THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Local Government Finance Act 1988; Statutory Assumptions; Gym and premises; Rental evidence; Base rate £m^2; Tone and comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal allowed.

Re: BST 29 – 35 Rathbone Street, London W1T 1NJ

APPEAL NUMBER: CHG100640626

BETWEEN:	The Boxing House	Appellant
	and	
	Mr Andrew Ricketts, Valuation Officer	Respondent

PANEL:	Mr Kevin Everett	(Chair)
	Mr Paul Phelps	(Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 1:	8 February 2022	
PARTIES PRESENT:	Mr Stewart Carter, Altus	Appellant's advocate
	Mr David Semple, Altus	Appellant's expert witness
	Mr Chris Cates	Respondent's representative

Summary of decision

1. The appeal was allowed. The panel determined a revised rateable value (RV) of £47,000 with effect from 3 June 2019.

Introduction

2. This 2017 compiled list appeal was brought in respect of The Boxing House, at BST 29 – 35 Rathbone Street, London W1T 1NJ.

3. The property was an office building of masonry construction under a pitched tile roof. The accommodation is arranged over five floors with the appeal property being in the basement. It is located on the west side of Rathbone Street and Tottenham Court Road, Goodge Street and Warren Street underground stations are all within walking distance.

4. The appeal property is a basement gym and premises originally valued on an overall basis at £400/m^2 giving an RV of £82,000 with effect from 3 June 2019. It had a total area In Terms of Main Space (ITMS) of 205.02m^2.

5. The appellant submitted an appeal against the Valuation Officer's decision notice of 7 May 2021 that the proposal to reduce the rateable value to £41,000 was not well-founded. The case was agreed with the VO and the appellant's representative after the serving of an initial response and further negotiations via subsequent rebuttals. The agreement was for a base rate of £290/m^2 giving an RV of £59,000 with effect from 3 June 2019. However, the appellant continued with the appeal against the revised RV of £59,000 seeking a revised RV of £47,000 based on a rate of £230/m^2 with effect from 3 June 2019.

6. 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.

7. 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.

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

9. Mr David Semple appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. He 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 client's case.

10. 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). The panel therefore considered the expert evidence and attached such weight to it as they saw fit.

Preliminary Matter

11. On 21 January 2022 the appellant's representative submitted new evidence under Regulation 17A. It was a Rating List alteration of a gym and premises at 14A Beaumont Mews, London W1G 6DL. The rate used to calculate the RV for the property had been

reduced from £425/m^2 to £235/m^2 by the VTE with effect from 24 November 2021 and had come into the possession of the appellants' representative on that date.

12. He stated that the new evidence had not been known to him at the challenge submission notice date of 7 May 2021 or by the appeal submission date of 7 September 2021. He stated that the new evidence supported his contention with regard to the RV reduction. He had issued the new evidence to the VTE on 21 January 2022 and to the CCA service on 7 January 2022.

13. The respondent's representative stated that he had not seen the new evidence. Whilst he could be in agreement for it to be admitted he requested a 10 minute adjournment to consider it. The panel agreed to the request and the Hearing was adjourned for 10 minutes.

14. When the hearing was re-convened the respondent's representative stated that he was in agreement for the new evidence to be admitted.

15. The panel noted that The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017 inserted Regulation 17A into the original regulations:

> 9. After regulation 17 of the 2009 Procedure Regulations insert—
> "Admission of new evidence on NDR appeal
>
> 17A.—(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—
>
> (a)that evidence—
> (i)is provided by a party to the appeal;
> (ii)relates to the ground on which the proposal was made; and
> (iii)was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations(7); or
>
> (b)all the parties to the appeal agree in writing to the party providing the new evidence.

16. The panel noted that all of the requirements of part (a) of this regulation had been satisfied and so agreed to allow the new evidence to be admitted.

Issue

17. The rateable value of the hereditament.

Evidence and submissions

18. The evidence bundle submitted by the respondent's representative comprised all of the documents exchanged between the parties as part of the challenge process; the Valuation Officer's challenge case decision notice; the appellant's challenge submission; photographs and location plans of the appeal property and comparable property assessments.

19. The respondent stated that the RV of £59,000 was not unreasonable and he stated that the comparable evidence submitted supported the appeal property base rate. In his opinion, the

going rate for gyms of this type is in the region of 280 – 290/m^2 and 29 Rathbone Street is currently valued at 290/m^2. There was no evidence for a drop of the valuation by £55/m^2. Further, the
Gym was in a basement position and therefore its location was not a major factor as the premises could not be seen from the outside.

20. The appellant's representative had submitted that the rent on the appeal property was agreed in 2019 for a 15 year period. However, as this was 4 years after the Antecedent Valuation Date (AVD) no weight should be attached to it.

21. He had submitted comparable properties including the new evidence in respect of 14A Beaumont Mews. In his view, the appeal property suffered from a poor location being in a quiet back street away from the main road, had a lack of visibility and these matters would affect footfall in comparison to those properties in better locations. The appeal property was most similar to 6 Duke Street and 14A Beaumont Mews but still suffered from a poorer location than these properties. He contended that £230/m^2 was the appropriate base rate for the property.

Decisions and reasons

22. The panel referred to the Local Government Finance Act 1988. The term 'rateable value' being defined in paragraph 2(1), Schedule 6 to the Act:

> "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 –"

23. 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).

24. The panel noted the current rent on the property from 2019 but attached no weight to it as it was agreed four years after the AVD.

25. The panel were aware of the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This 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. The panel were therefore required to look at other similar properties in the vicinity for comparison and were presented with the following details:

Address	Area m^2	Date of rent	Rent	Analysed rent/m^2	UAR /m^2	RV
29-35 Rathbone Street *	205.2	12 June 2019	£100,000	£439	£290	£59,000
34 Porchester Street	464.75	1 December 2017	£210,000	£429	£300	£139,000
16 Berkeley Street	436.36	21 June 2017	£260,000	£596	£275	£120,000

23 Kingsway	338.3	1 September 2016	£130,000	£384	£340	£115,000
49 Marylebone High Street	257.1	1 February 2016	£157,500	£601	£280	£71,500
6 Duke Street	221.91	22 March 2014	£40,596	£183	£190	£42,000
7-8 St James Street	204.37	1 March 2017	£241,514	£1,182	£155	£31,500
5 Allington Street	538.49	31 August 2017	£250,000	£464	£420	£226,000
28-31 Great Portland Street	407.1	26 October 2018	£200,000	£491	£425	£173,000

*The appeal property.

26. The panel found that this provided good evidence that the appeal property should be valued on a lower base rate. The properties of a similar size to the appeal property were valued on a base rate similar or lower than that of the appeal property.

27. 49 Marylebone Street at £280/m^2,6 Duke Street at £190/m^2 and 7-8 St James Street at £155/m^2 were closest in size and the best properties for comparison to the appeal property.

28. The panel noted that 49 Marylebone Street and 6 Duke Street were in a prime location where there was plenty of customer footfall. This made them superior to the appeal property.

29. The panel also found that the property at 14A Beaumont Mews valued at £235/m^2 was an assessment, like the appeal property, based on space. It was similar in location and recently assessed in November 2021 at the lower rate of £235/m^2. This property was in the same VO scheme as the appeal property (399890) and provided excellent evidence that the appeal property should be valued at a lower rate, further, the panel considered that 14A Beaumont Mews was in a better location than the appeal property and therefore the appeal property should be considered at a lower rate.

30. The panel was also presented with the premises at 6 Great Titchfield Street where the valuation was recently reduced from a base rate of £425/m^2 to £285/m^2. Similarly, the base rate shown for 49 Marylebone Street at £280/m^2 had been previously set at £700/m^2.

31. The panel found that there was considerable variation in the valuation of gym premises and that location and visibility were clearly important.

32. The appeal property was in a poor location compared to those comparables submitted and was most similar to the premises at 14A Beaumont Mews.

33. The panel therefore found that the appeal property should be valued at a rate less than that of the recent re-assessment of 14A Beaumont Mews and considered that £230/m^2 was appropriate with the valuation as follows:

Floor	Description	Area m^2	Base Rate £/m^2	RV
Basement	Gym	205.02	230	£47,154
			RV, say	**£47,000**

34. The appeal is therefore allowed.

Order

35. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of BST 29 – 35 Rathbone Street, London W1T 1NJ to an RV of £47,000 with effect from 3 June 2019.
36. 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: 14 February 2022

Appeal number: CHG100640626