assessed using the contractors method and so the subject property being a 'school and premises' should also have the contractors method applied to it. The base rate of £220/m^2 is supported by these comparable properties.

16. He explained to the panel that the VO had sought to use the rental evidence of offices in the vicinity of the subject property. The subject property had a planning use of D1 and this Mr Hatchwell explained did not include general offices and so it should not be valued using rents on a totally different type of property. Although D1 was a wide category it only included ancillary offices and planning use would not allow the use of the subject property for offices without a change in use application being approved.

17. If empty, the subject property would still be a school and any bidders for the property would be those looking to use it as a school and not as the VO argued as a potential office. In the case of *Lotus and Delta* the judge found that the use of other comparable properties was only helpful when the use of the other property was closely matched to the subject property. The use of offices as comparable properties was not helpful in assessing the RV for the subject property.

18. Mr Hatchwell submitted that the rent on the subject property was fixed 29 January 2017 at £200,000 pa but with a rent free period until 13 October 2018. The rent is to be reviewed every five years until the end of the term in November 2032 and the reviews are to be indexed to the RPI subject to a maximum increase of 5% and a minimum of 2%. Taking into account the fitting out costs borne by the appellant being £743,905 this would lead to an adjusted rent of between £274,299 and £269,471 depending on the rent reviews. This rent, in his opinion, was surprisingly high and it does not represent the likely rent payable at the AVD.

19. The panel was aware that the rent was not in line with the rating hypothesis being set 2 years and 8 months after the AVD and was therefore not of any assistance in determining the RV. The panel noted Mr Hatchwell's reference to Ryde on Rating in which it states that any rent set post AVD was only admissible to prove or otherwise the trend of rents. In this case the VO was seeking to rely on the rent as the main evidence of value.

20. He argued that the measurement of the subject property would depend on which method of valuing was adopted as if the rental method or any other than the contractors method were used then it would be based on the net internal area (NIA). As the VO was making comparisons with other office buildings then the toilets are excluded from the NIA and so should be excluded from the main space area for the subject property. It would also exclude stairwells, lifts entrance halls, stairs, landings and balconies used in common or for the purposes of essential access. In the case of the subject property that would mean excluding a portion of the ground floor area leading to the stairs and the central corridor. On the lower ground floor the area of the landing, circulation area and the stairwell which would also need to be excluded.

21. Mr Hatchwell submitted that the 2017 rating list entry for the appeal property calculated using the contractors method should be, as quoted below:

> **"Stage 1** of the Contractor's Basis proceeds by applying the cost per m^2 (£1,766) recommended in the VOA Practice Note to the total GIA: 449.51 m^2 @ £1,766 per m^2 = £793,835. This basic cost per m^2 excludes external works. In this instance, there are no external works other than service connections, so I add the minimum 2% recommended in the VOA Practice Note. This increases the cost to £809,711. Cost varies with location, and the basic cost represents an average across the UK. Construction in the London Borough of Southwark is more expensive than average, and the VOA Practice Note recommends an uplift of 17%. This further increases the cost to £947,362. This cost requires adjustment for contract size. The VOA's Cost Guide states that "the contract size adjustment should be made using the total ERC, excluding the land element. (I.e. after adjustment for location but before the addition for fees)". The VOA's 2017 Practice Note incorrectly states that the addition for external works should not be taken into account; I reject that and follow the practice recommended in the Cost Guide which agrees with previous practice in the VOA's recommended approach in other Contractor's Basis classes. I therefore compute the contract size adjustment for £947,362 on the scale applied by the VOA. It indicates an uplift of 4.42%. This further increases the cost to £989,486. The final element in arriving at the estimated replacement cost is the addition for professional fees. The VOA Practice Note refers to a scale of additions set out in the VOA Cost Guide, which recommends an addition of 11% at this level of cost. I therefore add 11% to the cost. This gives a total estimated replacement cost of £1,098,063.41."
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> **"Stage 2** of the Contractor's basis involves adjustment for age and obsolescence, but the subject hereditament is new and suffers from no obsolescence. No adjustment is required 42."
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> **"Stage 3** of the Contractor's basis is where land value is brought into account. The VOA's 2017 Practice Note for Colleges of Further Education recommends an addition of 25.5% to ERC for "Central London South". I therefore add 25.5%. The total estimated replacement cost for buildings and land is therefore £1,378,069.43."
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> **"Stage 4** is the application of the statutory decapitalisation rate. For educational hereditaments as defined, a rate of 2.6% is prescribed, but the Regulation which prescribes the rate applies for this specific purpose a very specific definition of "educational hereditament" which would only encompass the subject hereditament if it were to be operated other than for profit. It does not meet that requirement and therefore the decapitalisation rate prescribed for other hereditaments applies here. That rate is 4.4%. Applying this to the total ERC results in a value of £60,635.44."

"Stage 5 is an opportunity to "stand back and look" and to make any final adjustment. In this instance I see no need to adjust the resulting valuation, other than for standard rounding which reduces the value to £60,500.45."

22. Mr Hatchwell observed that this valuation is very close to the result of applying the maximum price per m^2 in Scheme 388574. Indeed if the price per m^2 in that scheme were reduced by about 12% below the scheme maximum of £250, to £220 per m^2, he stated that the result would exactly match his Contractor's Basis valuation, £60,500.46. Mr Hatchwell therefore submitted that the RV on the subject property should be reduced to £60,500.

23. Mr Abiodun drew the panel's attention to the rent passing on the appeal property. He argued that in *Lotus and Delta* the first type of evidence to be considered is the rent passing on the property. In the case of the subject property, he conceded that the rent was post AVD but the rent passing was £270,000 pa as compared to the proposed RV of £60,500 which he submitted did not support the reduced RV. He further submitted that there were other comparable properties with interpretable rents which could be used to determine the RV on the subject property as demonstrated by his comparable properties.

24. The panel was aware that the rent of the subject property was in the case of *Lotus and Delta* determined to be the first evidence considered, but if adaptations were required to allow the rent to comply with the rating hypothesis, the rent was of limited relevance when determining an RV.

25. Mr Abiodun contended that the next best evidence as laid out in *Lotus and Delta* were the rents of comparable properties close to the AVD. He submitted that the contractors method was the method of last resort and that rental evidence, if available, was more reliable as it was determined in the open market. He further submitted that 74 Roupell Street and 80 Kennington Road were not within the locality of the subject property and that Mr Hatchwell had provided no evidence that the distance between them did not create different rental markets.

26. He argued that the subject property had D1 planning use and so included offices therefore using rental evidence for offices in the vicinity of the subject property was appropriate. He argued that the subject property was acquired as a 'shell' unit and was not a purpose built school and so could easily be used as office space. This meant that, in his opinion, it was appropriate to use rentals on office buildings in the vicinity as comparable properties for the subject property.

27. The panel noted that an RV is derived from a basket of evidence with a hierarchy set out in *Lotus and Delta.* The valuation of the subject property was based on the first two types of evidence being the passing rent although weight must be attached to the fact that rent does not comply with the rating hypothesis and then the rent of other similar properties which were offices when the subject property was a school.

28. Mr Abiodun drew the panel's attention to the following comparable properties and their rent:

Address	Description	Total sig area m^2	Effective date of rent	Rent	Asst unit Value (£ per m^2)
3rd Flr, 118 Southwark Street	Offices	370.29	15 Nov 2013	£311,250	£475

2nd Flr, 118 Southwark Street	Office	122.81	1 May 2014	£60,812	£475
1st Flr, 118 Southwark Street	Office	122.81	16 Jun 2014	£62,134	£475
Gnd Flr, 118 Southwark Street	Offices and premises	64.73	1 Jul 2015	£45,000	£475

29. Mr Abiodun submitted that the above comparable properties all had rental evidence in the form of new leases or rent reviews and which were close to the AVD. The base rate adopted was £475/m^2 which supported the appeal property's base rate of £475/m^2.

30. The panel noted that these comparable properties were in the vicinity of the subject property although they were offices not schools. The panel therefore did not attach much weight to these comparable properties.

31. The panel considered the comparable properties provided by both sides. The panel found that the RV for the subject property was not reasonable and should have been established using the contractors method. The panel put little weight on the VO's comparable rental evidence as they were all offices. Vacant and to let the subject property would be a school and not offices applying the rebus sic stantibus principle.

32. The panel found the base price to be £220/m^2 and therefore the RV of the subject property to be £60,500 as laid out in paragraph 21 above.

33. The ratepayer is entitled to a refund in full of the appeal fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

34. The appeal is therefore allowed.

Order

35. As a consequence of the above decision, the VO is ordered to amend the RV of the subject property to be £60,500 with effect from 6 March 2018 within two weeks of the date of this order.

Date: 16 December 2022

Appeal number: CHG100172397

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.