VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Accuracy of the RV in the Rating List; Yoga Centre and premises; Level of value; Mode and category of use; Comparable properties; Fir Mill Ltd v Royston UDC (1960) 53 R & IT 389; Dawn Bunyan V Acenden Ltd [2023] UKUT 17 (LC); Appeal dismissed.

APPEAL NUMBER:	CHG100856780	
RE:	Lgnd-Gnd Floor 25-31 Ironmonger Row, London EC1V 3QN (the "subject property")	
BETWEEN:	Tara Yoga Centre	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Monday 16 September 2024	
BEFORE:	Mr A Ramsay, Senior Member	
CLERK:	Mrs S D Morgan	
APPEARANCES:	Mr M Morrison – Appellant's representative (Altus Group) Ms R Begum – Valuation Officer's representative	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The assessment was confirmed as £101,000 Rateable Value (RV) with effect from 4 December 2018.

Introduction

2. This is a 2017 rating list appeal. The subject property had been entered in the 2017 Rating List as 'yoga centre and premises' at a RV of £101,000 with effect from 4 December 2018.

3. The appellant had made a challenge against the accuracy of the list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO). After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to that effect was served on the appellant and his representatives then appealed the VO's decision to the Tribunal on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. Mr Morrison appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Morrison's' declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

5. I 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 Procedure regulations 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).

6. Ms Begum appeared as advocate and expert witness on behalf of the Valuation Officer, as stated in her statement of truth dated 13 September 2024.

7. Under Tribunal Business Arrangements, I could hear this appeal alone, as the other member selected to attend this hearing was unable on the morning of the hearing to participate and a replacement member could not be found at short notice.

8. The hearing was held remotely via Microsoft Teams.

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

Preliminary issue

10. At the panel's discretion, the appellant's representative asked to include the recent Upper Tribunal case of *Dawn Bunyan V Acenden Ltd* [2023] UKUT 17 (LC) which covered mode and category of use.

11. Ms Begum also asked to include photographs of the subject property taken on 12 September 2024. She added that she was unable to do so earlier due to annual leave and ill health.

12. There was no objection from either party regarding the additional evidence. I was therefore happy for the evidence to be admitted and the case continued.

Background

13. The evidence bundle before me comprised all of the evidence disclosed and exchanged during challenge which included comparable assessments, rental evidence, location plans, photographs of the subject property and their skeleton arguments.

14. The subject property was built in 1867 and comprises of five floors, offering office accommodation. The subject hereditament included accommodation on the lower and ground floors levels at 25-31 Ironmonger Row, London. It measured 356.89m^2 or in terms of main space 311.39m^2.

15. The subject property was used as a yoga studio which the appellant's representative contended was akin to a gymnasium or health centre and should be valued in line with health centres and gyms in the immediate locality. He referred to a number of comparable properties in the locality which are used as leisure facilities similar to the subject property to show how the adopted tone of the subject assessment is clearly out of kilter with the general trend of these types of property.

16. The valuation officer's representative believed that the existing assessment was not excessive and that the subject property should be valued in line with similar office accommodation in the locality. He provided rental and assessment evidence in support of his case.

17. The main issue in dispute concerned the level of value to be adopted for the subject property. The appellant's representative sought a revised RV of £74,000 based on an unadjusted rate of £280/m^2. The valuation officer's representative contended that the current RV of £101,000 was fair and reasonable based on £325/m^2.

18. There was also a dispute over the mode and category of occupation. The appellant's representative referred to the paragraph below highlighting the identification of the correct mode and category of a hereditament. He believed that this set out the position succinctly, in particular, to the effect of 'minor alterations'.

19. *26. The notional letting is to be assumed to be on the basis that the use to be made of the hereditament will be within the same mode or category of occupation as the ratepayer's actual use. The hypothetical tenant is not required to put out of its mind the possibility that "minor alterations of a non-structural character" might make the premises more suitable for its occupation and use without changing the general mode or category of that use (Fir Mill Ltd v Royston UDC (1960) 53 R & IT 389, a decision of the Lands Tribunal approved by the Court of Appeal in Williams (VO) v Scottish & Newcastle Retail Ltd [2001] RA 41 at [74]-[78]). These "minor alterations" could include "a fair amount of 'rebranding' in fascias and fittings appropriate to the same category of business" (Scottish & Newcastle at [75]).*

20. In relation to paragraph 26, the valuation officer's representative contended that this paragraph failed to take into account paragraph 3 in the same judgment.

    3. *The principal contention of the respondent ratepayer is that the additional Category B works carried out by a tenant to render a high-quality office building capable of beneficial occupation make no difference whatsoever to the building's rateable value. That rateable*

value can therefore be ascertained substantially by reference to the rent and other financial terms agreed between the building owner and the incoming tenant when it was let in its Category A condition.

Relevant Law

21. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

“(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.

22. Reference was made to the following.

- *Fir Mill Ltd v Royston UDC* (1960) 53 R & IT 389
- *Dawn Bunyan V Acenden Ltd* [2023] UKUT 17 (LC)

Discussion

23. 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.

24. 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.

25. 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 was 4 December 2018.

26. In the case under consideration, I had analysed the competing evidence having regard to the authoritative guidance in Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA141. The rent on the subject property is considered to be the correct starting

point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

27. The starting point for consideration was the actual rent passing on the subject property. The subject property was held on a new lease effective from August 2017 with an annual rent of £150,000. As this rent was too far removed from AVD to be used as a reliable indicator of value, I must look at properties that are comparable to the subject property.

28. The appellant's representative referred to six leisure facilities in the locality of the subject property, where the unadjusted rate ranged from 107.50/m^2 to £280/m^2. All had been placed in different valuation schemes to the subject property.

- South Retail One, 407, St John Street, London, EC1V 4AB. This property was fully refurbished in 2018. It is fully fitted out as a gym. 0.7 miles from the subject property. This was valued at an unadjusted rate of £280/m^2.

- BST 201A, Old Street, LONDON, EC1V 9NP. This property was fully refurbished in 2013. It is fully fitted out as a gym. 0.3 miles from subject. This had an unadjusted rate of £280/m^2.

- The Gym, 251 – 279 Goswell Road, London EC1V 7AH. This building was completed in 2014. It is a fully fitted out as a gym. 0.5 miles from the subject property. This had an unadjusted rate of £107.50/m^2.

- 1st Fl 7, Morris Place, London, N4 3JG. Tone challenged. Challenge disagreed. Not appealed. Valued as an office. 3.2 miles from the subject property. This was valued at an unadjusted rate of £200/m^2.

- Central & Northwest London NHS Foundation Trust 1ST FLR 681-689, Holloway Road, London, N19 5SE. Valued as an office. Built late 1970's. 3.5 miles from the subject property. This was valued at an unadjusted rate of £165/m^2.

- Unit 7 6, Hornsey Street, London, N7 8GR. It was refurbished in 2013. Retail unit. Tone reduced on challenge. 2.3 miles from the subject property. This was valued at an unadjusted rate of £175/m^2.

29. The appellant's representative believed that these comparable properties supported his contention that £280/m^2 was more appropriate for its use as a yoga centre.

30. The valuation officer's representative referred to six comparable office assessments in Ironmonger Row where the adopted rate of £325/m^2 was applied and had not been challenged. He also made reference to rental evidence, providing details for the subject property and three other properties in Ironmonger Row taken from the Form of Returns. He believed that the rental information below supported the £325/m^2 applied to the subject property.

- The 2017 rent renewal on the subject property of £150,000 per annum analysed to £481.71/m^2.

- A new July 2014 rent on Grd Flr 19-23, Ironmonger Row, London, EC1V 3QN at £51,026 per annum analysed to £314.59/m^2.

- A June 2014 rent renewal on Bst & Gnd Flrs 76, Ironmonger Row, London, EC1V 3QR at £60,000 per annum analysed to £468.57/m^2.

- A September 2015 rent review on 1st -3rd Flrs 19-23, Ironmonger Row, London, EC1V 3QN at £131,835 per annum analysed to £333.11/m^2.

31. In response to the valuation officer's rental evidence, the appellant's representative contended that the rental evidence provided by the Valuation Office during the challenge stage in support of the current tone referred only to office hereditaments. The subject is a yoga centre and premises and is a completely different mode and category with a different planning use of D1. He highlighted the importance of *Fir Mill Ltd v Royston UDC* on mode or category of use.

32. Having examined the evidence presented by the parties, including the case law, I determined that the assessment should not be reduced. I found that the comparable properties put forward by the appellant's representative were not in the same scheme as the subject property. His comparable properties were fully fitted out gyms which would have had a significant amount of money spent on them to convert them to a gym or similar leisure facility including the purchasing of equipment. It would also take substantial costs to convert them back to their original use. I therefore considered that these were not comparable to the subject property despite its D1 use.

33. I also noted that the appellant's representative could not confirm any costs or what physical changes had been made to the subject property. The internal and external photographs of the subject property showed that no significant amount of fitout had taken place for its use as a yoga centre and as such, the cost of converting it back to a shell would not be any different to being offices. The subject property was part of an office building, which vacant and to let, would be occupied as an office and would achieve the same level of rent as other offices in the locality. I found that the rental evidence for similar accommodation in Ironmonger Row supported the existing assessment for the subject property and that £325/m^2 appeared reasonable as office accommodation.

34. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, I concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value. Consequently, I was satisfied that the grounds for the appeal were not substantiated, and the appeal was dismissed.

Disposal

35. In view of the above findings and conclusions, I am satisfied that the present assessment for the subject hereditament of £101,000 RV with effect from 4 December 2018 is reasonable. Consequently, the appeal is dismissed.

Date issued to parties: 15 October 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.