THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; compiled list appeal; offices and premises; level of value; goldfish bowl allowance for lack of privacy; rental evidence; comparable properties; appeal dismissed.

Re: Ground Floor, Capitol House, 159 Hammersmith Road, London, W6 8BS

APPEAL NUMBER: CHG100526744

BETWEEN: Nigerian National Petroleum Corporation Appellant

and

Mr A Ricketts Respondent

(Valuation Officer)

PANEL: Mrs S Nix (Senior Member) and Mr P Phelps

CLERK: Mrs S Morgan

REMOTE HEARING: Tuesday 11 January 2022

PARTIES PRESENT: Mr J McCarthy of Altus group acting as expert witness

Mr S Carter of Altus Group acting as advocate

Mr C Cates for the valuation office acting as both advocate

And Expert Witness.

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as offices and premises at £97,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. 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.

3. 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.

4. In accordance with that Practice Statement, the VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.

5. This appeal was brought in respect of Ground Floor, Capitol House, 159, Hammersmith Road, London (the appeal property). The appeal property are offices and premises on the ground floor within a four storey 1983 office build. The appeal property has a total area of 294.3m^2 and appears not to have been refurbished.

6. This is a 2017 Rating List appeal, and the RV of the appeal hereditament was £97,500 with effect from 1 April 2017. The appellant's representative sought a reduction to £75,500 RV based on a reduction in the level of value for the unadjusted rate from £340.00/m^2 to £290/m^2 and a 10% allowance for lack of privacy.

7. The challenge submission was received on 9 December 2020. The grounds for the challenge where the RV does not represent the rental value of the hereditament under the rating hypothesis at the antecedent valuation date (AVD) of 1 April 2015.

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

9. Mr McCarthy also 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.

10. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

11. Before the hearing took place, Mr Cates expressed his disappointment for the late inclusion of photographic evidence submitted by the appellant's representative just days before the

hearing. He was not objecting to the evidence being included but he felt that he needed to make the point that this evidence could have been submitted at an earlier stage. The panel noted his comments and the hearing continued.

12. 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 item of evidence, should not be construed as it having been overlooked.

Issues

13. The appellant's representative contended that the unadjusted main space rate adopted in the assessment was excessive. He sought a reduction to £290.00/m² whilst the Valuation Officer contended that £340.00/m² was reasonable.

14. The appellant's representative also believed that a 10% allowance should be included in the assessment for a lack of privacy also known as a Goldfish Bowl allowance. The Valuation Officer contended that no allowance was warranted for this issue.

Evidence and submissions

15. Mr Carter, acting as advocate, confirmed the issues in dispute which covered the tone and an allowance for lack of privacy. In his introduction, he added that the appeal property was office space that had not been refurbished and that it was a mistake to compare refurbished offices with those where no refurbishment had taken place.

16. Mr McCarthy, acting as expert witness, explained that the appeal property had been occupied by his client since 2000. The rent on the appeal property was between connected parties and was therefore not reliable. Looking at other properties to support his case, Mr McCarthy believed that the best comparable property was The Quadrant at 177-179 Hammersmith Road, London which was situated close by. It was constructed at a similar time and was of a similar quality to the appeal property. There was a new letting for the offices at Ground Floor Rear, The Quadrant from 6 March 2015 (close to AVD), which analysed to £291.67/m^2. Based on this rent, Mr McCarthy contended that the unadjusted rate of £290.00/m^2, he was seeking for the appeal property, was not unreasonable.

17. In relation to the lack of privacy allowance sought, Mr McCarthy confirmed that a recent challenge on the Ground Floor Rear assessment at The Quadrant had resulted in a 10% allowance being given for lack of privacy. He believed that the same allowance should be applied to the appeal property. Mr McCarthy added that the tone continued to be challenged in this case.

18. In response to the respondent's comparable evidence, Mr McCarthy disputed the inclusion of some of the rents due to them being fixed following refurbishment works, whilst other rents were some 18 months post AVD in a rapidly rising market. He added that other properties such as 107A Hammersmith Bridge Road were constructed at a different time and like Lincoln House they were some distance away from the appeal property to be useful.

19. To support his argument that there was a difference between the rents achieved between offices that had been refurbished and those that had not, Mr McCarthy referred to 3 Angel Walk. It demonstrated that the rent for the refurbished 2nd floor offices was higher than the 3rd floor offices which had not been refurbished. He therefore believed that it was unfair to compare refurbished offices with those where no refurbishment had taken place.

20. Based on his evidence, Mr McCarthy sought a revised rateable value of £75,500 with effect from 1 April 2017.

21. In relation to the first issue regarding tone, Mr Cates contended that as the landlord and tenant were connected parties, the rent on the appeal property should be disregarded.

22. In support of his case, Mr Cates referred to rents on ground and 1st floor offices at The Quadrant, 2nd, and 3rd floor offices at 3 Angel Walk, various floors of office space at 2-14 Shortlands, 1st floor offices at 107A Hammersmith Bridge Road and various floors at Lincoln House, 137-143 Hammersmith Road, London. The unadjusted rate for the comparable properties in The Quadrant and Shortlands, like the appeal property, were within the W6 postcode area and ranged between £340.00/m^2 (the lowest figure within valuation scheme 374456) and £360.00/m^2. Mr Cates argued that many of the rents both before and after the AVD devalued to figures above the current tone of £340.00/m^2. He believed that the 5% allowance that the appeal property currently benefited from was reasonable and that an additional reduction in tone was not necessary.

23. Mr Cates contended that although there was a rent for Ground Floor Rear of The Quadrant it should not be taken in isolation. In his view, it was better to look at a basket of rents when determining the correct tone, as the rent on this comparable property appeared low for its location.

24. In relation to the second issue, Mr Cates argued that the allowance given at challenge stage for Ground Floor Rear, The Quadrant was awarded based on rental evidence that showed that this ground floor office was less desirable than other offices at that address. In the appeal case, there was no evidence submitted to show that the ground floor area was any less valuable than other floors in Capitol House. Furthermore, he drew the panel's attention to the external photograph of the appeal property which showed the ground floor windows at Capitol House had reflective glass and prevented any lack of privacy. He contended that passers-by would not be able to see into the offices unless their faces was pressed against the window. There was no reflective glass on the ground floor offices at The Quadrant.

25. In conclusion, Mr Cates contended that there was no compelling or persuasive evidence to reduce the level of value or award any allowance for loss of privacy. He therefore sought a dismissal of the appeal.

Decision and reasons

26. The main issues in dispute concerned the level of value to be adopted for the appeal property and whether or not a 10% loss of privacy allowance was warranted.

27. The term 'rateable value' is defined in paragraph 2(1), 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".

28. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

29. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

30. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment 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.

31. The panel noted that the rent on the appeal property was between connected parties and was therefore disregarded. In turning to the comparable rents, the appellant's representative believed that the best rent was on similar ground floor office accommodation at The Quadrant just a short distance from the appeal property. The rent on the rear ground floor offices at The Quadrant analysed to £291.67/m^2. However, the panel found that this rent appeared low for this location and therefore taking one rent in isolation was not enough. The basket of rents provided by the respondent showed that the unadjusted rate of £340.00/m^2 was not unreasonable.

32. In relation to the argument that the rental market was different for refurbished properties, the panel agreed that it may be easier to let a property that had been refurbished but there was no substantive evidence to show that Capitol House was any less valuable for not being refurbished.

33. In relation to the lack of privacy allowance, the panel was not persuaded that any allowance should be given for this issue, as it felt there was little evidence to support the contention of a lack of privacy (evidence as opposed to oral submissions). The installation of the reflective coating on the glass of the appeal property whilst preventing people looking in, also allowed light to pass inside the building. Any suggestion that the appeal property suffered from poor natural light was disregarded by the panel.

34. Having considered all the evidence submitted, the panel determined that the assessment should not be reduced. The price per m^2 that had been applied to others in the same locality and within the same valuation scheme supported the unadjusted level of value of £340.00/m^2 for the appeal property. With this in mind, the panel was not persuaded to reduce the level of value for the appeal property, sought by the appellant's representative. Neither did the panel find that an allowance was warranted for the lack of privacy.

35. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value or a lack of privacy allowance. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Friday 28 January 2022

Appeal number: CHG100526744