VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Offices and Premises; Accuracy of compiled list entry; rental evidence; comparable assessment evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeals allowed in part.

APPEAL NUMBER:	CHG100752142; CHG100774236; CHG100827846
RE:	1st Floor 110, Old Brompton Road, London, SW7 3RA 110, Old Brompton Road, London, SW7 3RA (the "subject properties")

BETWEEN:	SRO Motorsports Europe Limited	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	7 October 2024
BEFORE:	Mr SP Wood, Presiding Senior Member Mr SC Kamalan, Senior Member
CLERK:	Mr J Massey IRRV(Dip)
APPEARANCES:	Mr J McCarthy of Altus Group, representing the appellant Ms T Adeyemi, representing the respondent

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are allowed-in-part.

2. The panel determined an unadjusted rate of £425 per m² for the split assessments of the subject property was reasonable with effect from 1 April 2017 and £425 per m² for the merged assessment from 1 May 2021.

Introduction

3. The appellant's representative had made challenges against the accuracy of the compiled list assessments in the 2017 Rating List, by way of proposals served on the Valuation Officer (VO) as follows:

   Split assessments:
   CHG100752142 1st Floor 110, Old Brompton Road, London, SW7 3RA RV £22,750
   Challenge dated 3 November 2021 sought RV £15,750 effective 1 April 2017
   CHG100774236 110, Old Brompton Road, London, SW7 3RA RV £31,750
   Challenge dated 11 February 2022 sought RV £15,750 effective 1 April 2017

   Merged assessment:
   CHG100827846 110, Old Brompton Road, London, SW7 3RA RV £65,500
   Challenge dated 13 July 2022 sought RV £47,500 effective 1 May 2021

4. After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals in respect of the split assessments were not well founded and refused to alter the existing assessments and decision notices to that effect were served on the appellant on 19 May 2023. The VO decided that the proposal in respect of the merged assessment was not well founded, but that the existing assessment was excessive and proposed a reduction to RV £59,500 with effect from 1 May 2021. A decision notice to that effect was served on the appellant on 13 July 2023. The appellant's representative then appealed the VO's decisions to the Tribunal on 22 August 2023, on the grounds that the current valuation for the hereditaments were not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

5. Mr McCarthy appeared on behalf of the appellant as both advocate and expert witness and the clerk asked if there was a success related fee involved. 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. It was established that Mr McCarthy's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, Mr McCarthy declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

7. 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).

8. The statement of truth provided by Ms Adeyemi confirmed that she was not instructed under any conditional or other success-based fee arrangement.

9. As part of their induction training, a new member of the Tribunal was observing proceedings. It was explained to the parties that it was the panel's intention to invite their colleague to accompany it to the retiring room. The parties were assured that the new member would not

participate in the decision-making exercise but would simply observe as part of their training. Neither party had any issues or objections to this.

10. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Issue

11. The subject hereditaments are 'Offices and Premises' located in a three storey semi-detached Grade 2 listed building built in 1886. It is located on Old Brompton Road, opposite Onslow Gardens and in close proximity to Gloucester Road and South Kensington underground stations. The hereditament known as 110 Old Brompton Road consists of office accommodation on the second and third floors of the building with a total area of 89.1 m^2, and the hereditament known as First Floor, 110 Old Brompton Road consists of office accommodation on the first floor of the building with an area of 41.9 m^2. The separate assessments have been assessed by the respondent at unadjusted rates (UAR) of £550 per m^2 and £577.50 per m^2 respectively. The assessments were merged by the respondent with effect from 1 May 2021 to create a hereditament (also known as 110 Old Brompton Road) with office accommodation on the first to third floors with a total area of 131m^2 valued at a UAR of £500 per m^2.

12. It was the appellant's contention that the current assessments were excessive and that a UAR of £400 per m^2 would be more representative of the value of the subject hereditaments at the AVD. The respondent was defending the current assessments of the subject hereditaments.

Evidence and submissions

13. The evidence bundles before the panel comprised all of the evidence disclosed and exchanged during challenges which included the challenge decision notices, and a combined supporting evidence statement, which contained details of the parties' comparable properties, the parties' skeleton arguments, expert witness statements, photographs of the subject property and valuations of the subject property.

Decision and reasons

14. The appeal hereditaments must be valued for the purpose of non-domestic rating on the basis of the rent at which they might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 or 1 May 2021 (material day) for these appeals. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

15. 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 the Respondent. 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 agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in section 19(6) of the General Rate Act 1976 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.'

16. The Panel was aware that, following the propositions set out above, the rent on the subject property should be a starting point, followed by those on similar properties. The respondent referred to the rent passing on the merged hereditament of £87,307 per annum (pa) effective from 1 May 2021. She stated that the rent devalued to £731 per m^2, and even accounting for rental growth between the AVD and 1 May 2021, she considered this supported the current assessments for the subject properties. The panel considered that this lease renewal was more than six years after the AVD, and very little detail had been provided by the respondent regarding the terms of the lease renewal and therefore considered that it held little weight.

17. The appellant referred to rents agreed on what he considered to be similar office assessments in the locality which he considered demonstrated that the UAR applied to the subject properties was excessive.

- 34 Sumner Place - lease renewal 13 November 2014 – analysed rent £349.59 per m^2 – UAR £550 per m^2 reduced to £400 per m^2 further to challenge.
- Gnd to 2nd Floors, 81 Cromwell Road –lease 1 January 2014 – analysed rent £362.54 per m^2 – UAR £550 per m^2
- 4th Floor, 27 Emperors Gate – new lease 30 June 2015 – analysed rent £476.49 per m^2 – UAR £577.50 per m^2 reduced to £480 per m^2 further to challenge.
- Gnd Floor, 7-10 Kendrick Mews – lease 1 August 2017 – analysed rent £236.95 per m2 – UAR £550 per m2
- Gnd to 2nd floors, 10 Cromwell Place – lease 22 October 2015 – analysed rent £427.74 per m^2 – UAR £550 per m^2

18. In addition to the two settlements above, the appellant also referred to settlements on the following office assessments in the locality:

- 31 Onslow Square - UAR £550 per m^2 reduced to £465 per m^2 further to challenge.
- 2nd Floor, 8 Cromwell Place - UAR £550 per m^2 reduced to £465 per m^2 further to challenge.
- 1st Floor, 8 Cromwell Place - UAR £550 per m^2 reduced to £465 per m^2 further to challenge.
- 1st & 2nd floors, 27 Emperors Gate - UAR £550 per m^2 reduced to £456 per m^2 further to challenge.
- Gnd floor, 27 Emperors Gate - UAR £575 per m^2 reduced to £480 per m^2 further to challenge.
- 3rd floor, 27 Emperors Gate - UAR £575 per m^2 reduced to £480 per m^2 further to challenge.

19. The respondent argued that the assessments within Cromwell Place and 27 Emperors Gate had been reduced as a result of rental evidence pertaining to those particular buildings or locations. She did not consider them as comparable to the subject property due to them being in different locations. She also contended that the subject building was a late 19th century Grade 2 listed building with associated character and style features, whereas the comparable properties cited by the appellant were of different ages, built in the mid-twentieth century and not listed buildings.

20. The appellant did not consider that the listed status of the subject property added to its value, given the lack of heating and the additional maintenance and repair costs. He challenged the respondent's descriptions of the comparable properties as being more modern and having less character. In particular he referred to 34 Sumner Place, which he had recently discovered was also situated in a Grade 2 listed building. Ms Adeyami objected to this as she considered it to be new evidence, and it was unfair to introduce it at the hearing.

21. In considering a breach of the Tribunal's directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case;

- the need for litigation to be conducted efficiently and at proportionate costs
- that the failure to grant relief may leave an inaccurate entry in the rating list and
- the need to enforce compliance with the rules, directions and orders of the Tribunal.

22. The panel adjourned the hearing and retired to consider the admission of new evidence by Mr McCarthy. It considered the introduction of the new evidence at the hearing was a serious breach of the tribunal's directions. Mr McCarthy stated that the evidence had only recently been discovered by himself when he inherited these appeals, and he did not know why the matter had not been addressed either by the previous caseworker or the respondent. The panel did not consider that this was a good reason for the breach. Having regard to the third stage, the panel considered that the respondent had clearly provided incorrect information regarding the attributes of 34 Sumner Place. The panel considered that the correct information

would be essential in enabling it to come to a fair decision with regard to the comparability of 34 Sumner Place to the subject building.

23. Having been informed of the panel's decision to allow his new evidence, Mr McCarthy provided the panel and the respondent with a link to a Historic England webpage, which showed that 25-34 Sumner Place was a grade 2 listed building built in the mid-nineteenth century. The panel was therefore satisfied that 34 Sumner Place was similar in age to the subject building, and due to its listed status, was the most useful comparable in determining the correct value of the subject building.

24. The appellant had also referred to other office premises on Old Brompton Road, which were assessed at between £400 per m^2 and £460 per m^2 and he considered demonstrated that the assessments of the subject properties were unreasonable. Ms Adeyemi did not consider that these properties were directly comparable as they consisted of offices situated above retail premises, which were inferior due to their poor access and visibility, whereas there were no retail units in the subject property. The panel was satisfied that 123-123a Old Brompton Road, with a UAR of £460 per m^2 was much more modern than the subject building and therefore not comparable.

25. In considering the localities of the subject building and comparable properties, the panel considered they were all situated in mixed retail or residential streets. There were two underground stations almost equidistant from the subject building – Gloucester Road and South Kensington. These two stations were also within a reasonable distance of the appellant's comparable properties. It considered that 34 Sumner Place was situated a similar distance from South Kensington station to the subject building, but further from Gloucester Road station. It also noted that the subject building was situated in a more prominent position than 34 Sumner Place on an A road. Overall, it considered that the subject building was located in a more valuable area than 34 Sumner Place. Taking this into account, and the general tone of assessment of other office assessments on Old Brompton Road, the panel considered that a UAR of £425 per m^2 was reasonable for the subject properties.

Disposal

26. In view of the above findings and conclusions, the Tribunal Panel is satisfied that a UAR of £425 per m^2 is reasonable for the subject properties and the appeals are therefore allowed in part.

27. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entries in the rating list for the subject properties in accordance with the valuations below.

28. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

29. A refund of the paid fees will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refunds will take around six weeks to process.

Date issued to parties: 28 October 2024

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.

CHG100774236 110, Old Brompton Road, London, SW7 3RA (effective 1 April 2017)					
Ref	**Floor**	**Description**	**Area m^2**	**£ per m^2/unit**	**Value (£)**
1.1	Third	Public Toilets	0	0.00	0
1.2	Second	Office	60	383.56	23,014
1.3	Second	Kitchen	10.6	383.56	4,066
1.4	Third	Office	18.5	363.38	6,722
	valuation sub total				33,802
				RV	33,750

CHG100752142 1st Floor 110, Old Brompton Road, London, SW7 3RA (effective 1 April 2017)					
Ref	**Floor**	**Description**	**Area m^2**	**£ per m^2/unit**	**Value (£)**
1.1	First	Office	41.9	403.75	16,917
	valuation sub total				16,917
				RV	16,750

Merged assessment: CHG100827846 110, Old Brompton Road, London, SW7 3RA (effective 1 May 2021)					
Ref	**Floor**	**Description**	**Area m^2**	**£ per m^2/unit**	**Value (£)**
1.1	Second	Office	60	383.56	23,014
1.2	Second	Kitchen	10.6	383.56	4,066
1.3	Third	Office	18.5	363.38	6,722
1.4	Third	Public Toilets	0	0.00	0
1.5	First	Office	41.9	403.75	16,917
	valuation sub total				50,719
				RV	50,750