THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 compiled list appeal; Schedule 6 to the Local Government Finance Act 1988; relativities to be applied to upper floors above retails space; comparable properties; appeal allowed.

Re: Bst-3rd Flrs, 8 Silver Place, London W1F 0JU

APPEAL NUMBER: CHG100347368

BETWEEN:	Soho Frames Ltd	Appellant
	and	
	A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs A Fielder (Presiding Senior Member)
Dr J Johnson (Senior Member)

CLERK: Mrs C McAvoy

REMOTE HEARING No.2 on 5 October 2022

APPEARANCES:

Mr S Cater of Altus Group on behalf of the appellant as advocate
Mr M Tann of Altus Group on behalf of the appellant as expert witness
Ms D Castle on behalf of the respondent as advocate

Summary of decision

1. Appeal allowed; the appeal property's assessment was reduced to £33,500 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: Bst-3rd Flrs, 8 Silver Place, London W1F 0JU which following the Valuation Officer's (VO) decision was shown in the 2017 rating list at £61,000 RV effective from 1 April 2017.

3. The appeal property was shown in the rating list as office and premises and consists of ground floor retail area used as a workshop/sales area for the framing of pictures and the sale of pictures and frames, with a basement workshop and office space on the upper floors.

4. Mr Carter, on behalf of the appellant, disputed the RV on the grounds that the upper floors should be valued on relativities ancillary to the shop use whereas the respondent considered that the current hybrid approach with a 15% allowance to be correct. The current zone A price adopted was not contested.

5. Mr Tann appeared on behalf of the appellant as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration included a statement that he was instructed under a contingency based fee.

6. Within his written statement, Mr Tann 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 the appellant's case.

7. 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).

8. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

9. The hearing of this appeal was conducted remotely via Microsoft Teams conference call using audio/video-link. During the hearing the Presiding Senior Member lost connection for a few minutes. The hearing was paused until she restored connection. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

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 before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

11. The issue between the parties concerned the RV of the appeal property, specifically the relativities applied to the upper floor offices.

Evidence and submissions

12. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the challenge process.

13. The appellant's representative provided photographs in advance of the hearing. In accordance with the Tribunal's consolidated practice statement, there is no need for photographs to be sent at the two-week period and they can be sent to the clerk prior to the remote hearing date. However, there should be agreement before the hearing between the parties that any photos and plans submitted to assist the panel on the day are a true representation of the situation at the material day. Ms Castle agreed for the photographs to be admitted.

14. To summarise the parties' respective cases, the appellant's representatives submitted that the rent on the appeal property was two years post the antecedent valuation date (AVD), so there could be many reasons for it being higher, such as market growth. The rent appeared to be an outlier within the basket of rents.

15. The upper floor offices are currently valued at the full office rate of £550/m^2 with a 15% hybrid allowance applied which assumes the offices are capable of being separately let. However, it was submitted that it is quite clear that they were not capable of separate let as the only way to access the upper floor offices is via the ground floor shop entrance and there is no external access. Mr Tann had inspected the property and provided photographs to demonstrate there is no external access, showing instead a single access point for the offices. As the offices can only be accessed via the ground floor shop, it was submitted that the upper floors offices should be valued at an ancillary retail rate which he stated was supported by the comparable properties provided. The comparable properties were retail properties in the W1F postcode whereby the offices above retail areas are valued at an ancillary rate of A/20 for the first floor and A/25 for the second floor.

16. In further support of his argument, Mr Tann identified two assessments (Bst-4th Flrs 40-42, Lexington Street, London W1F 0LN and Bst-grd Flr 29, D'arblay Street, London, W1F 8EP) which are currently valued in the same way as the appeal property, that being the upper floors offices are valued at the full rate with a hybrid allowance applied. The key difference being that the offices have their own separate access.

17. The appellant proposes that this appeal be allowed at a RV of £33,500 with effect from the 1 April 2017 based on the upper floors being valued at an ancillary retail rate of A/20 for the first floor, A/25 for the second floor and A/50 for the third floor. The proposed RV of £33,500 is a fair and reasonable determination in all the prevailing circumstances.

18. Ms Castle, for the respondent, defended the current RV. She submitted that it is valued as a hybrid; in other words, it is valued in two different ways but with an adjustment to reflect this. As this space has been separately occupied in the past, it would suggest there is a market for this type of office space in this

location so therefore submitted that it has value over and above that of ancillary storage/office space for a shop premises.

19. Of the comparable properties quoted by the appellant's representatives, she submitted that two have retail and storage on the upper floors as well as some office use, suggesting that the office space is ancillary. The third has mostly storage space and a small amount of office use.

20. *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141 was referred to in terms of the weighting of evidence and the passing rent being the starting point. It was accepted that the rent was agreed two years post AVD but even allowing for this, the proposed valuation is less than half of the actual rent.

21. It was submitted that although it may be inconvenient to have no separate access to the upper floors, they were capable of being separately assessed and each floor had been separately assessed in the 1990 rating list, and the three floors were assessed as one in the 2005 list. At the start of the 2010 list, they were merged with the ground floor and basement as they were shown now, with the 15% hybrid use. The 2010 rateable value had not been challenged.

22. It was Ms Castle's view that regardless of whether the office space is capable of being separately assessed, how much of the property is office and how much is shop, whether other properties have been valued in the same way or not, the fact remains that there is a rent on the property which shows a significantly higher value than a typical shop with ancillary accommodation above. She therefore submitted that the £61,000 RV, which was based on an office rate of £550/m^2 (which she submitted was the tone for offices) with a 15% hybrid allowance applied, was reasonable.

Decision and reasons

23. In considering this appeal, the panel had regard to the term 'rateable value' as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended).

24. The AVD for 2017 rating list appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, in accordance with the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day is the 1 April 2017. The material day is the date on which the panel must have regard to the physical facts relating to the hereditament and its locality but having regard to economic factors as at the AVD.

25. In considering the RV, the panel also had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council* [1976] RA 141. This case had established six propositions, which gave clear guidance to be followed when assessing RV. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. The more closely the

circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements, the more weight should be attached to it.

26. The appeal property was let on a ten-year lease commencing from 1 December 2016 for an annual rent of £77,000 for the first three years, then £77,500 for the remaining two years. There is a break option in the fifth year, and it had a rent-free period of six month (four months in year 1 and two months in year two).

27. The panel was mindful that this was a stepped rent agreed twenty months after the AVD and therefore would require adjustment to conform with the rating hypothesis. At the request of the proposer, the VO had included rental evidence. The zone A rate of £1,100/m^2 was not disputed, the issue in dispute was the relativities applied to the upper floor office space. However, the panel was mindful that this rent did appear to be higher than the basket of rents.

28. Initially the respondent disputed there was no separate access, submitting that the offices are accessible via an external staircase to the property. Ms Castle had not inspected the property and having regard to the evidence, she did not dispute the fact that there is no separate access but still considered the hybrid approach to be correct and reasonable, especially given the rental evidence for the appeal property. Given the rent was agreed twenty months after the AVD the panel found it would be incorrect to rely on this one rent to justify a higher rate to be applied to the upper offices.

29. The panel was also not persuaded by how the property was assessed in previous rating lists or that the RV in the 2010 rating list had not been disputed. There was no evidence of the properties physical access at this time, nor any evidence that the space was let separately. The panel was mindful that if it was let, this could have been between connected parties. In any event, the panel was of the view that each list should be considered de nova. This was especially relevant with the 2017 rating list, with the AVD for the 2010 and the 2017 rating lists being seven years apart. The panel was considering the value of the property vacant and to let at the AVD and applying the reality principle. As at the material day for this appeal, there was sufficient evidence from the photographs and expert witness evidence that there was no separate access to the upper floors.

30. The panel therefore considered the comparable properties presented by the appellant's representative. These properties had no separate access to the upper floors and were valued as follows:

(1) Lwr Grd- 2nd Flrs, Novello House 152-160, Wardour Street, London W1F 0UN
First Floor = A/20
Second Floor = A/25

(2) Bst-1st Flr 14-16, Fouberts Place, London W1F 7PH
First Floor = A/20

(3) 1O Ganton Street, London W1F 7QR
First Floor = A/20
Second Floor = A/25

31. The panel found this evidence to be persuasive, especially when considering the size of the upper floors in the appeal property and the photographs provided which demonstrated that this too was used as storage space. This, together with the fact that there was clearly no separate access, so did not conform with the usual circumstances in which the VO would value as a hybrid, supported that the upper floors should be valued at the same ancillary rate.

32. In view of the foregoing, the panel found that the proposed RV was supported and reasonable and the appeal was therefore allowed.

Order

33. Under the provisions of regulations 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 show the following:

Bst-3rd Flrs, 8 Silver Place, London W1F 0JU

£33,500 effective from 1 April 2017

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

35. 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: 20 October 2022
Appeal number: CHG100347368

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.