THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; surgery and premises; mode or category of occupation; the panel found the rental evidence and comparable assessments for office premises in the locality supported the appeal property's current rateable value; appeal dismissed.

Re: 18 Cadogan Gardens, London, SW3 2RP

APPEAL NO: CHG100732158

BETWEEN:	Happy Kids Dental Practice Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mr D C Gardner (Presiding Senior Member)
Mrs N Crawshaw (Senior Member)

CLERK: Mrs A Keohane

REMOTE HEARING 3: Wednesday 18 October 2023

APPEARANCES: Mr J McCarthy of Altus Group (on behalf of the appellant)
Ms C Tam (Respondent's representative)

Summary of decision

1. The appeal was dismissed; the appeal property's assessment remained unaltered at £372,500 Rateable Value (RV) with effect from 1 March 2019.

Introduction

2. This appeal has been brought in respect of the following: 18 Cadogan Gardens, London, SW3 2RP, (the 'appeal property') which was entered in the 2017 Rating List as surgery and premises, £372,500 RV with effect from 1 March 2019.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 24 September 2021. The appeal to this Tribunal was made on 19 May 2023, following the VO's Decision Notice of 16 March 2023.

4. The appeal hereditament is a period terraced property of brick construction, built pre 1900s and refurbished in 2018. It is split over seven floors, with the basement, lower ground, ground, first, second, third, and fourth floors used as a dental surgery. The property is fully heated and air-conditioned and served with a passenger lift. It is located in the Royal Borough of Kensington and Chelsea, about five minutes' walk to Sloane Square Underground Station. The property is held on a nine-year lease effective from 17 December 2018, with the current rent being £350,000 per annum. The lease allows for index linked reviews and a 15-month rent free period.

5. Mr McCarthy 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 McCarthy explained that Altus Group 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 the evidence supports his client's case.

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

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

Issue

9. The issue in dispute was the correct rating assessment for the appeal property. The VO considered the current assessment based upon £640/m^2 was reasonable. Mr McCarthy proposed a revised assessment £277,500 RV based on £475/m^2.

Evidence and submissions

10. A bundle of evidence which included the documentation exchanged between the parties during the Challenge process was provided for the tribunal. Reference was also made to the following:

    - *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141
    - *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* RA-480-[1993] (LT) and the subsequent Court of Appeal decision in *Williams (VO) v Scottish & Newcastle Retail Ltd and another* [2001] EWCA Civ 85 (referred to hereafter as the *Williams* judgments).

11. Mr McCarthy submitted that the appeal property's rental transaction took place almost four years post AVD in a growing market and resulted in an analysed rent of £532/m^2, a figure significantly lower than the price adopted by the VO. Whilst the VO had determined

that little weight should be attached to this rent due to its distance from the AVD, Mr McCarthy argued that it should not be given less weight for this reason, he considered it to be a clean, open market rent which analysed to below the current rate/m^2 in a stronger market. He submitted it had merit as a guide to value.

12. Seven other surgery and premises were referred to by Mr McCarthy in the SW3 and neighbouring SW1 postcode areas. He had found the appeal property's assessment was based on one of the highest rates for the area. He considered these comparable properties, the majority of which were also in period buildings, gave a broader picture of the values for a surgery and premises in the area.

13. Although the VO was relying on office rents from within the immediate locality, Mr McCarthy argued that to facilitate office use at the appeal property it was necessary to apply for a change of use. In addition, significant work had been done to the building to facilitate its mode or category of occupation as a dental surgery. This included the installation of plant rooms, x-ray rooms and laboratories on the fourth floor, fixed dental chairs and underfloor piping. Mr McCarthy referred to the Lands Tribunal and Court of Appeal judgments in *Williams* where it had been confirmed that a property had to be valued *rebus sic stantibus*, and only the prospect of minor works could be envisaged at the time of its hypothetical letting. Mr McCarthy argued that it would take more than minor works to put the property to office use.

14. To conclude, Mr McCarthy sought a revised valuation of £277,500 RV, which included an addition to reflect comfort cooling in the building.

15. In the VO's Challenge Decision Notice and in oral submissions at the hearing, it was argued that the appeal property should remain valued on an office basis, as no significant alterations had been made to facilitate its use as a dental surgery and premises. Office rental evidence was therefore considered to be relevant, as vacant and to let, the appeal property would still fall within this market.

16. Ms Tam placed little weight on the appeal property's rent as she submitted it was too far removed from the AVD and based on annual index linked reviews. As the VO did not have a Form of Return for the property, a copy of the lease had been requested to enable a full analysis to be undertaken. The VO also understood that the occupier of the property was the landlord and therefore the lease could be between connected parties.

17. Ms Tam argued that Mr McCarthy's comparable properties were not within the same locality as the subject and were within different schemes. Also, the rates applied in their assessments reflected issues pertinent to those particular properties.

18. Rental evidence relied on by the VO was within the same locality as the appeal property and supported the current adopted base rate of £640/m^2. A Challenge to this level of value had been made in respect of 45 Cadogan Gardens and this had been settled with no change being made to the assessment. Ms Tam therefore sought confirmation of the current assessment of £372,500 RV, with effect from 1 March 2019.

Decision and reasons

19. 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 March 2019 (material day) for this appeal.

20. The Lands Tribunal judgment in *Lotus and Delta* provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was the correct starting point, but where available, rents on similar properties were also to be considered. The assessments of other comparable properties could also be relevant. All the evidence could then be weighted.

21. As outlined in *Lotus and Delta*, the starting point was consideration of the appeal property's rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account. The rent for the subject property commenced on 17 December 2018, which the panel considered to be too far from the AVD to be given any significant weight. In addition, adjustment was required as there was a rent-free period included and the lease allowed for annual index linked reviews, a different basis to five yearly rent reviews at open market value. The panel concluded this rental evidence did not greatly assist in determining the matter before it. The VO also indicated that the appellant was the landlord of the building which Mr McCarthy refuted, and whilst this instigated some discussion, a copy of the lease was not within the hearing bundle.

22. The panel had to have regard to the appeal property 'vacant and to let' and consider the mode or category of occupation as at the material date of 1 March 2019. When determining the issue of mode or category of occupation, the panel had to consider the appeal property physically as it stood, or *rebus sic stantibus*.

23. The panel was aware there were two limbs to the *rebus sic stantibus* or reality principle as set out in the *Williams* judgments, namely, that the physical state of the property had to be regarded as at the material day and that the only alterations permitted were minor alterations of a non-structural nature. The second limb being the use to which the property was put (mode or category of occupation).

24. Addressing the first limb, the panel found there was insufficient evidence to show the physical state of the appeal property at the material day. Mr McCarthy maintained it had been set up as a dental surgery with significant works being undertaken and that it would require more than minor works to facilitate office use, as the VO contended. Through questions the panel ascertained that neither party had internally inspected the property and there was insufficient alternative evidence, for example, a schedule showing the work undertaken, or internal photographs, to assist in establishing what, if any, major physical changes had occurred to the premises. The panel sought to clarify whether free-standing equipment was used within the building, but this question could not be answered with any certainty.

25. The second limb of the *rebus sic stantibus* rule required the assumption that the appeal property could only be occupied for a purpose within the same mode or category of occupation as that which existed on the material day. Any prospective change of use outside of that mode or category should be ignored. The panel accepted that the appeal property's mode or category of occupation at the material day was that of a dental surgery and premises.

26. With regard to permissible evidence, the *Williams* judgments indicate that:

"Any evidence relating to the rents or assessments of other hereditaments may be taken into account provided it is relevant to the valuation. There is no rule that evidence relating to another hereditament is irrelevant if that other hereditament is in a different mode or category of occupation".

27. After looking at the external photographs of the appeal property, the panel found the rental evidence for offices in the locality, situated on Sloane Street and Lower Sloane Street, was relevant to the valuation of the appeal property. These properties were in close proximity and their rents, which related to new leases, had been set in 2014/2015 and when analysed, supported the £640/m^2 applied in their assessments. Although the appeal property was occupied as a dental surgery, there was no evidence to show this use would achieve a substantially lower rent than that achieved by office premises in the same locality. Further, it had not been established that the appeal property could not facilitate office use if a minor amount of work was undertaken and with a change of planning use. Again, neither advocate had visited the property and could speak to what changes would be required and there was no other evidence of what works would be required. On balance, the panel was satisfied that the rental evidence supported the base rate of £640/m^2 adopted in the appeal property's assessment.

28. The panel placed less weight to Mr McCarthy's evidence of comparable surgeries on Sloane Avenue, Markham Street, Walpole Street, Basil Mansions, Sloane Street, Eccleston Street and Pimlico Road, which had been valued on rates of between £400/m^2 and £500/m^2. These rates reflected factors such as the attributes and quality of the buildings, their available facilities and lack of heating/air-conditioning, in effect, factors that did not affect the appeal property.

29. Ultimately, the onus was on the appellant to demonstrate that the appeal property's existing assessment was wrong, and on balance, the panel was not persuaded, on the evidence before it, that it had done so. The appeal was therefore dismissed.

Date: 17 November 2023

Appeal number: CHG100732158

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.