

THE VALUATION TRIBUNAL FOR ENGLAND



2017 rating list appeal; Local Government Finance Act 1988; gallery and premises; tone of the rating list in the locality; Zone A price; appeal dismissed.

APPEAL NUMBER: CHG100734986

BETWEEN:	The House of Fine Art Limited	Appellant
and	Andrew Ricketts (Valuation Officer)	Respondent

RE: (& 25 Bruton Lane) Basement Front & Ground Floor, 11 Bruton Street, London W1J 6PY
("the subject property")

PANEL: Ms A Verma (Presiding Senior Member)
Ms S Eze (Senior Member)

CLERK: Mrs A Sloan

SITTING ON: 13 October 2023 (remote hearing no.2)

APPEARANCES: Mr C Poole of Altus Group (for the appellant)
Mr M Staples (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of £270,000 from 11 December 2019.

Introduction

2. The appellant had made a challenge against the accuracy of the assessment in the 2017 Rating List, by way of a proposal served on the Valuation Officer (VO) on 5 October 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and refused to alter the existing assessment of £270,000 RV. A decision notice to that effect was served on the appellant on 3 April 2023 and this decision was appealed to the Tribunal on 19 May 2023, on the grounds that the current valuation for the hereditament was not reasonable.

3. The subject property is occupied as an art gallery and the assessment includes the ground and basement levels of the building. It is situated in Mayfair, close to Berkeley Square and New Bond Street. It had been valued on a retail basis. To assist the Tribunal, the parties had agreed all basic facts and the only issue to be decided was the correct Zone A price for the property.
4. Mr Staples was appearing as advocate and expert witness for the VO, presenting evidence prepared by a colleague, but he had also visited the subject property. Mr Poole appeared before the panel in a dual capacity as both advocate and expert witness for the appellant. He confirmed that his firm was instructed on a success related fee but accepted that first his duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case.
5. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), 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 in England). The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.
6. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all the parties' evidence.

Issue

7. The issue in dispute before the panel was the correct tone of value for Zone A to be applied to the subject property. Mr Poole sought a reduced entry of £245,000 RV, based on a Zone A price of £3,420/m². Mr Staples defended the VO's existing assessment of £270,000 RV, based on a Zone A price of £3,800/m².

Decision and reasons

8. The material date on which to consider the property was 11 December 2019, the date of the latest entry in the 2017 rating list. The value must be considered as at the antecedent valuation date (AVD) of 1 April 2015.
9. The Zone A tone for the properties on the north side of Bruton Street was not in dispute. Mr Poole submitted that, although a rent was agreed on the subject property, it was too far from the AVD to be of use in establishing a value on 1 April 2015. He confirmed that he agreed the Zone A price of £3,800/m² was supported by rents on the properties located on the north side of the street. However, he considered that the subject property was in a less desirable location, being on the south side amongst offices and no other retail units.
10. Mr Poole referred the panel to a number of settlements on other retail assessments in London and submitted that Zone A values can vary on the same street to reflect trading position. He highlighted that there was no rental evidence from the south side of Bruton Street from close to the AVD and that the established tone on the north side retail parade did not necessarily reflect values on the south side. Mr Poole contended that the hypothetical

tenant would pay 10% less for a unit on the south side of the street than one amongst similar retail units on the north side, which would attract passing trade.

11. Mr Staples submitted that, while he agreed that the Zone A price had been adjusted on the examples provided by Mr Poole, his records showed that the reduction was to reflect the lower rent agreed on those properties. Therefore, although they may be in an inferior location to others on the same street, this was evidenced by the rents agreed. In the subject appeal, there was no rental evidence from around the AVD on the south side of Bruton Street to substantiate Mr Poole's claim that it was a less desirable location.
12. While the panel accepted in principle that the tone in a street may vary to reflect trading position, there was no evidence presented at the hearing to support that was the case in Bruton Street. It noted the comparable properties cited by Mr Poole, but found that they were situated some distance away, in different locations to Mayfair. After considering the photographs submitted in the evidence bundle, the panel noted that Bruton Street appeared to largely contain high end retailers in a quiet street, whereas the photographs of Mr Poole's comparable properties illustrated busier locations with small cafes and restaurants or retailers.
13. In the panel's opinion, Mayfair is a desirable location, demonstrated by the rents agreed around the AVD shown in the VO's table of rental analysis for Bruton Street. The subject property's rent, effective from February 2020, was the only rent from the south side of the road. No rents were presented by Mr Poole from a similar period on the north side, to demonstrate there was any difference in the amounts agreed on either side. Despite his assertion that it was reasonable to expect the hypothetical tenant to bid less for a premises on the opposite side of the street to the other retail units, no evidence was presented to support this position. He contended that the subject property was isolated by being the only retail unit on that side of the street and would not benefit from passing trade. However, no evidence of footfall figures for either side of the street was presented to support this statement.
14. The burden lay with the appellant in this appeal to persuade the panel that the RV was wrong. It found that there was insufficient evidence to demonstrate the location of the subject property was so disadvantageous that it would cause a reduction in the rental bid. The panel was satisfied that rents agreed around the AVD on broadly similar properties in the same street supported the existing Zone A tone of £3,800/m² and there was no evidence that there was a difference in values for the south side of the street. The appellant's representative had therefore not proved his case and the appeal was dismissed. The panel confirmed the RV at £270,000 from 11 December 2019.

Date: 30 October 2023

Appeal number: CHG100734986

Right of further 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.