THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2017 rating list appeals; Local Government Finance Act 1988; Unadjusted rate per m$^2$ in dispute; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal dismissed.*

RE: Grd & Mezz Flr 34 – 35, Bedfordbury, London WC2N 4DU

APPEAL NUMBER: CHG100683756

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| BETWEEN: | OnSight Limited | Appellant |
| | and | |
| | Mr Andrew Ricketts (Valuation Officer) | Respondent |
| BEFORE: | Miss Alison Griffiths | (Chair and Senior Member) |
| | Mr Philip Hickson | (Senior Member) |
| CLERK: | Mr Duncan Adamson IRRV (Hons) | |
| REMOTE HEARING 2: | 14 August 2023 | |
| PARTIES PRESENT: | Mr Austin Marshall of Conneely Tribe | Appellant's representative |
| | Mr Chris Cates | Respondent's representative |

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## Summary of decision

1. Appeal dismissed. The Rateable Value (RV) of the appeal property was confirmed as £267,500 with effect from 1 April 2017.

## Introduction

2. This appeal had been brought in respect of the following: the appellant was the non-domestic rates payer of the appeal property at Grd & Mezz Flr 34 – 35, Bedfordbury, London WC2N 4DU.

3. This was a three-storey brick building with arches to the ground floor, constructed in the 1980's. The basement and ground floor levels were used as commercial offices with

residential use above them. The property was between Leicester Square and Charing Cross underground stations in a commercially orientated area.

4. The RV of the property was £267,500 with an area of 487.91m$^2$ valued at £500/m$^2$. Initially, the appellant's representative proposed that it should be reduced to £102,000 but later revised his proposal to £127,000 and this is the basis of the appeal.

5. Mr Austin Marshall 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.

6. 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 it saw fit.

7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

**Issue**

8. The RV of the appeal property.

**Evidence and submissions**

9. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.

10. On 10 August 2023 the appellant's representative had submitted documentary evidence in respect of his case to the tribunal and to the respondent. This was not new evidence but papers that had been erroneously omitted from the final 2-week pack.

**Decision and reasons**

11. The panel referred to the Local Government Finance Act 1988 in respect of the definition of rateable value in paragraph 2(1), Schedule 6 to the Act (as amended). 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.

12. The material day for this appeal was 1 April 2017.

13. The panel referred to the hierarchy of rental evidence that should be used to determine the RV of the appeal property as detailed in the authoritative and binding Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

14. The panel noted the rental evidence of the appeal property. It was let 15 months prior to the AVD on 23 December 2013 for a term of ten years. There was a rent-free period of nine months with a rent for the following year of £65,000 per annum (p.a.) rising to £130,000 thereafter until rent review.

15. The respondent's representative had submitted details of the costs required to bring the property back into full repair and analysed these with the lease arrangements. He had calculated that, with a few adjustments, the RV should be £127,000 based on a base rate of £235/$m^2$. He asserted that his calculations were based on the best evidence available as required by the Lotus v Delta case, the rent on the subject property.

16. The panel noted that the rental agreement included a requirement to repair and fit-out the property, this was a condition of the tenancy and such details had been included in the Form of Return held by the VO. The works were substantial to the extent that the hereditament was taken out of the rating list whilst undergoing the works.

17. With these conditions in mind, the panel found that such arrangements did not ideally reflect the property valuation assumptions, concessions had been made. Further, there was no basket of evidence presented to the panel by the appellant's representative to support the subject property rent, it was offered as the single source of evidence for the valuation of the appeal property.

18. The panel was presented with rental evidence in respect of other properties in the vicinity of the appeal property that were in the same mode or category of office. Whilst there were some differences in their locations, some on higher floors than the appeal property, some of a different size and some of a higher quality, the panel found that they did constitute a basket of evidence and provided comparable evidence useful in the valuation of the appeal property.

19. The rental agreements were mostly new leases and within one year of the AVD. All of them were for rental amounts higher than the £130,000 of the appeal property with four of them being around £300,000 p.a. The panel found the appeal property rental arrangement to be an outlier, not representative of the market and that this was most likely attributable to the concessions in respect of rent and repairs agreed between the landlord and the tenant. Little weight was therefore attached to the appeal property rent.

20. The panel found that, in cases of this nature, the onus was on the appellant to prove his case. The panel found that his case had not been proven but there had been sufficient evidence to show that the current RV of the appeal property was not excessive and was reasonable given the basket of evidence submitted for other similar properties within its locality.

21. The panel therefore dismissed the appeal and confirmed the RV as £267,500 with effect from 1 April 2017.

**Date:** 25 August 2023

**Appeal number:** CHG100683756

**Rights of appeal**

Any party who is aggrieved by the Tribunal's decision 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.