THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; surgery and premises; base rate in dispute; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO); appeal allowed.

RE: 41-42, Welbeck Street, London W1G 8DT

APPEAL NUMBER: CHG100810955

BETWEEN:	HCA International Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL:	Mr AN Backway (Presiding Senior Member) Mr B Proudfoot (Senior Member)
CLERK:	Miss F Willson
REMOTE HEARING ON:	1 February 2024
APPEARANCES:	Mr J McCarthy from Altus Group (on behalf of the appellant) Mr M Williamson (on behalf of the Valuation Officer) Ms D Reddihough (expert witness on behalf of the Valuation Officer)

Summary of decision

1 Appeal allowed. The panel determined a revised rateable value (RV) of £700,000 with effect from 5 June 2017.

Introduction

2 This is a 2017 rating list appeal for 41-42, Welbeck Street, London W1G 8DT (the subject property) which was entered in the 2017 rating list as ‘surgery and premises’ at an RV of £765,000 with effect from 5 June 2017. The challenge proposal was submitted on 24 May 2022. The challenge sought a revised assessment of £700,000 RV with effect from 5 June 2017. The Valuation Officer (VO) determined that it was not well founded and issued a

challenge case decision notice on 9 June 2023 which stated that based upon the evidence and information available, the rating list entry of £765,000 RV was reasonable.

3 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, this appeal was received by the Tribunal on 27 July 2023.

4 Mr McCarthy appeared 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). Mr McCarthy confirmed that he was instructed under a contingency fee and he 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 his client's case.

5 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).

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

7 The subject property consists of a terraced period property split over six floors and has been converted for medical use. It is situated on Welbeck Street in the Marylebone area of the city in what is known as the 'Harley Street Medical Area'. It is close to Oxford Circus and Bond Street tube stations.

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

Issue

9 The issue between the parties is should the appeal property be valued at the unadjusted base rate of £650/m^2, in line with the tone agreed for other surgery and premises in the locality or at the existing rate of £775/m^2, in line with office usage.

Evidence and submissions

10 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, VO's challenge case decision notice, and appellant's challenge submission. Mr McCarthy also submitted extra photographs of the subject property which had been agreed in advance with Mr Williamson.

11 Mr McCarthy, on behalf of the appellant, submitted that a reduced base rate of £650/m^2 was justified and was in line with other medical facilities in the same area. This resulted in a reduced RV of £700,000.

12 The VO submitted that the office base rate of £775/m^2 was appropriate based on the subject property's rent and after having regard to other comparable properties in the subject property's vicinity.

Decision and reasons

13 The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

> 2(1) 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.

14 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, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

15 The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 5 June 2017, being the date the subject property entered the rating list.

16 The panel must consider the subject property 'vacant and to let' and what the mode or category of occupation was at the material date. The issue of valuing a property *rebus sic stantibus* was considered by the Court of Appeal in the judgment of *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)*. In the *Scottish & Newcastle* case there were two public houses in a shopping centre in Milton Keynes. The Court of Appeal found that the subject premises must be valued *rebus sic stantibus* in connection with the actual mode or category of occupation. It was held that the works required to strip the subject premises back to a shell in order for them be let as retail units were not minor works. The hypothetical tenant would not consider this when determining a rental bid for the subject property. The court held that the two public houses were not in the same mode or category of occupation as the shops and restaurants the VO relied upon and the premises which were valued as public houses and premises.

17 Mr McCarthy explained that the subject property had been an office and premises when the appellant took the lease for the property. His client had always intended to convert the property into a medical facility and applied for planning permission to use the premises as Class D medical accommodation for 21 years. The appellant then started on a programme of building works which took one year to complete and involved reconfiguring the subject

property in order to create a private medical facility. The subject property was therefore no longer an office but a surgery as reflected in the change of description from 'office and premises' to 'surgery and premises' agreed between the parties at the check stage. Mr McCarthy submitted that the RV for the subject property should therefore be calculated on the base rate for a 'surgery and premises' and not an 'office and premises'.

18 Mr McCarthy referred the panel to the nine comparable properties he had introduced into evidence. They were all in the direct vicinity of the subject property and as they were all medical facilities, they were in the same mode and category of occupation as the subject property. He submitted that the established rate for a surgery and premises in the 'Harley Street Medical Area' of a similar size to the subject property was £650/m^2. He also drew the panel's attention to the photographs provided of the subject property and the comparable properties which he stated showed the similarity between the adaptation of the subject property and how similar it now appeared to that of the comparable properties.

19 Mr McCarthy submitted that the rent on the subject property should not be taken in isolation when calculating the RV for the subject property but instead a basket of evidence should be looked at. The rent was settled 15 months post AVD in a growing market and he therefore submitted that little weight should be given to the rent and instead asked the panel to take into account the evidence of the comparable properties he had put forward and the tone for the area which was based on the rental evidence of many similar properties in the area.

20 Mr Williamson cited the leading judgment of *Lotus and Delta* in support of his contention that the rent of the subject property was strong evidence for setting the rateable value. He noted that the subject property was held by the appellant on a 20 year lease which commenced on 21 July 2016. There was a six-month rent-free period and five yearly rent reviews. The headline rent was £912,500 per annum. Mr Williamson analysed the rent to £864.58/m^2 and then adjusted that figure for AVD growth which then equated to £766.86/m^2. This he submitted suggested that the base rate of £775/m^2 was reasonable.

21 The panel noted the reference to the Lands Tribunal case of *Lotus and Delta* but was aware that the case laid down that the rent of the subject property was only the starting point when assessing a base rate for a property, the closer it was set to the statutory definition of rateable value, the greater weight it should attract. The case went onto to find that other rental evidence and tonal needed to be weighed in the basket of evidence before the rateable value could be established.

22 Mr Williamson reiterated that the subject property was advertised to let as an office and premises. He submitted that the planning permission to change the use was temporary and so did not change the subject property from being an office when considering it 'vacant and to let'. When the appellant's lease comes to an end, they would be required to strip the property back to its shell and that would mean it would return to being an office. The subject property should therefore be valued in accordance with the base rate for offices in the locality being £775/m^2. This supported the present RV of £765,000.

23 The panel was aware that there were two limbs to consider in the *rebus sic stantibus* rule. The first limb was what was the physical state of the subject property 'vacant and to let' at the material date. The only alterations permitted were minor alterations of a non-structural nature. However, after the year-long extensive programme of work carried out on the subject property the panel found that *rebus sic stantibus* it was a 'surgery and premises'. The work included installing sinks and vinyl flooring in most rooms to create consulting rooms,

installing an MRI scanner in the basement. This had also been reflected in the change of the subject's property description to 'surgery and premises.'

24 The second limb is that a subject property has to be considered assuming the same mode and category of occupation as on the material day. Any change of use outside that mode or category should be ignored. The panel concluded that if the subject property was to be stripped back to a shell suitable for the property to be relet as an office then extensive work would be required. This would not be in the contemplation of the hypothetical tenant when formulating a rental bid. The panel therefore found that the mode or category of the subject property was 'surgery and premises'.

25 As the panel concluded that the subject premises mode or category of occupation was that of a surgery and premises, that should be assessed in line with the tone of the other surgery and premises in the vicinity. The panel noted that all the comparable properties provided by Mr McCarthy were very similar to that of the subject property and that a base rate of £650/m^2 was the adopted tone for such properties and put weight on this evidence.

26 The panel concluded that the appellant's representative had successfully demonstrated that the subject property was a 'surgery and premises' and so the base rate for surgeries in the vicinity of the subject property of £650/m^2 should be applied to the subject property. The panel therefore allowed the appeal. The RV is as follows:

27

Floor	Description	Area/m²	Price per m²	RV
Basement	Surgery	241	£357.50	£86.157.50
Ground	Reception/Entrance	18	£357.50	£6,435.00
Ground	Surgery	215	£715	£153,725.00
First	Surgery	244	£715	£174,460.00
Second	Surgery	138	£715	£98,670.00
Third	Surgery	140	£715	£100,100.00
Fourth	Surgery	118	£715	£84,370.00 Subtotal £703,917.50
Total:				**£703,917.50 Say: £700,000**

Order

28 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 alter the entry in the rating list for 41-42, Welbeck Street, London W1G 8DT be revised to a rateable value £700,000 with effect from 5 June 2017.

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

Refund of fees

30 A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 5 March 2024

Appeal number: CHG100810955
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.