VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeals: Local Government Finance Act 1988; Accuracy of the RV in the Rating List; Offices and Premises; Level of value in dispute; comparable properties; appeals dismissed.

APPEAL NUMBER:	CHG100631039 and CHG100631043	
RE:	3rd Floor 163-170 Tottenham Court Road, London W1T 7NP and 2nd Floor, 163-170 Tottenham Court Road, London W1T 7NP (the “subject properties’)	
BETWEEN:	ULC Partners Limited and HCA International Limited	Appellants
	and	
	Mr A Ricketts (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Wednesday 23 October 2024	
BEFORE:	Ms T Blades, Presiding Senior Member Ms A Cole-Roberts, Senior Member	
CLERK:	Mrs S D Morgan	
APPEARANCES:	Mr J Fitzsimmons - Appellant’s representative Ms R Heuck – Valuation Officer’s representative	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals were dismissed. The assessments were confirmed as follows.

    - 2nd Floor 163-170 Tottenham Court Road, London W1T 7NP - £365,000 with effect from 1 April 2017.

    - 3rd Floor, 163-170 Tottenham Court Road, London W1T 7NP - £367,500 with effect from 1 April 2017.

Introduction

2. These are 2017 rating list appeals. 2nd Floor 163-170 Tottenham Court Road, London W1T 7NP and 3rd Floor, 163-170 Tottenham Court Road, London W1T 7NP (the subject properties) had been entered into the 2017 Rating List as 'offices and premises' at a RV of £367,500 and £365,000, respectively, with effect from 1 April 2017.

3. The RVs were disputed on the grounds that the hereditaments were over-assessed based on nearby challenge settlements and that they did not represent the rental value of the hereditaments under the rating hypothesis at the Antecedent Valuation Date (AVD) 1 April 2015 reflecting the physical factors of the property and locality as at the Material Date 1 April 2017.

4. The appellant's representative had made a challenge against the accuracy of the compiled list assessments in the 2017 Rating List, by way of proposals that he served on the Valuation Officer (VO). After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals were not well founded. Decision notices to that effect were served on the appellants, and their representatives then appealed the VO's decisions to the Tribunal on the grounds that the current valuations for the hereditaments were still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

5. Mr Fitzsimmons appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Fitzsimmons explained that he was instructed on a contingency fee basis and he declared that he understood and accepted his duty 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 the evidence supported the client's case.

6. 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).

7. Ms Heuck who appeared on behalf of the Valuation Officer (VO) was acting as advocate only.

8. This statement of reasons is not and does not purport to be a verbatim record of proceedings.

Background

9. The evidence bundles before the panel comprised all of the evidence disclosed and exchanged during challenge which included comparable assessments, rental evidence, location plans, photographs of the subject properties and comparable properties and their skeleton arguments.

10. The subject properties occupied the 2nd and 3rd floors within a 7-storey building situated at the junction of Tottenham Court Road and University Street. The building was constructed around 1977 and had been refurbished since. It had a modern air conditioning system with air handling units on the roof. There was retail space on the ground floor with office space

above. The subject properties sat within a valuation scheme where the base rate price ranged between £550/m^2 to £605/m^2.

11. The appellant's representative believed that the adopted price of £550/m^2 for the subject properties was excessive. His proposed assessments were as follows based on a main space rate of £450/m^2.

- 3rd Floor 163-170 Tottenham Court Road, London W1T 7NP - £315,000 with effect from 1 April 2017
- 2nd Floor, 163-170 Tottenham Court Road, London W1T 7NP - £315,000 with effect from 1 April 2017.

12. The valuation Officer's representative believed that the existing assessments were not excessive and that the subject properties should be valued in line with similar office accommodation in the locality at £550/m^2. She provided rental and assessment evidence in support of her case.

Relevant Case Law

13. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

"(1) 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.

Discussion

14. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

15. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

16. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day was 1 April 2017.

17. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

18. The lease for the 1st and 2nd floors of 163-170 Tottenham Court Road, London W1T was a 10-year lease effective from 1 December 2012, with a 5 yearly rent review. The initial rent agreed for both floors, on 1 December 2012, was £472,342.12 per annum (pa). This increased to £515,095 pa on review effective of 1 December 2017. The ratepayer, HCA International Ltd, only occupied the 2nd floor, the 1st floor was occupied by a subsidiary company who paid their rates separately. The 3rd floor at 163-179 Tottenham Court Road was occupied by ULC Partners Limited. It was held on a 10-year lease on standard market terms with effect from 6 October 2011. The lease allowed for a 5th year rent review and break option. The initial rent agreed was £309,501 pa but this increased on review to £496,730 pa effective of 6 October 2016. The appellant's representative believed that these rents were too far away from AVD to be useful.

19. The appellant's representative provided comparable rental evidence for other office properties along Tottenham Court Road and the surrounding area to support his contention that there should be a reduction in the current main space price for the subject properties. In addition, the appellant's representative referred to settlement evidence in the locality. Offices on the 3rd and 4th floors at 237-247 Tottenham Court Road had been reduced from £525/m^2 to £425/m^2. Offices on the 3rd and 4th floors of 7 Ridgmount Street had been reduced from £575/m^2 to £475/m^2 and the 3rd floor office at 1 Maple Place had been reduced from £525/m^2 to £425/m^2 on a well-founded challenge. In line with this settled pattern in the locality, he believed that a reduction to £450/m^2 for the subject properties did not appear unreasonable.

20. The valuation officer's representative also referred to the rental evidence on the 3rd floor at 163-170 Tottenham Court Road. This property had a total area of 700.20m^2. The rent was a new letting in October 2011. It included 4 months' rent free less three months for fit out. A figure of £262,238 for improvements was taken over the 10-year term of the lease. The rent analysed to 474.96/m^2. Following a rent review in 2016 the analysed rent was £659.66/m^2. This showed how much the market grew between 2011 and 2016. This growth was also repeated with the rents for the 1st and 2nd floors at 163-170 Tottenham Court Road between 2012 and 2017, albeit this was a larger property.

21. In addition, the valuation officer's representative made reference to 4th floor at 163-170 Tottenham Court Road. This had a total floor area of 656.70m^2. It was a new letting in August 2013 for a 10-year term with a 5-year review. According to information provided by the occupier, a capital sum of £21,300 was paid by the tenant to the landlord. The rent of £309,500 analysed to £504.08/m^2. The assessment was based on a main space rate of £550/m^2 like the subject properties. The valuation officer's representative believed the toning of the 3rd floor rent review back and the 4th floor evidence forward to AVD would support the base price of £550/m^2 in the basket of evidence. She considered this to be the best evidence, and it held the most weight.

22. The valuation officer's representative gave her response to the appellant's comparable evidence. In relation to the settlement evidence, the valuation officer's representative explained that offices at 237–247 Tottenham Court Road were considered below average quality office space. There was inferior air conditioning within the building, and it was marked for redevelopment in 2021. It was valued differently to the subject properties and related to offices built between 1940 and 1970 which have not been redeveloped and retained most of the characteristics of this period. It was therefore not a useful comparable property, in her opinion, despite being located close to the subject properties. Number 7 Ridgmount Street was also not comparable to the subject properties in terms of age, quality and location. The 3rd floor, Maple Place was in a scheme for 1940-1970 purpose-built offices in Fiitzrovia. This office was of a basic standard and was not situated on a main road. The VO survey stated it was built between 1940-1954 and therefore it was older and not comparable with the subject properties.

23. The panel noted the comments made on the comparable properties by both parties. Having examined the evidence presented, the panel found that the rental evidence for properties in the same building to be the most relevant, particularly the evidence supplied for the 3rd floor, 163-170 Tottenham Court Road, which showed a market growth between 2011 and 2016 (analysing to £474.96/m^2 in 2011 and £659.66/m^2 in 2016) which supported the level of value adopted of £550/m^2 for the subject properties. This was the lowest figure within the range of values within the scheme. The panel also noted the rent passing in August 2013 on the 4th floor at 163-170 Tottenham Court Road. This was of a similar size to the 3rd floor assessment and within the same building and scheme. This was a new letting in 2013 which analysed to £504.08/m^2. Bearing in mind the growth in the market from that date, the panel was satisfied that the existing level for the subject properties at £550/m^2 was reasonable.

24. 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 cases before the panel, it concluded that he had failed to produce sufficient evidence to justify his claim for the assessments to be reduced. Consequently, the panel was satisfied that the grounds for these appeals were not substantiated, and the appeals were dismissed.

Disposal

25. In view of the above findings and conclusions, the panel is satisfied that the two appeals for the 2nd floor at 163-170 Tottenham Court Road, London W1T 7NP and the 3rd floor at 163-170 Tottenham Court Road, London W1T 7NP should be dismissed.

.

Date issued to parties: 22 November 2024

Right of further 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.
