VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; shop and premises; rental evidence; comparable assessments; appeal dismissed.

RE: 1st Flr Sth 6-8, Bst & Grd Flr 6, Sackville Street, London W1S 3DD

APPEAL NUMBER: CHG100406058

BETWEEN:	Jones Chalk and Dawson	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Dr J Johnson (Senior Member)
Miss EF Blois

CLERK: Mrs H Beresford

REMOTE HEARING ON: 10 March 2021

APPEARANCES: Mr D Hill of Altus Group (Appellant's representative)
Mr K Abaas (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £96,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 1st Flr Sth 6-8, Bst & Grd Flr 6, Sackville Street, London W1S 3DD (the 'appeal property'), which was entered in the 2017 rating list as 'shop and premises' at RV £96,500, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Jones Chalk and Dawson made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £78,000 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal property comprises a shop and premises. The property is located on Sackville Street, Mayfair, which lies between Vigo Street in the North and Piccadilly in the South.

6. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

8. It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. The President of the 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.

10. 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.

11. 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 when 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

12. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £1,700/m^2 in respect of the appeal property, but the appellant sought a

reduction to £1,375/m^2. The parties had agreed that the property measured 56.92m^2 in terms of zone A (ITZA)

Evidence and submissions

13. Mr Hill, the appellant's representative, had submitted evidence which included: a written submission; a valuation office scheme; photographic evidence; a location plan; a map of the comparable properties; the current 2017 assessment; and a revised valuation in respect of the appeal property.

14. Mr Hill contended that the rating assessment of £1,700/m^2 on the subject property is not in line with its passing rent of £82,500 per annum which was agreed in December 2015. Mr Hill had revised his initial analysis from £1,375/m^2 to £1,450/m^2 ITZA based on the rent passing of £82,500 which Mr Hill stated had been agreed in December 2015.

15. Mr Hill argued that the comparable properties cited by the Valuation Officer were unreliable as one was nine times smaller than the subject and both rents were too remote from the antecedent valuation date (AVD). Mr Hill asked the panel to confirm an RV of £82,500 for the appeal property.

16. The Valuation Officer's representative Mr Abaas had provided: details of two comparable properties; a valuation of the appeal property; a comparable rental summary; and a response to the challenge.

17. Mr Abaas argued that the Valuation Officer had not been provided with the full details of the lease of the subject property which Mr Hill had stated had been agreed in December 2015. He believed that in cases of this nature the burden of proof rests upon the appellant to provide evidence to confirm that the appeal property is over assessed. In this case Mr Abaas argued that Mr Hill had not had sight of the lease concerned and that consequently this evidence was hearsay and very little weight should be attached to it.

18. Mr Abaas contended that the two comparable properties cited by the Valuation Officer supported a value of £1,700.00/m^2 for the subject property. Mr Abaas asked the panel to confirm an RV for the appeal property of £96,500.

Decision and reasons

19. The panel had 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.

20. 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 –
>
> 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;

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"

21. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 which had been referred to by both parties 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.

22. The panel noted that Mr Hill had stated that there was rental evidence for the subject property, and it was aware that he believed that an agreement of £82,500 per annum had been reached in December 2015. However, the panel was aware that no copy of the lease had been provided to prove that this was the case and it also noted that according to the Valuation Officer's records no form of return had been submitted in respect of the 2017 revaluation. It was, therefore, unable to attach significant weight to this evidence.

23. The panel also noted that Mr Hill had not provided any other rental evidence to support his argument. It found that whilst the passing rent forms a good starting point for determining the RV of a property other evidence should also be taken into consideration.

24. The panel turned to the evidence of comparable properties cited by the Valuation Officer. Unit 26 and Unit 2-5 Sackville Street were in close proximity to the subject property. The panel found that in particular Unit 26 Sackville Street, which analysed to £1,734/m^2 supported a value of £1,700 for the subject property. Whilst Mr Hill had argued that this property was significantly smaller than the subject property the panel were aware that the comparison should be made with an area in terms of zone A.

25. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £1450/m^2 was warranted. Therefore, the appeal was dismissed.

Date: 22 March 2021

Appeal number: CHG100406058