THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Factory and premises; main space price; appeal allowed.*

RE: 4 and 5 Horseshoe Close, London, NW2 7HU

APPEAL NUMBER: CHG100347241

BETWEEN:	Fresh Air Limited	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

BEFORE: Mrs M Dowrick (Senior Member)
Ms S Eze

CLERK: Mr R Gath

REMOTE HEARING 3 on 15 January 2021

APPEARANCES: Mr O Hamblin from Altus (Appellant's representative)
Mr J Balogun (Valuation Officer's representative)

Summary of Decision

1. Appeal allowed in part. The entry is reduced to Rateable Value £180,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 4 and 5 Horseshoe Close, London, NW2 7HU (the 'appeal property'), which was entered in the 2017 rating list as 'factory and premises' at rateable value £189,000 effective from 1 April 2017 with an unadjusted value of £75/m^2. However, Mr Hamblin was seeking a rateable value of £145,000 with a main space price of £60/m^2 and an increase to the end allowance due to a split site and variation in the floor level between the two buildings.

3. The appeal property was built in 1965. It was located on Oxgate Lane, close to Staples Corner in the London borough of Brent in North West London. The property was formed by the merger of 4 and 5 Horseshoe Close. It had an area of approximately 2404m^2. The appeal property was held on two separate leases for 4 and 5 Horseshoe Close, effective from April 2018 at a rent of £300,000.

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.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Hamblin made an appeal to this Tribunal because he 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].

7. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 27 October 2020 following the Valuation Officer's Decision Notice of 7 September 2020 in respect of the appeal property (hereditament).

8. Mr Hamblin 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 Hamblin'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.

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).

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

Issues

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

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

Evidence and submissions

12. Mr Hamblin had provided the Tribunal with both parties' submissions. The evidence included the following: his statement of case, photographs of the appeal property and other units in the locality, brief details of his comparable properties, the current valuation and the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice and copies of correspondence that had passed between the parties.

13. He argued that the rental evidence for the appeal property was unreliable as the appeal property was held on two separate leases. Therefore, the rental evidence from properties within the locality should be used to establish the rateable value. He also argued that the appeal property was in the wrong scheme. He also requested an increase to the 2.5% end allowance up to 7.5% to reflect the disabilities associated with the appeal property and asked the panel to allow the appeal in respect of all three of these grounds.

14. Mr Balogun was representing the Valuation Officer as advocate and expert witness. He contended that the VOA adopted the unadjusted rate of £75/m^2, based on the comparable properties in the locality. He also argued that the scheme was not necessarily important in respect of the unadjusted rate adopted by it.

15. Mr Balogun accepted that the VOA had allowed a 2.5% allowance, however, in his opinion, the allowance was not justified. He was going to look to remove the allowance if the panel dismissed the appeal. Given all of this, in his opinion, the rateable value was correct and he asked the panel to dismiss the appeal.

Decision and reasons

16. 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),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.

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

18. 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 –
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> 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; 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".

19. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 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.

20. The property was formerly two units. 4 Horseshoe Close had an area of 290m^2 and 5 Horseshoe Close had an area of 2113m^2. It was currently in the valuation scheme 396991 which was for industrial properties located in Staples Corner in the borough of Brent, built prior to 1965 or properties built to a similar standard to a property of that age.

21. The two properties were held on two separate leases from 1 April 2018 on a combined rent of £300,000. Mr Hamblin stated that this was to allow the appellant company flexibility in respect of the accommodation it occupies. However, the appellant company accepted that this was more expensive than having just one combined lease. Therefore, Mr Hamblin argued that the rent was not reliable due to the two separate leases, and that the 2018 rent was too far from the AVD to be reliable.

22. To support his argument that the main space price should be £60/m^2 Mr Hamblin provided the following comparable properties:

Property	Rateable value	Area	Unadjusted rate
Rear Pt, Oxgate House, Oxgate Lane	£115,000	2,205m^2	£65.26/m^2
3 Millennium Business Centre, Humber Road	£182,000	3,320m^2	£55/m^2
Front Pt, Oxgate House, Oxgate Lane	£219,000	3,422m^2	£55/m^2

23. In respect of these comparable hereditaments, Mr Hamblin suggested a rate of £60/m^2 for the appeal property, being the median average of the unadjusted rate as these comparable properties were either smaller or larger than the appeal property.

24. Mr Hamblin also argued that the appeal property was in the wrong VOA scheme. The appeal property had been placed in scheme number 396991 for industrial properties that were located at Staples Corner, built pre 1965. Mr Hamblin wanted the appeal property to be placed in scheme number 397077 which is for industrials…built between 1965 to 1974.

25. He explained that all the other hereditaments in Horseshoe Close had been placed in scheme number 397077 and, with the hereditament being built in 1965, he argued that the appeal property should also be placed in this scheme.

26. Mr Hamblin then argued that the appeal property suffered from disabilities as the two properties were split and there was only one doorway two metres wide to go between the two units. There was also a two metre drop from one unit to the other. These prevented stock being moved internally. To support this increase to the end allowance, Mr Hamblin produced five comparable assessments. These were:

Property	Rateable value	End allowance
717 North Circular Road	£115,000	7.5%
717A Front, North Circular Road	£220,000	7.5%
732-733 Tudor Estate, Abbey Road	Deleted	5%
Units 2-3 Falcon Industrial Estate, Neasden Lane	£164,000	5%
Unit 8 & Warehouse Unit 9, Drury Way Industrial Estate, Laxcon Close	£123,000	5%

19. Mr Balogun argued that the scheme was not important as it was the basket of rents and tonal evidence that determined the main space price, not the scheme. Therefore it was largely academic what scheme the appeal property had been placed in.

20. However, to support the VOA's contention that the unadjusted rate was correct, he provided the following comparable properties:

Property	Rateable value	Area	Unadjusted rate
3A Horseshoe Close	£27,250	287m^2	£90/m^2
4 Horseshoe Close (Pre-merger)		290m^2	£90/m^2
5 Horseshoe Close (Pre-merger)		2,113m^2	£75/m^2

21. Mr Balogun contended that following the merger, the hereditament has not increased very much, going from 2113m^2 to 2404m^2. In his opinion, this did not justify a reduction in the unadjusted rate from £75/m^2 to £60/m^2.

22. He also contended that the units were not affected by any disabilities and therefore he would look to remove the allowance by way of serving a VO notice, although he was going to wait until the outcome of this appeal.

23. The panel firstly considered the VOA scheme. It accepted that the scheme was not crucial in this appeal, although it noted that for hereditaments in scheme number 397077 which Mr Hamblin was asking for, the value ranges from £55/m^2 to £100/m^2. The scheme that Mr Balogun was defending, the value ranged from £75/m^2 to £100/m^2.

24. The panel also noted that scheme number 396991 was for industrial properties that were located at Staples Corner, built pre 1965 or **of a similar standard** (emphasis added).

25. Whilst the panel accepted that the property was built in 1965, at the latter end of scheme number 396991, it had established through questioning and the photographs in Mr Hamblin's evidence bundle that all the other units in Horseshoe Close, which had been placed in scheme number 397077, had been refurbished but the appeal property did not appear to have had been improved. Mr Hamblin stated that the structures of the other units were still a 1965 build. However, they did appear to have modernised and improved.

26. It therefore appeared to the panel that the appeal property was in the correct scheme. Ultimately, no evidence had been presented by Mr Hamblin to prove that the appeal property was not of a similar standard to a pre-1965 built property. The panel therefore concluded that the appeal property should remain in the current scheme.

27. It then considered the main space price. Although Mr Hamblin had provided the unadjusted rate for three comparable properties, the panel was mindful that the rateable value should reflect the rent. Whilst the new lease was three years from the AVD, it was still a useful starting point. It was disappointed that Mr Hamblin did not provide the 2015 rent, despite being asked, however, the rateable value was 1/3 less than the 2018 rent.

28. Having considered all of this, the panel applied little weight to Mr Hamblin's comparable properties as the descriptions of these were 'stores and premises' and 'warehouse and premises'. The appeal property was 'factory and premises' and therefore they were not 'like for like' comparable properties.

29. The panel was aware that the VOA had to prove that the rateable value was reasonable. Mr Balogun had done this as, in his opinion, the property had not increased much in terms of size following the merger. The unadjusted rate for the smaller units in Horseshoe close were valued at £90/m^2 and therefore a larger unit would have a smaller rate. But the panel was not convinced that an increase in size, 290m^2, justified a reduction of £15/m^2. Furthermore, the burden of proof is on Mr Hamblin to prove that the unadjusted rate was incorrect but he did not provide any substantial evidence to prove that it was wrong. It therefore concluded that the main space price should remain at £75/m^2 and dismissed this aspect of the appeal.

30. Turning to the adjustment for the disabilities, the panel was very disappointed at the parties. The VOA had not inspected the property with Mr Balogun proposing to remove the allowance. Likewise, Mr Hamblin had not provided any photographic evidence to support his argument. Unfortunately, the external photographs of the appeal property did not show that there was such a large difference between the level of the two units internally.

31. However, given Mr Hamblin's oral evidence, the panel concluded that these two disabilities were relevant as a two metre difference in the floors levels was significant. It also understood that the difficulties would cause issues for the occupier and granted the additional 5% allowance, increasing it to 7.5%. The revised valuation is as follows:

Floor	Description	Area m^2	£ per m^2	Value
Ground	Office	175.39	82.50	14,470
Ground	Showroom	27.54	90.00	2,479
Ground	Production area	194.48	75.00	14,586

Ground	Area under supported floor	15.37	52.50	807
Mezzanine	Supported 1st floor	15.37	30.00	461
Ground	Kitchen	2.37	90.00	213
Ground	Workshop	11.16	71.25	795
Ground	Production area	587.52	75.00	44,064
Ground	Office	9.65	82.50	796
Ground	Mess room/lockers/office	110.24	82.50	9,095
Mezzanine	Supported 1st floor	112.83	30.00	3,385
Ground	Area under supported floor	4.23	52.50	222
Mezzanine	Access to office	4.23	37.50	159
Mezzanine	Office	19.69	75.00	1,477
Ground	Office	7.23	90.00	651
Ground	Production area	885.84	75.00	66,438
Ground	Office	27.30	82.50	2,252
Ground	Area under supported floor	23.90	52.50	1,255
Mezzanine	Supported 1st floor	22.79	30.00	684
Ground	External storage	7.44	54.84	408
Ground	Office	35.51	90.00	3,196
Ground	Office	53.22	90.00	4,790
Mezzanine	Mezzanine Office	19.68	82.50	1,624
Ground	Area under supported floor	19.68	52.50	1,033
First	Office	71.36	90.00	6,422
Second	Office	70.49	90.00	6,344
	Surfaced open spaces	26	250	6,500
			Sub total	194,606
	Less allowance for split unit		-7.5%	14,454
			Total	180,152
		Rateable value say		180,000

Order:

32. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £180,000 with effect from 1 April 2017.

33. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

34. As 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: 10 February 2021

Appeal number: CHG100347241