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; appeal allowed as the evidence showed that the existing valuation was unreasonable.

Re: 2 King Street, Nottingham NG1 2AS

APPEAL NO: CHG100674779

BETWEEN:	King Street Business Centre Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mr K Sutch (Senior Member) and Mr A Wheeler

CLERK: Mrs R James

REMOTE HEARING 1: Wednesday 10 November 2021

APPEARANCES: Mr R Howes of Bird and Howes LLP (on behalf of the Appellant)
Mrs P Bailey (Respondent's representative)

Summary of decision

1. Appeal allowed; the appeal property's assessment was reduced to £54,500 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. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The panel was satisfied that the parties were able to fully participate in the hearing.

5. Mr Howes 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. Mr Howes explained that Bird and Howes 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 have 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

8. This appeal has been brought in respect of the following: 2 King Street, Nottingham NG1 2AS, which was entered in the 2017 Rating List as office and premises at £75,500 RV, effective from 1 April 2017. Following the appellant's challenge, the Valuation Officer served a Notice to reduce the assessment to £63,500 RV, with effect from 1 April 2017.

9. The appellant's Challenge to the Valuation Officer (VO) was made on 24 March 2021. The appeal to this Tribunal was made on 21 June 2021, following the VO's Decision Notice of 10 June 2021, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

10. The subject property was an offices and premises located in central Nottingham. It had been built in the 1890s in a Renaissance Revival style in red brick external facings and steep pitched slate roofs. It was arranged over the first, second, third and fourth floors above retail units on both King Street and Long Street, with limited ground floor frontal access onto King Street. It was a Grade II Listed building. The premises benefitted from a passenger lift.

11. The appeal property had an area in terms of main space (ITMS) of 841.20 m^2. An unadjusted main space rate of £95/m^2 had originally been applied to the appeal property's assessment, with a 5% allowance to reflect lack of heating. Following the challenge, the VO reduced the main space rate to £76/m^2.

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 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

13. The correct rateable value for the appeal property, with effect from 1 April 2017.

Evidence and submissions

14. The panel had been provided with a bundle of evidence, which comprised the challenge submission and VO's Decision notice, a copy of the appeal property's lease, photographs of the appeal property, location plans and details in relation to comparable properties.

15. Mr Howes referred to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] and contended that the correct starting point was the rent passing on the appeal property. He provided the following three devalued rents for the appeal property:

i) The initial 2009 rent - £68.48/m^2;
ii) Hold over rent 2013 to 2018 - £71.48/m^2; and
iii) Lease renewal in 2018 - £75.90/m^2.

16. As the initial 2009 rent and the lease renewal in 2018 had both taken place sometime from the AVD, Mr Howes had regard to other available rents. He referred to asking rents and actual rents in respect of offices in the close vicinity. Having regard to the evidence he had presented, he considered the current assessment of £63,500 RV, which was based on a main space rate of £76/m^2 was excessive. He sought a reduction to £54,500 RV, which was based on his proposed main space rate of £65/m^2.

17. Having regard to the character of the appeal property, its passing rent and the comparable properties provided, Mrs Bailey contended that the amended assessment of £63,500 RV was in the bounds of reasonable. Accordingly, she sought dismissal of the appeal.

Decision and reasons

18. 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 (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.

19. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976], as referred to by both parties. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

'(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

20. 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.

21. The appeal property was currently let on a lease for the term 12 February 2018 to 11 February 2028, the initial rent had been £60,131.55 per annum (pa), with a rent review after five years. The rent was stepped and increased by 3% pa. Mr Howes considered that this was a lease renewal, from the original lease dated 12 February 2008, which had been let at an initial rent of £51,870 pa, increasing by 3% pa to a maximum of £60,131.55 to 12 February 2013. This rent had remained in place until the lease renewal in 2018.

22. Mr Howes provided the following three rents for the appeal property:

i) The straight-line average rent of the initial 2009 lease was £57,604.26 - £57,604.26/£841.2 m^2 = £68.48/m^2.

ii) The 2018 lease renewal rent had a straight-line average of £63,849.31 - £63,849.31/£841.2 m^2 = £75.90/m^2

iii) The holding over rent, which remained the same between 2014 and 2018 at £60,131.55 -
£60,131.55/£841.2 m^2 = £71.48/m^2

23. Mr Howes attached less weight to the 2009 rent and 2018 lease renewal as they had been reached some distance from the AVD. He contended that the holding over rent, when the landlord would have had ample opportunity to review the market rate, and the tenant would have had chance to equally renegotiate terms, represented the basic gauge as to what the maximum rate of the market would have been as at the AVD.

24. Mrs Bailey had also referred to the rent passing on the appeal property. Whilst Mrs Bailey disputed that the rent had been holding over from 2013 to 2018, no evidence in support of this had been provided.

25. Before arriving at its decision, the panel wished to have regard to the whole basket of evidence and not make a decision based on one rent in isolation. Therefore, in line with the

third proposition of the *Lotus & Delta* judgment, the panel had regard to the rents passing on the comparable properties cited by both parties.

26. The appeal property had been valued in accordance with valuation scheme 322244. This valuation scheme covered a small geographic area, which included converted offices and their equivalent at King Street, Queen Street and Norfolk Place. Within that scheme, the values applied ranged from £95/m^2 to £110/m^2. The panel noted that the appeal property had originally been valued at the lower range of £95/m^2; however, this had since been reduced to £76/m^2.

27. The panel agreed with Mr Howes, that when having regard to comparable properties, it should consider like properties in close proximity within the same valuation scheme. The panel placed less weight on those comparable properties presented by the VO that were located further afield, namely 1st and 2nd Floors at 27-33 Market Street, Offices over 12 Poultry and 64-66 St James's Street.

28. Mr Howes had referred to 2nd to 6th Floors at 12 King Street, providing July 2014 asking rents, which devalued between £58.91/m^2 and £61.81/m^2. Whilst asking rents, he contended that they gave an indication of the office rental market in this locality around the AVD. However, the panel attached little weight to this evidence as it was asking rents and not actual lease transactions.

29. The panel had also been provided details in relation to 3rd Floor 15-17 King Street, which had been let from 22 May 2015 on a 3 year term. Mr Howes had devalued the net effective rent at £48.16/m^2. He added that the VO would normally adopt a relativity of 0.65 for such space, which would equate to a rate of £65/m^2 on the assumption of a passenger lift.

30. Mrs Bailey highlighted that 15-17 King Street had a very poor Energy Performance Certificate rating of G, which she contended would affect the rental level achieved.

31. The panel found 15-17 to be a good comparable property, being located a matter of metres north from the appeal property, in similar late 19th Century office space above retail units. This property had been let within two months of the AVD, with that rent devaluing to £48.16/m^2. However, a 'lifted' rate of £65/m^2 had been provided.

32. In arriving at its decision, the panel accepted that there was very limited rental evidence in this tight location around the AVD. However, after having regard to the devalued rents on the appeal property, in particular the holding over rent at £71.48/m^2, together with the May 2015 letting on 15-17 King Street, the panel found that the current assessment of £63,500 RV, based on a main space rate of £76/m^2 was unreasonable. The panel noted that a main space rate of £76/m^2, was more in line with the 2018 lease renewal on the appeal property, which was three years post AVD.

33. After considering all the available evidence and taking the stand back and look approach, the panel found that a main space rate of £65/m^2, as proposed by Mr Howes, more adequately reflected the appeal property's characteristics, its rent and the rent achieved on 15-17 King Street in May 2015.

34. The appeal was therefore allowed and the panel determined an assessment of £54,500 RV, with effect from 1 April 2017.

Order

35. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £54,500 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

36. If the appeal was successful (either in part or full) 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: 29 November 2021
Appeal Number: CHG1000674779