THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; business unit and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; tone of value of main space; comparable assessments; end allowance not warranted; appeal allowed in part.

RE: 28 Westbourne Studios, 242 Acklam Road, London W10 5JJ (“the subject hereditament”)

APPEAL NUMBER: CHG100769826

BETWEEN:	Paymentsense Ltd	Appellant
	and	
	Valuation Officer	Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 14 February 2024

PANEL: Mr S Levy (Presiding Senior Member)
Mr K Everett (Senior Member)

CLERK: Mr S Fletcher IRRV (Hons)

APPEARANCES: Mr J McCarthy of Altus Group (Appellant’s representative)
Ms D Pathak (Respondent’s representative)

Summary of decision

1. Appeal allowed in part. The panel determined the rateable value (RV) of the subject hereditament to be £27,750 with effect from 1 April 2017.

Introduction

2. The appeal process began with a challenge made by the appellant’s representative on 27 January 2021 in respect of the Valuation Officer’s (VO) compiled list entry of the subject hereditament at £52,000 RV with effect from 1 April 2017. The appellant’s representative proposed a revised assessment

of £25,125 RV from that date based on a reduced main space rate due to the low specification of the property.

3. The respondent issued a challenge case decision notice on 17 May 2023, which stated that based on the evidence available, the existing rating list entry of £52,000 RV was unreasonable and determined a revised entry of £40,250 RV with effect from 1 April 2017. The revised RV accounted for a reduced main space rate based on an agreed assessment within the building, however, the respondent did not consider that evidence had been provided to reduce the value to the appellant's representative's proposed level. The appellant's representative appealed that decision to this Tribunal on 30 August 2023 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was a business unit and premises constructed in 2002 which comprised basic studio/office space. It was located in Portobello, London, and sat below the A40 Westway flyover.

5. The appellant's representative appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), the representative confirmed that he was instructed under a conditional fee arrangement. 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 the client's case.

6. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

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

Issue

8. The issue for the panel to determine was the correct rateable value to be attributed to the subject hereditament in the 2017 rating list. The issue in dispute concerned the tone of value for the main space, and whether an end allowance was applicable.

Evidence and submissions

9. Arguments and factual evidence from both the appellant's representative and the respondent were provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's

representative's challenge submission, the respondent's challenge decision notice and reference to, and photographs of, properties deemed comparable to the subject hereditament by the parties. The Lands Tribunal's judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 was also referred to.

10. The appellant's representative sought a revised RV of £25,125 following a reduction to the main space rate to £240 per m^2 and an end allowance of 10% due to a lack of air conditioning and the level of the flooring. He contended that the rents at the subject building were higher than those typical for premises in Central London due to the nature of the agreements between the landlord and tenants, which were more akin to short-term occupational licences to give flexibility to the tenant. He relied on comparable assessment evidence in the locality to support a lower tone.

11. The respondent had revised the list entry of the subject hereditament with effect from 1 April 2017 by reducing the tone of value of the main space rate from £500 per m^2 to £385 per m^2. An end allowance was also awarded of 10% for the reasons proposed by the appellant's representative. This resulted in a revised RV of £40,250. In determining the main space rate, the respondent relied on rents and an agreement at the subject building.

Decision and reasons

12. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

13. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

14. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 1 April 2017.

15. It is a well-established rating principle that the starting point in the determination of a property's RV should be the rent passing on the subject hereditament itself as held in *Lotus and Delta*. The subject hereditament had a rent of £90,933.65 with effect from 20 September 2021. The panel attached little weight to the rent as it was too remote from the AVD to assist in determining the ratable value of the subject.

16. When presented, rents on similar properties can be considered. The respondent referred to two respective forms of return on 126 Westbourne

Studios and 127 Westbourne Studios, both of which were located in the building of the subject. 127 Westbourne Studios had a new lease for a term of two years with effect from 13 July 2015 at £51,901 per annum. The respondent had analysed the rent to £495.76 per m^2 and deducted 20% for external repairs, flexible monthly breaks and an onsite manager/café. The tone of value for the unadjusted space rate was £396.60 per m^2. 128 Westbourne Studios had a new lease for a term of two years with effect from 30 September 2016 at £56,309 per annum. The respondent had analysed the rent to £537.86 per m^2 and deducted 20% for the same reason it did so at number 127 Westbourne Studios. The tone of value for the unadjusted space rate was £430.28 per m^2. The respondent also referred to 18 Westbourne Studios which had its main space rate agreed at £425 per m^2. The respondent contended that the adjusted main space rate for the subject hereditament of £361.00 was therefore reasonable when compared to the evidence of other assessments at the subject.

17. The appellant's representative contended that the rental evidence at the subject building was unreliable. He stated that the landlord offered flexible leases akin to licences to tenants which were usually SMEs or start-up companies. He stated that there were minimal barriers to moving in, tenants were usually responsible for internal repairs only whereas the landlord was responsible for exterior repairs and building insurance, and many licenses also included provision of heating, gas and other utilities covered by the landlord. The terms of the agreements were less onerous than those usual in Central London as they were short, allowing for flexibility for the tenants. Wi-fi was also provided to all tenants as well as a dedicated team for IT issues. The building also had contained a communal central café with shops and amenities, and access was available to free events, examples being to networking and energy saving. As such, he argued that the arrangements were not typical of what the market for such spaces provided, and a hypothetical landlord would not provide such additional benefits to a hypothetical tenant. The respondent's representative agreed that the nature of the agreements was unusual. The appellant's representative contended that the rents would require significant adjustment to conform with the rating hypothesis and this was demonstrated by the 20% deduction to analysed rents as described by the respondent. He argued that it was an arbitrary figure and difficult to quantify.

18. The appellant referred to several comparable assessments to the subject hereditament within West London to support his proposed tone of value for main space. He described the building of the subject as metal clad and of an industrial aesthetic, which was disadvantaged by being under a flyover of a large dual carriageway. He stated that it had small windows, low specification basic space and was not in a commercial location. He referred to Great Western Studios, Ihub Building and Television Centre. The properties were described as either fully refurbished or purpose-built office buildings of superior quality to the subject hereditament. Their tone of value for main space was between £400 and £425 per m^2. Ihub Building and Television Centre both benefitted from air conditioning throughout, and the appellant's representative argued that the subject hereditament should be valued far less

than those comparable assessments when considering the differences in quality.

19. He also referred to The Canal Building and Buspace Studios, which had a tone of value for main space of £235 per m^2 and £240 per m^2 respectively. He stated that The Canal Building benefitted from full raised access flooring and air conditioning throughout. It also overlooked a canal. He argued that Buspace Studios was the most comparable property to the subject hereditament. He described it as converted industrial building into basic office studio, which had exposed ceilings and located in a similar non-commercial area to the subject hereditament. The respondent contended that those two properties were of a lesser quality than the subject hereditament, hence their lower tones of value.

20. The panel determined that little weight should be applied to the rents provided at the building of the subject hereditament given the nature of the agreements between the landlord and tenants as described by the appellant's representative. It was clear that these rents deviated from a typical agreement for such premises in the area as demonstrated by the 20% reduction to the unadjusted main space rate awarded by the respondent, and the respondent's representative's agreement that the leases/licences were unusual. The panel concluded that the rents were high to reflect the level of flexibility afforded to the tenants in the form of short-term agreements and the amount of additional services provided. As such, the panel found that a premium was being paid which was not in line with the expectations of a typical hypothetical landlord and tenant for a business unit and premises being utilised as office/studio space. The panel therefore concluded that should the subject hereditament be let on a typical lease for properties of its nature, the rent would be significantly lower.

21. The panel found that the comparable assessments of Great Western Studios, Ihub Building and Television Centre supported a lower unadjusted tone of value than £385 per m^2 determined by the respondent. Their tone of value for main space was between £400 and £425 per m^2. The panel was satisfied that the photographs, locations and descriptions from the appellant's representative demonstrated vastly superior specifications than the subject hereditament and more desirable locations. Great Western Studios overlooked a canal, Ihub Building was located on a development of high-specification offices and Television Centre was located in an area with numerous shops and restaurants. Television Centre also benefitted from a large atrium reception. In contrast, the subject hereditament was underneath the flyover of a large dual carriageway, in a non-commercial area.

22. The panel attached significant weight to the assessment of Buspace Studios. Like the subject hereditament, it too was a building of external industrial aesthetic which comprised office/studio space. The panel found that the property was similar in terms of character and style internally to the subject hereditament, and the office space was basic in nature. The panel did not consider that the property benefitted from a desirable locality unlike those comparable assessments that were located in commercial areas or

overlooked aesthetically pleasing natural features. No evidence was provided that the property benefitted from air conditioning or beneficial floor levels. Having distinguished the subject hereditament from comparable assessments with far higher quality and specifications, the panel determined that the subject hereditament's main space rate should be reduced to £240 per m^2 in line with Buspace Studios.

23. Having regard to the evidence, the panel was persuaded that the tone of value for the main space should be reduced and determined that an unadjusted main space rate of £240 per m^2 was fair and reasonable. No end allowance was applied as the panel considered the disadvantages at the property described by the appellant's representative were taken into account in its revised main space rate determination. The revised assessment for the compiled list entry with effect from 1 April 2017 as determined by the panel was as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Office	116.00	240.00	27,840
			Valuation sub-total	27,840
			Say RV	**27,750**

24. The panel therefore allowed the appeal in part as it considered the respondent's valuation of the subject hereditament unreasonable, but not to the extent as sought by the appellant's representative.

Order

25. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £27,750 RV with effect from 1 April 2017. The respondent must comply with this order within two weeks of its making.

26. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date: 13 March 2024

Appeal number: CHG100769826

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.