VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Local Government Finance Act 1988; Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC); Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA141; comparable evidence; *tone within the development; appeal dismissed .*

APPEAL NUMBER:	CHG100813919 and CHG100814048	
RE:	2nd Floor, 1 Vere Street, London W1G 0DF 3rd Floor ,1 Vere Street London W1G 0DF (the “subject property”)	
BETWEEN:	Greenbrook Communications Limited	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	20 November 2024	
BEFORE:	Ms AG Cole Roberts, Presiding Senior Member Mrs F Cortese, Senior Member	
CLERK:	Mrs J Routledge IRRV(Tech)	
APPEARANCES:	Mr R Gibala of Altus representing the appellant. Mr C Cates representing the respondent.	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel concluded that the unadjusted rate (UAR) of £775 m^2 was reasonable on both subject properties having taken into account the tone of rental values within the immediate locality.

Introduction

3. The notice of hearing in respect of CHG100813919 was abridged as these were linked appeals with the same evidence being submitted on both. The appeals had been stayed awaiting a decision as both concerned the value to be placed on properties that had been fitted out. Neither party raised any objection to the abridged notice.

4. This was a 2017 Rating List appeal. The subject properties had been entered in the 2017 rating list as offices and premises with an unadjusted rate (UAR) of £775.00 per m^2. Therefore 2^{nd} Floor had an RV of £138,000 and 3^{rd} Floor of £149,000 with effect from 1 April 2017.

5. The challenge proposals were submitted by the appellant's representatives and were received by the Valuation Officer on 31 May 2022. They had been made on the grounds that the RV shown in the rating list on 1 April 2017 was unreasonable. A revised UAR of £725 per m^2 was proposed with effect from 1 April 2017. The VO issued challenge case decision notices on 27 November 2023, which stated that based upon the evidence and information available, the rating list entries for the two premises were reasonable and there would be no amendment.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuation for the hereditaments were not reasonable. The appeals were received by the Tribunal on 2 February 2024.

7. Mr Gibala appeared on behalf of the appellant as both advocate and expert witness and advised he was instructed on a conditional fee basis. This was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC). 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 the evidence supported the client's case.

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

9. Mr Cates' declaration of truth included a statement that he was not instructed under any conditional fee arrangement and 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 the evidence supported the client's case.

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

Background

11. The subject properties are on the second and third floor of a brick building that has retail space at the basement and ground levels with four floors of offices above. In 2014 the building was extensively refurbished to a high standard with secondary double glazing, dual aspect windows, raised floors and LED lighting. It is on the corner of Oxford Street and Vere Street.

12. In the challenge notice the appellant provided evidence that the rental analysis conducted by the agent supported a lower UAR. A number of settlements were identified that further supported the contention that the UAR was excessive. The building also had a number of disadvantages, it was on a noisy street, there was no reception area on the ground floor. It was argued the evidence supported a UAR of £725.00 per m^2 and the current RV was excessive for both properties.

13. The Valuation Officer disputed the rental analysis and argued that the rental analysis of the agent was flawed. Comparable properties identified were in different schemes and the most reliable rental evidence was within the building itself where there were a number of leases taken out close to the AVD which supported the UAR of £775.00.

Relevant Law

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

15. "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 –

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

    (2) 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;

(3) 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".

16. 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).

17. 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 1 April 2017

Discussion

18. In the case under consideration, the panel considered the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141 which was referred to by both parties.

19. The dispute was over the correct unadjusted rate to be applied to the subject assessments. It was contended by Mr Gibala that the current value of £775.00 was excessive and should be reduced, based on analysed rental transactions from within the subject building, and from comparable office properties along Vere Street, at the AVD. In accordance with the hierarchy of evidence as outlined in *Lotus and Delta v Culverwell (VO)*, the rent on the subject property should be the starting point.

- 2nd Floor 1, Vere Street:
  held on a lease for an 8-year term effective from 20/07/2015, three and a half months after the AVD, at a headline rent of £165,280 per annum. The net effective rent was calculated as £142,008.58 per annum, allowing a four month rent-free period as an incentive, and discounting the rent by 4% to reflect the rental growth post-AVD. With an ITMS of 179.29m^2, the rent analysed to £792.06m^2 .

- 3rd Floor 1, Vere Street:
  held on a 10-year lease effective from 01/07/2015, three months after AVD, at a headline rent of £158,175 per annum. The three months' rent free and four months half-rent were equivalent to 5 months' rent free in total. Amortising five months' rent-free up to the 5th year rent review and then toning back the rent by 3% to reflect the market growth at the time, the net effective rent was calculated to £140,541.65 per annum. Against an ITMS of 193.34m^2, the subject rent analysed to £726.91m^2.

Mr Gibala at the hearing confirmed that he had revised the analysis of the rent for the 3rd floor to £748m^2.

- 4 th Floor 1, Vere Street:
  held on a 10-year lease effective from 03/08/2015, four months post-AVD, at a headline rent of £145,853 per annum. Allowing a two month rent free period along with 10 months at half-rent, and toning back by 4% per month a net effective rent of £123,637 per annum was calculated. Against an ITMS of 173m^2 the rent analysed to £714.66.

This 4th floor rental analysis was also revised to £728m^2 at the hearing.

20. The Valuation Officer contended that the analysis of the rents was incorrect and disputed the devaluation of 1% per month post AVD that had been applied by the agent. It was argued this had only been agreed on central London properties. It was contended that the rents should be calculated as follows:

- 2nd Floor 1 Vere Street
  The two month rent free period and six months half rent should be treated as five months' rent free with two months for fit out and three months as incentive amortised to the rent review which analysed the rent to £856.38m^2.

- 3rd Floor 1 Vere Street
  The three months rent free period followed by four months of half rent was treated as five months rent free with two months for fit out and three months incentive amortised to the five year rent review which analysed the rent to £771.74 m^2.

- 4th Floor 1 Vere Street
  The two months rent free period followed by ten months half rent was treated as seven months rent free, allowing two months for fit out the remaining five months rent free was amortised to the five year rent review which analysed the rent to £794.40m^2.

21. The panel noted that both parties had used two months rent free for fit out and agreed the treatment of the incentive half rent. The panel found no evidence of rental growth had been provided by the appellant and therefore the panel preferred the Valuation Officer's analysis of the rents.

22. The appellant also identified seven comparable assessments: 1st -5th Floor 3-4 Vere Street was a neighbouring property. It had a UAR of £725 and was similar to the subject properties with retail at the ground floor with offices above. The panel noted the refurbishment was completed in 2001 and it was in a different scheme to the subject properties, it also did not benefit from a double frontage. The panel found that this comparable could be given limited weight as it was within the immediate locality but without the modern refurbishment that the subject properties had undergone.

23. Two properties in 1 Chapel Place were identified as comparable, the panel noted the Ground floor property had been given a 10% allowance for lower quality and the 3rd Floor property had an allowance for a Mansard roof which

reduced the UAR. The panel considered an adjustment needed to be made to allow for the more recent and higher standard refurbishment of the subject properties and gave this evidence little weight.

24. Three properties in Cavendish Square were also cited as comparable by the agent. These were all in different schemes and in a different location, one had been refurbished in 2006, another in 2019. It was argued they were in a better location than the subject properties. The panel gave these comparable properties and settlements little weight as these properties were considerably larger than the subject properties and in different locations.

25. The panel having had regard to the basket of evidence provided by the parties and having applied the principles in *Lotus and Delta* considered that the strongest evidence was the rents on the subject properties and comparable property within 1 Vere Street, they were all close to the AVD and new lettings. The rental analysis of both parties supported that £775 m^2 was reasonable for 2^{nd} Floor 1 Vere Street. Having had regard to the other rents which were all in a similar range the panel found that £775 m^2 was also reasonable for 3^{rd} Floor 1 Vere Street.

Disposal

26. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the rateable value of the subject properties was not unreasonable based on a UAR of £775.00 m^2.

Date issued to parties: 16 December 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.
