THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; offices and premises; tone of the rating list; comparable properties; rental evidence; appeal allowed

RE: 100 Cedarwood, Chineham Park, Basingstoke, Hampshire, RG24 8WD ("the subject property")

APPEAL NUMBER: CHG100765996

BETWEEN:	Kuehne and Nagel Limited	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL: Mr C Aggrey (Senior Member)
Mr M Bhatti

CLERK: Mrs A Sloan

HEARING: Remote hearing No.3 on 20 January 2023

APPEARANCES: Mr O Hamblin of Altus Group (for the appellant)
Mr S Britton (Respondent's representative)

Summary of decision

1. Appeal allowed. The panel reduced the rateable value (RV) to £66,500 with effect from 1 April 2017.

Introduction

2. The subject property is an office building, built in 1997 and refurbished in 2009. This appeal was lodged on 21 June 2022 to challenge the Valuation Officer's (VO) decision notice of 23 May 2022, which stated that the challenge was not well founded and the RV in the list at £83,500 with effect from 1 April 2017 was reasonable. The appellant's representative considered this valuation to be excessive and sought a reduction to £66,500.

3. Mr Hamblin was acting in a dual role as both advocate and expert witness for the appellant. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO)

[2018] UKUT 0253 (LC), he declared that he was instructed under a success related fee arrangement. In giving expert evidence, 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 his client's case.

4. 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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). It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

5. Mr Britton stated he was also acting as both advocate and expert witness for this case and he had personally inspected the subject property.

6. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

7. The issue before the panel was the accuracy of the entry shown in the rating list. The facts and floor areas of the subject property were agreed.

Evidence and submissions

8. Mr Hamblin placed most weight on the rent agreed on the subject property from June 2015 and sought a reduction in the base rate from £150/m^2 (unadjusted) to £120/m^2 (adjusted by 2.5%). This produced a revised RV of £66,500. Mr Britton contended that the basket of rental evidence he had provided suggested the existing valuation was reasonable and asked the panel to confirm the RV at £83,500.

Decision and reasons

9. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

   "The rateable value 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 on these three assumptions –

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

   b) the second assumption is 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) the third assumption is 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".

10. 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. The material day (the date by which physical factors have to be taken into account) was 1 April 2017, when the current entry was made in the rating list.

11. Both parties referred the panel to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

12. Mr Hamblin relied upon the rent agreed on the subject property. He confirmed that the appellant company had agreed a new 10-year lease from 24 June 2015. There was a nine-month rent free period with the rent commencing from 25 March 2016. There was a five-year break clause, and the rent was stepped from the rent commencement date to 28 September 2017 at £50,820 per annum then £101,640 up to 23 June 2020.

13. There was some confusion between the parties at the hearing over the analysis of the subject property's rent. Mr Hamblin stated that he had accepted the respondent's analysis at £105.41/m^2 over his own analysis at £121.51/m^2 as he believed the respondent had stated his analysis was wrong. Mr Britton clarified at the hearing that he had actually stated that the lease information provided by Mr Hamblin suggested the records held by the VO from the form of return (FOR) was flawed. The analysed rent shown at £105.41/m^2 in the table within the evidence bundle related to the information taken from the FOR, for completeness. Therefore, Mr Britton did not disagree with Mr Hamblin's analysis but had not provided any analysis of his own on the subject rent after receiving the details as part of the challenge.

14. The parties both referred the panel to other rents on the same development as the subject property, Chineham Park.

Address	RV	Area (m^2)	Rent	Effective date	Analysed rent	UAR (m^2)
100 Cedarwood Park *	£83,500	572.62	£60,984	1/6/2015	£105.41	£150
1st Flr Spinnaker House	£109,000	727.86	£105,000	13/6/2014	£127.57	£150
Unit 3 Lindenwood	£118,000	792.60	£119,000	12/3/2014	£131.76	£150
Gnd Flr North Wing Central 40 Lime Tree Way	£96,500	645.39	£159,395	8/6/2015	£234.63	£150
1st Flr Unit 1 Lindenwood	£92,000	616.30	£119,628	1/9/2016	£148.47	£150

Gnd Flr East Rosewood	£90,000	602.10	£114,354	1/6/2015	£173.78	£150

*subject property – rent from FOR

15. Mr Britton contended that the basket of rental evidence demonstrated the rate of £150/m^2 applied to the subject property was reasonable. He confirmed that little weight had been placed on Ground Floor North Wing Central 40 Lime Tree Way as its rent appeared out of kilter with others nearby, but he had not researched the reasons for this.

16. Mr Hamblin also argued that the rent on Ground Floor North Wing Central 40 Lime Tree Way should be disregarded. He stated that this building was a high specification flagship office, designed to have excellent environmental credentials and contended that tenants would likely pay a premium for this type of modern office space. To illustrate the quality of the building, details were provided from the property brochure. Although close to the AVD, Mr Hamblin argued that the rent on this property skews the tone for the locality and should be excluded.

17. The rent on Ground Floor East Rosewood was also close to the AVD, being agreed from 1 June 2015, but Mr Hamblin contended that less weight should be given to this rent as it is a renewal rather than a new lease. He stated that, after excluding this rent and that of Central 40 Lime Tree Way, the remaining four rents averaged £137/m^2. He therefore contended that the subject property should be valued somewhere between £105.41/m^2 and £137/m^2 and asked the panel to accept £120/m^2.

18. Mr Britton considered that the renewal rent on Ground Floor East Rosewood should be given some weight and included in the basket of evidence. He explained that rents generally cannot go down at review so renewals are exposed to the open market conditions at that time, whereas a new lease can be agreed at a lower rate if the circumstances demand. He confirmed that the VO's analysis of the subject property's rent was likely flawed given it was based on different information to that provided by the appellant's agent. He confirmed that he was not placing weight on the higher rent for Ground Floor North Wing Central 40 Lime Tree Way and considered the existing valuation at £150/m^2 was fair.

19. The panel noted from Mr Britton's submission that the development on which the subject property is located was not divided into different schemes by age. Instead, all properties were grouped by those built pre and post 1996 and therefore there were a variety of styles and quality within the scheme for post 1996 properties.

20. After considering all the evidence presented, the panel found that the guidance in *Lotus and Delta v Culverwell* was that the starting point of a valuation should be the rent passing on the subject property. In this case, the rent was agreed close to the AVD and analysis was provided adjusting for the rent-free period. The panel found that the rent would reflect the quality of the building and should only be disregarded if the rents on nearby similar properties suggested it was unreliable. The properties referred to by the parties varied in size, with around 220m^2 between the largest and smallest but were largely of similar age. Both parties were in agreement to place little weight on the rent for Ground Floor North Wing Central 40 Lime Tree Way as it appeared to be an outlier, possibly explained by its high specification attracting a premium.

21. When considering the remaining properties, the panel noted that the range of rental analysis covered £105.41/m^2 to £173.78/m^2. The panel understood from Mr Britton that the

£105.41/m^2 was now considered flawed, so little weight was placed on this figure. The panel concluded that the best evidence in this case was the rent agreed on the subject property, which was close to the AVD and would reflect the property's advantages and disadvantages. Mr Hamblin's original analysis of the subject rent was £121.51/m^2 and Mr Britton had provided no alternative, after disregarding the earlier figure of £105.41/m^2. The panel therefore found that £120/m^2, as proposed by Mr Hamblin, was reasonable and the appeal was allowed.

Order

22. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for 100 Cedarwood, Chineham Park, Basingstoke, Hampshire, RG24 8WD in the 2017 Rating List to £66,500 effective from 1 April 2017. The Valuation Officer must comply with this Order within two weeks of its making.

23. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended)), provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 3 February 2023 **Appeal number:** CHG100765996

Appeal Rights

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.