THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; office and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; the correct main space rate to be applied to the subject property's assessment; appeal dismissed as the panel found on the evidence presented that the existing assessment was not unreasonable.

Re: 239-241 Kennington Lane, London SE11 5QU

APPEAL NO: CHG100371717

BETWEEN:	Alton & Co	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr M Heslop-Mullens (Senior Member) and Mrs FER Duggan

CLERK: Mrs R James

REMOTE HEARING 1: Wednesday 11 October 2023

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors (on behalf of the appellant as advocate and expert witness)
Mr C Cates (respondent's representative as advocate only)

Summary of decision

1. Appeal dismissed; the appeal property's assessment remained unaltered at £108,000 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: 239-241 Kennington Lane, London SE11 5QU, which was entered in the 2017 Rating List as office and premises at £108,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 15 August 2020. The appeal to this Tribunal was made on 14 December 2021, following the VO's Decision Notice

of 13 August 2021, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The appeal property was a Grade II listed Georgian mid-terraced property, with brick walls and a tiled roof. It was owned by one of the appellant's business partners who rented the premises to the appellant company for £70,000 per annum (pa). It was located within the London Borough of Lambeth in an area that was described as 'mainly residential'. Vauxhall tube station was approximately 650m away, via Kennington Lane.

5. 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).

6. Within his signed declaration, Mr Bacon had confirmed that he was representing the appellant in this appeal on a contingency 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 supports his client'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 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

8. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary Issue

9. Prior to the hearing, Mr Bacon had provided a late submission containing photographs in relation to the appeal property and the comparable properties cited by both parties, a summary of the VO's rental evidence and an updated location plan. This evidence had also been provided to Mr Cates, who had initially objected to its inclusion. At the hearing, Mr Bacon confirmed that he was happy to withdraw the updated location plan. On this basis, Mr Cates confirmed he had no objection to the additional photographs or summary of rental evidence being provided in evidence. Accordingly, the panel proceeded to hear the appeal having regard to all the evidence provided, with the exception of the updated location plan.

Issue

10. The correct main space rate to be applied to the appeal property's rating assessment, with effect from 1 April 2017.

Evidence and submissions

11. The panel had been provided with a joint bundle of evidence, which comprised the challenge submission, VO Decision notice and the appellant's representative's late submission minus the updated location plan.

12. The VO contended that the appeal property's existing assessment of £108,000 RV based on an unadjusted main space rate of £275/m^2 was reasonable. In contrast, the appellant's representative sought a reduced assessment of £56,500 RV, which was based on an unadjusted main space rate of £150/m^2.

13. The appellant's representative pointed out that within the VO Decision, reference had been made to 153 Kennington Road rather than the appeal property. As such, he questioned whether the VO Decision notice had been issued in respect of the correct property. Mr Cates stated that he had not compiled the VO Decision notice; however, he could confirm that the issue was just a clerical error, and where it quoted 153 Kennington Road, it should have read 239-241 Kennington Lane. Whilst the panel appreciated the appellant's representative's concerns, it accepted that the matter was purely a clerical error.

Decision and reasons

14. 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, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

15. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976], as quoted in the VO Decision. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration as to how that rent compared to the statutory definition of rateable value. The panel acknowledged that there was a rent passing on the appeal property of £70,000 pa, with effect from 2 August 2013, which analysed to £175.79/m^2.

16. However, after having regard to the second proposition set out in *Lotus & Delta*, the panel attached less weight to this rent as it had been agreed between connected parties. Furthermore, £100,000 had been spent on 'on- going decorations', which had not been accounted for within the rental analysis.

17. Accordingly, the panel went on to examine the third and fourth propositions outlined in *Lotus and Delta* and had regard to the rents and assessments placed on comparable properties.

18. The appellant's representative had provided three comparable properties and the VO's representative had provided six. The parties disputed the comparability of each other's properties. The appellant's representative claimed that the VO's properties were further afield located in Lambeth Central near to the Imperial War Museum. Whereas the VO claimed the appellant's representative's properties were located further away from the Vauxhall tube station.

19. The panel did not find the majority of the properties cited as comparable by the parties useful in arriving at its decision. In relation to the three properties cited by the appellant's representative, it noted 87 Vauxhall Walk had been valued at a main space rate of £160/m^2, with 9 Harmsworth Street and 10 Kennington Park Place having been valued at £150/m^2. After having regard to the photographs provided and the specific details in relation to those

three properties, the panel was not persuaded that they were true comparisons to the appeal property. The panel noted that 87 Vauxhall Walk was a book wholesaler and, whilst it was valued as an office and premises, it had the appearance of a retail frontage. This property was approximately 3,000 m^2 in size, which was significantly larger than the appeal property that had a total area of 417 m^2. In contrast, 10 Kennington Park Place, whilst it was a period property, was part of much smaller office suites.

20. 9 Harmsworth Street was let on a new lease from 21 May 2015 at a rent of £37,200 pa for 10 years with 5 yearly rent reviews on full repairing and insurance (FRI) terms. This rent analysed to £150/m^2, which the appellant's representative contended supported a reduced main space rate being applied to the appeal property. However, after having regard to the photograph of 9 Harmsworth Street, the panel was not convinced that it was of the same quality as the appeal property. 9 Harmsworth Street gave the appearance of an inferior office that was situated directly on the pavement with bars on the lower ground floor windows. The appellant's representative had not internally inspected the premises so could not confirm the actual quality.

21. The VO had provided a schedule detailing the rents passing on six comparable properties. Those rents had been set between August 2014 and May 2016 and analysed to values ranging between £222.07/m^2 and £437.06/m^2. Those six properties had been valued at main space rates ranging between £250/m^2 and £285/m^2. Five of those offices were smaller than the appeal property measuring between 24.94m^2 and 109.35m^2, with Blue Sky House being larger with a total area of 1,172.66m^2. The appellant's representative contended that these properties were not true comparisons to the appeal property as the majority were more modern properties located closer to the Imperial War Museum. The panel accepted that Blue Sky House at 450 Kennington Road was a more modern 1989 build.

22. Of the six comparable properties put forward by the VO, the panel placed greatest weight on 359 Kennington Lane. This was an office and premises located on the second floor of an older office block. It was situated on the same road as the appeal property. This property had a rent set in May 2016 that analysed to £323.20/m^2 and it had been valued at a main space rate of £275/m^2. This rent suggested to the panel that the current main space rate applied to the appeal property was not excessive.

23. The appellant's representative pointed out that Ground Floor Rear 4 Pratt Walk was a Georgian townhouse. As such, he considered that it was the best comparable property that the VO had put forward in terms of quality and age. This property had a total area of 94.80m^2. It had a March 2015 rent that analysed to £222.07/m^2. The panel noted that like the appeal property, this property had been valued at an unadjusted main space rate of £275/m^2. However, the VO stated that allowances had been applied to the main space rate applied to Ground Floor Rear 4 Pratt Walk to reflect the lack of air conditioning and central heating. In contrast, the panel noted that the appeal property benefitted from a comfort cooling system, which both cooled and heated the premises, plus there was underfloor heating to part of the premises.

24. The panel then had regard to the one piece of settlement evidence that had been provided. This was in relation to 7 Bishops Terrace that had been agreed at £230/m^2. This property had been valued in accordance with the same valuation scheme as the appeal property. It was located off Kennington Road, in close proximity to the appeal property. The VO considered that 7 Bishops Terrace was an inferior building to the appeal property which justified the differential in the main space rates applied. The VO also contended that the

settlement on 7 Bishops Terrace at £230/m^2 demonstrated that the appellant's representative's proposed main space of £150/m^2 was unjustified.

25. In respect of 7 Bishops Terrace, the panel considered that it was situated in an inferior side street location, in comparison to the appeal property that was located on a main road. The panel found that this justified the difference in the unadjusted main space rates applied to the two properties.

26. The VO had pointed out that the appellant's representative's proposed main space rate of £150/m^2, was lower than the main space rate of £219/m^2 that had been applied to the appeal property in the 2010 Rating List. On this issue, the panel was aware that at each revaluation all evidence had to be looked at afresh. However, the panel agreed with the VO that no evidence had been presented to show that rental levels had fallen between the two Rating Lists.

27. In appeals of this nature, the burden of proof was on the appellant to provide evidence to demonstrate that the existing assessment was excessive. However, having regard to the evidence before it, the panel was not convinced that the current unadjusted main space rate of £275/m^2 was unreasonable. Accordingly, the panel confirmed that the appeal property had been correctly valued at £108,000 RV, with effect from 1 April 2017.

28. The appeal was therefore dismissed.

Date: 26 October 2023
Appeal Number: CHG100371717

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.