THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: 5th Flr Barnards Inn, 86 Fetter Lane London EC4A 1EQ

APPEAL NUMBER: CHG100195687

BETWEEN:	Veale Wasbrough Vizards LLP	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Ms R Sharma (Presiding Senior Member)
Mrs MJ Cole (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 28 July 2023

APPEARANCES: Mr V Newbury from CBRE (on behalf of the appellant)
Mr C Cates (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed. The rateable value (RV) of 5th Flr Barnards Inn, 86 Fetter Lane London EC4A 1EQ (subject property) is reduced from £355,000 to £273,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal in respect of the subject property which arises from a challenge made by the appellant's representative on 27 April 2020. The challenge was in

respect of the entry in the rating list at £355,000 RV as ‘office and premises’ effective from 1 April 2017. The appellant sought a revised assessment of £320,000 RV based on a tone of £350/m^2 and an end allowance of 15% due to construction work being carried out on the next-door building. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was well founded and granted an end allowance of 10% as opposed to the appellants submission for 15% and not well founded in relation to the tone applied and a decision notice confirming an RV of £320,000 was issued on 18 October 2021.

3. Mr Newbury 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 Newbury 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 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.

5. The subject property comprises an office and premises within a seven storey 1990’s office building close to Holborn in central London with a total area of 920.88m^2.

6. This hearing was held remotely via Microsoft Teams.

7. This document is not and does not purport to be a full verbatim record of proceedings.

Issues

8. The first issue in dispute was the basic price to be adopted for the subject property which the VO submitted was not unreasonable at £387.50/m^2. The appellant’s agent submitted that a reasonable basic price was £350/m^2. The second issue was the end allowance awarded at the rate of 10% which the appellant argued should be increased to 15%.

Evidence and Submissions

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties’ skeleton arguments, expert witness statements and photographs of the subject property and other offices in its immediate locality.

10. The appellant’s representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £273,500 based on a basic price of £350.00/m^2 and an end allowance of 15%.

11. Mr Cates requested that the tribunal dismiss the appeal and confirm the RV of £355,000 with effect from 1 April 2017

Decision and Reasons

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

13. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, namely:

    (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 is 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 VO. 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 value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on 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.'

14. The RV on the subject property was disputed by the appellant on the basis of the two new leases on the same building as the subject property close to the AVD. The new lettings were close to the rating hypothesis and so required little adjustment. The date of the leases were 4 June 2014 and 25 February 2015, they were for a period of ten years and had a rent-free period of nine months and ten months respectively. The rents analysed to £306/m^2 and £347/m^2 respectively with a tone of £340/m^2 and £351/m^2. This he submitted supported a rate of £350/m^2 for the subject property.

15. Mr Newbury submitted that although the VO had now agreed to award an end allowance of 10% due to the disturbance resulting from the construction work next door this should be increased to 15% as the main part of the work took place after the AVD. The subject property suffered disturbance due to the large site adjacent to the subject property being redeveloped including the part demolition of the building, the addition of new floors and terraces, the extensive redevelopment of the remainder of the building, recladding of the exterior elevations and scaffolding covering the works building, pavement and across the road up to the subject property.

16. He submitted that the noise and vibration were extensive as the subject property and the property being worked on shared a party wall and so the noise and vibrations penetrated into the subject property. The work also involved works traffic, road closure, dust, impaired access, loss of outlook, staff inconvenience and a general loss of amenity to the subject property. This covered the period from the commencement of the 2017 list for approximately three years. Mr Newbury drew the panel's attention to the photographs taken of the site in April 2017 and April 2018 which demonstrated the level of work carried out. He also referred the panel to the list of end allowances given for the 2010 and 2017 list which included allowances of between 3% and 17.5%.

17. The panel noted the photos produced by the appellant showed that extensive construction work was still ongoing at the adjacent property ten months after the work began. The panel when considering comparable properties noted that an allowance of more than 10% had been allowed in relation to some of the properties where the constriction work was taking place further away and therefore put weight on this evidence.

18. Mr Cates on behalf of the VO submitted that the majority of the 'noisy' work would have been completed by the AVD and the work remaining would be internal and therefore cause a minimum of disruption. He further submitted that the nature of the work being steel works did not cause the level of noise which a property being demolished and rebuilt would have caused. He argued that the other occupiers in the same building as the subject property had accepted the allowance of 10% and that the 10% end allowance was, in his opinion, sufficient to compensate for the disruption caused by the work.

19. The panel found that the works being carried out were going to be external work for some period of time and that the work was ongoing for up to three years after the AVD. The settlement by the other occupiers did not, in the panel's opinion, support an argument that the appellant should also accept the end allowance of 10%.

20. Mr Cates explained that although the VO had not included any comparable evidence for the tone of £387.50/m^2 the fact that the other occupiers had been consulted and had accepted the end allowance would suggest that they also agreed the tone. The occupiers, he submitted, would have looked at the RV as a whole, which included the tone when determining whether to settle for the 10% allowance. He submitted that the tone was therefore settled at £387.50/m^2 on the basis that there had been no other challenges to the RV in relation to the other assessments.

21. The panel was aware that a basket of evidence was required to demonstrate a tone for similar neighbouring properties. Those rentals nearest to the AVD and which required least adjustment would carry most weight.

22. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that he had discharged that burden. The panel found that it had been provided

with evidence to suggest that the tone of the subject property of £387.50/m^2 was unreasonable. The panel was persuaded by the appellant's comparable properties in the building which supported a basic price of £350/m^2 and the increased end allowance of 15%.

23. The panel therefore allowed the appeal. 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). The refund will take around six weeks to process.

Order

24. 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 £273,500 with effect from 1 April 2017.

Date: 7 August 2023

Appeal number: CHG100195687

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.