VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List; Office and premises; Compiled List Entry; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal allowed

APPEAL NUMBER: CHG100858314

RE: First And Second Floor Rear, 10 Hammersmith Grove, London W6 7AP (the "appeal property")

BETWEEN:	Accor UK Business and Leisure Hotels Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Monday 27 January 2025

BEFORE: Mrs AE Fielder (Presiding Senior Member)
Mrs NC Yang (Senior Member)

CLERK: Miss K Hendry

APPEARANCES: Mr P Nash of Lambert Smith Hampton (Appellant's Representative)
Mr G Singh (Respondent's Representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed

2. The panel confirmed the rateable value (RV) £980,000 with effect from 1 April 2017.

Introduction

3. The challenge proposal was submitted by the appellant's representative and was received by the Valuation Officer (VO) on 22 September 2022. It had been made on the grounds that the RV shown in the rating list on of £1,020,000 on 1 April 2017 was inaccurate. A revised RV of

£980,000 was proposed with effect from 1 April 2017, based upon a reduced unadjusted rate from £460/m^2 to £440/m^2.

4. The VO issued a challenge case decision notice on 20 March 2024 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was lodged by the appellant's representative on behalf of the appellant, and received by the Tribunal on 17 July 2024.

6. Mr Nash 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), he confirmed that he was instructed 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.

7. 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.

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

Background

9. The appeal property was a nine storey purpose built grade A office building constructed in 2014 and was located in the centre of Hammersmith. It benefitted from fully raised floors and air conditioning. The appellant occupied the first and part second floors under a lease which commenced on 4 July 2014 for a term of ten years.

10. The issue between the parties is whether the appeal property should be valued at a main rate of £460/m^2 as submitted by the VO or a main rate of £440/m^2 as the appellant's representative submitted.

Relevant Law

11. The subject property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988).

12. The panel was aware of the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 cited by the parties. This case had established six propositions, which gave clear guidance to be followed, namely:

(1) ‘Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

(3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.’

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 1992/556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

Discussion

14. The appellant’s representative stated that the initial rent payable was £1,114,697 which was increased on 4 July 2019 rent review to £1,288,000. There was an initial 16 month rent free period at the start of the lease. Mr Nash argued that the rent paid by the appellant supported a lower basic rate. Due to a rent increase in the 2019 review, he had undertaken a discounted cash flow rental analysis up to the first review in the five year lease, then adopted a rate of 7%, ignoring the first three months of the rent free period to reflect fit out. This approach equated to an analysed the rent of £376/m^2. As the rent was effective from July 2014, he applied an adjustment for rental growth of 0.75% per month to equate to an adjusted rent at the AVD of £400/m^2.

15. In further support of a reduction, Mr Nash referred to comparable properties, namely other grade A office accommodation located in Hammersmith which had been valued at a lower rate than the appeal property. 9th and 11th floors of 245 Hammersmith Road had been valued at £440/m^2. He had identified 35 assessments covering four buildings within scheme reference 373333 which covers modern purpose built offices within Hammersmith, including the appeal property. These properties had been reduced from £460/m^2 to £440/m^2, including 245 and 175 Hammersmith Road and 12 and 10 Hammersmith Grove. The majority of reductions were agreed at the Check stage, with one disagreed Challenge, in respect of Pt 4th Floor 12 Hammersmith Grove.

16. Mr Nash stated that the VO's defence was that that had been an error in reducing the assessments and therefore the VO was impugning the list. He argued that the VO had not provided any detail of the original rental analysis, the revised rental analysis to show that there was an error.

17. In response, Mr Singh as advocate, argued that the tone was not established and the current rate of £460/m^2 was not unreasonable. The 35 reductions cited were as a result of a flawed decision notice in respect of Pt 4th Flr, 12 Hammersmith Grove. He stated that the reductions were undertaken with no review or rental analysis and were untested by negotiation and the errors were unable to be corrected due to the closure of the 2017 rating list. He stated that the reduction on Pt 4th Floor was based on an incorrect rental analysis with no fit out uplift applied.

18. Mr Singh referred to the rent and how he had amortised it over five and ten years. Over five years it equated to £387/m^2, applying 1.1% per month to the AVD equated to £425/m^2 then applied a £25 uplift for fit out equating to £450/m^2. He had also provided rental evidence for 7th Floor at 10 Hammersmith Grove, which equated to £440/m^2. 2nd Flr Front and 3rd Flr at 10 Hammersmith Grove rent analysed to £454/m^2, 6th Floor at 10 Hammersmith Grove equated to £473/m^2 and 8th Flr 10 Hammersmith Grove equated to £477/m^2. The VO's review of the rental evidence now supports a main rate of £460/m^2 on the appeal property.

19. Having regard to the evidence presented, the panel concluded that the basic rate adopted by the VO of £460/m^2 was excessive and should be reduced to £440/m^2 in line with rent adopted by Mr Nash and the 35 comparable assessments which evidenced that a tone had been established. Whilst Mr Singh had argued that this had been reduced in error, there was no supporting evidence to suggest that it had.

Disposal

20. The panel therefore found the appeal property to have a main rate of £440/m^2 confirming a revised RV of £980,000. The panel therefore allowed the appeal.

Order

21. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £980,000 with effect from 1 April 2017 within two weeks of the date of this order.

Refund of appeal fee

22. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date issued to parties: 19 February 2025

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.