THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Price per $m^2$ in dispute; Appeal dismissed.*

RE: Pt Ground Floor 95-100 Gracechurch Street London EC3V 0DQ

APPEAL NUMBER: CHG1000723016

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| BETWEEN: | LJ | Appellant |
| | And | |
| | Andrew Ricketts<br>The Valuation Officer | Respondent |

BEFORE: Dr H M Freeman (Senior Member)
Ms L M Stuart (Member)

CLERK: Ms J Routledge Tech IRRV

ON: 16 October 2023

APPEARANCES: Mr J Adams of Jones Norris Adams
(advocate and expert witness for the Appellant)
Mr G Emery (representing the Respondent)

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

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**DECISION AND STATEMENT OF REASONS**

*Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009*

## Summary of decision

1. This appeal was dismissed. The panel was satisfied that the rateable value (RV) of the subject property was reasonable. Consequently, the RV remained unchanged at £232,000 with effect from 1 April 2017.

## Introduction

2. This decision notice is not intended to be a verbatim record of the proceedings and must not be construed in such a manner.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant had challenged the Valuation Officer's (VO) decision that the appellant's proposal was not well-founded.

4. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the RV for the subject property was not reasonable. The RV was £232,000. The RV sought by the agent was £180,000.

5. Mr Adams appeared on behalf of the appellant (as advocate and expert witness). He confirmed that he was instructed under a success related fee. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO0* [2018] UKUT (LC). The panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

6. It was therefore appropriate that the panel consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

## Issue

7. The issue in dispute was whether the valuation for the subject property was reasonable and, in particular, the price per $m^2$ to be adopted.

## Summary of evidence and submissions

8. The subject property was a ground floor retail unit within a terraced six storey building believed to have been constructed in the early 1990s. It is situated in a corner position at the junction with Leadenhall Street and Cornhill. The ground floor of this building where the property is located is set back from the road, allowing pedestrian access below the building from Gracechurch Street into Leadenhall Street. An end allowance of 5.3 per cent had been granted in respect of the fact that the entrance was obscured by columns.

9. The subject property had a rent review dated 25 March 2008 agreed at £180,000 pa when a previous tenant was in occupation. The subsequent rent of £27,000 per annum agreed on 25 March 2015 to a new tenant was agreed by both parties to this appeal as being of no assistance as it was not compliant with the rating hypothesis there being no security of tenure with a three month notice period, the site being due for redevelopment.

10. Mr Adams contended that the RV of £232,000 (based upon an unadjusted rate of £1,800 p/$m^2$) was excessive and he proposed a revised RV of £180,000 (based upon an unadjusted rate of £1400 p/$m^2$). He had successfully appealed the RV in the 2010 list on the basis of the

rent review in 2008 and argued that the rental market from 2008 to 2015 was flat and therefore the increase in RV for the subject property was excessive.

11. Mr Adams also argued that an adjustment should be made for the unusual shape of the property and an increase in the end allowance for the entrance being obscured.

12. The Valuation Officer identified four pieces of rental evidence to support the base rate of £1,800$m^2$ three were new rentals and one a rent review.

**Decision and reasons**

13. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the RV 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 based upon three assumptions. These assumptions are:

    (a) that the tenancy begins on the day by reference to which the determination is to be made;

    (b) 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) 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.

14. This was an appeal against an entry in the 2017 rating list and so the rental levels were 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. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended) that being 1 April 2015 in this case.

15. The panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. Whilst it was not found necessary to list them, this case sets out six propositions to have regard to when weighing the evidence and expert evidence.

16. Mr Adams did not produce any rental evidence, although he argued that the panel should have regard to market conditions, the differences relating to the subject property and fairness.

17. He submitted there were seventeen assessments of shops in Gracechurch Street, Leadenhall Street, and Whittington Avenue where fourteen had no change in RV, one had decreased and two had increased slightly. The subject property had seen an increase of 28.9% which he considered was unfair.

18. Mr Adams considered the lack of increase in the RV for surrounding properties was a reflection of the rental market between 2008 and 2013. He cited the rental evidence provided by the VO to support this contention. The rents were agreed between 15 December 2015 and 15 April 2016 and the analysed rents did not increase during this period.

19. Mr Emery argued that comparing the two lists was the wrong approach to support this argument and he referred the panel to *Lamb v Minards (VO) (LVC/345/1973)* where the following observations were made:

> 'Entries in the old valuation list are not good evidence for determining value in the current list' and
> '…market forces operating today were entirely different from those in force when the tone of the old valuation list was established'.

20. The panel disregarded Mr Adams argument regarding the lack of increase in RV between the 2010 and 2017 rating lists for the nearby properties. This was because the AVD of these two rating lists were seven years apart and the panel accepted that the caselaw states that each rating list was separate and distinct and should stand upon its own evidence.

21. Mr Emery provided four comparable properties to support the £1,800 base rate. Those rents had been set between December 2014 and April 2016 and analysed to values ranging between £1806.56/$m^2$.and £2,187.46/$m^2$ Those four properties had been valued at main space rates ranging between £1800/$m^2$and £1900/$m^2$. These were smaller than the appeal property with main space measuring between 17.99$m^2$ and 127.70$m^2$.

22. Mr Adams did not dispute the adjusted rates but argued that these comparable properties were in a more valuable location. Mr Adams had provided no evidence to support this argument. The panel found that the location of the comparable properties within eighty metres would not have such an effect as to support the reduction sought by the appellant.

23. In accordance with *Lotus and Delta* the panel placed weight on the rents either side of the AVD that were open market transactions for properties in very close proximity to the appeal property. The panel found that the base rates on the four properties, when analysed, reflected an established tone for properties in the locality, and therefore supported the current RV on the subject property.

24. Mr Adams provided no evidence to support an increase in the end allowance for the entrance being obscured. The panel found in the absence of evidence to the contrary that the end allowance of 5.3 per cent was reasonable.

25. After full consideration of the evidence presented by the parties, the panel found that the appellant had not discharged the legal and evidential burden of proof to demonstrate that the RV of the subject property was unreasonable. Therefore the panel dismissed this appeal.

**Date:** 6 November 2023

**Appeal Number**: CHG1000723016

## Right of 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.