VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; fitness centre 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 dismissed.

APPEAL NUMBER:	CHG100819761
RE:	Basement, Ground & Mezzanine Floors 83, Great Titchfield Street, London W1W 6RH (the "subject property")

BETWEEN:	Ten Health & Fitness Limited	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	15 April 2024
BEFORE:	Mr P Blythe-Bartram, Presiding Senior Member Miss K Marsden, Senior Member
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)
APPEARANCES:	Mr D Semple from Altus Group (on behalf of the appellant) Ms W Leung (on behalf of the respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel confirmed a rateable value (RV) of £96,000 for the subject property with effect from 1 May 2017.

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered in the 2017 rating list as 'fitness centre and premises' at an RV of £96,000 with effect from 1 May 2017. The challenge proposal was submitted on 21 June 2022. The challenge sought a revised assessment of £48,000 RV with effect from 1 May 2017. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice on 25 July 2023 which stated that based upon the evidence and information available, the rating list entry of £96,000 RV was reasonable.

4. 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 24 November 2023.

5. Mr Semple 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 Semple 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.

6. 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).

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

8. The subject property is part of a six storey period building constructed prior to 1900 but fully refurbished in 2017. There is commercial space on the ground and basement floors and residential accommodation on the upper floors. It is located on Great Titchfield Street within the Noho area in Fritzovia. It is close to Portland Street and Goodge underground stations.

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

Background

10. The issue between the parties is whether the appeal property should be valued at a main space rate of £650/m^2, in line with the tone agreed for other office and premises in the locality or at the rate of £220/m^2, in line with fitness gym usage.

Relevant Law

11. 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.

12. 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).

13. 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 May 2017, being the date the subject property entered the rating list.

Discussion

14. The panel must consider the subject property 'vacant and to let' and the mode or category of occupation as 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.

15. Mr Semple explained that the subject property is incorrectly valued using an office basis and should in fact be valued as a gym/fitness centre and placed in a gym valuation scheme with a revised main space rate of £220/m^2. He explained that there had been major work carried out to change the subject property into a gym which would not be advantageous to a tenant wanting to use the premises as an office. The subject property had changing rooms fitted with showers, The basement level did not have the necessary electrical points or a raised floor to allow it to be used as an office. The lighting was suitable for a gym but not of a suitable quality for an office. The entrance on the ground floor had been fitted out to allow a retail section for the users. All of these changes would need to be removed if the premises was to be used as an office. Mr Semple referred the panel to the internal photographs of the subject premises

which showed the changing rooms, gym and entrance retail space. He therefore submitted that the subject premises should be calculated using a gym/fitness centre main space rate.

16. Mr Semple referred the panel to the six comparable properties he had introduced into evidence. They were all in the direct vicinity of the subject property and as they were all gym or fitness facilities, they were in the same mode and category of occupation as the subject property. He submitted that the established rate for a gym and premises in the vicinity and of a similar size to the subject property was between £190/m^2 and £300/m^2. He also drew the panel's attention to photographs 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.

17. Mr Semple 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 23 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.

18. Ms Leung cited the leading judgment of *Lotus and Delta* in support of her contention that the rent of the subject property was strong evidence for setting the rateable value. She noted that the subject property had a lease which commenced on 27 February 2017 with a headline rent of £120,000 per annum. The rent was analysed to £809.72/m^2 and then that figure was adjusted for AVD growth which then equated to £686.48/m^2. This she submitted suggested that the base rate of £650/m^2 was reasonable.

19. The panel noted the reference to the Lands Tribunal case of *Lotus and Delta* and was aware that the case laid down that the rent of the subject property was 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 on to find that other rental evidence and tonal should be weighed in the basket of evidence to establish the rateable value.

20. Ms Leung reiterated that the subject property was advertised to let as an office and premises. She 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'. Ms Leung submitted that the rent on the subject property was in line with other office rents in the locality and this supported the main space rate of £650/m^2. When the appellant's lease comes to an end, they would be required to strip the subject 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 £650/m^2. This supported the present RV of £96,000.

21. 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 alterations permitted were minor alterations of a non-structural nature. The work carried out on the subject property was non-structural and the panel therefore found that *rebus sic stantibus* it was an 'office and premises'.

Disposal

22. The panel concluded that the appellant's representative had not successfully demonstrated that the appeal property should be assessed as a gym/fitness centre at £220/m^2. The present valuation of £96,000 RV based upon an office rate of £650/m^2 was confirmed. In view of the above findings and conclusions, the Tribunal Panel dismissed the appeal.

Date issued to parties: 10 May 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.