

VALUATION TRIBUNAL FOR ENGLAND



Non Domestic Rating; Valuation Appeal; Local Government Finance Act 1988; Offices; Material change of circumstances; Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council [1976] RA 141; Local rental evidence; Comparables; Appeal allowed in part.

RE: (& 1 Ormond Yard) 3rd Floor, 3 Duke of York Street, London SW1Y 6JP

APPEAL NUMBER: 599023131347/537N10

BETWEEN:	Richard Osborne Fine Art	Appellant
	And	
	Mr M Dunlevey Valuation Officer	Respondent

PANEL: Mrs M Colne (Chairman)
Mr M Bhatti

SITTING AT: Valuation Tribunal Offices, 2nd Floor, Black Lion House,
45 Whitechapel Road, London E1 1DU

ON: Thursday 28 August 2014

APPEARANCES: Mr H Makhdumi of Evans and Payne, Appellant's Representative
Mr M Patel, Valuation Officer's Representative

Summary of Decision

1. Appeal Allowed in part.
2. The rateable value is reduced to £18,750 with effect from 1 March 2012.

Introduction

3. This appeal has been brought in respect of the following: The appeal arose out of a proposal made on 23 September 2013 seeking a reduction in the rateable value to £1 with effect from 6 June 2011 on the grounds that circumstances affecting the property changed on that date. The proposal stated, "That the entry should describe the correct extent of

the hereditament and the entry is excessive, unfair, incorrect and/or bad in law. The building works at 8 St James's Square have caused much nuisance and disturbance and resulted in lower property prices.”

4. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it having been overlooked by the panel.
5. The appeal property comprises offices located on the third floor of an end terraced, period corner building constructed in 1897, with stone/brick walls and a tiled mansard roof. It is situated at the corner of Duke of York Street and Ormond Yard at the end of a block of similar buildings. It was last refurbished in 1987 and is fairly basic with single glazed, timber frame, sash windows.

Issues

6. The issue remaining before the panel was the appropriate main space to be applied as it was now accepted that a 7.5% allowance for building works should be applied with effect from 1 March 2012.

Evidence and Submissions

7. Mr Makhdumi presented the panel with a submission containing a photograph of the subject building and a copy of his case together with appendices including; a location plan, photographs of the appeal property and details of rents within the building. He also included a copy of the agreed valuation on the previous 2005 Rating List for the offices on the 4th floor, photographs of those offices, photographs and details of a comparable property, Ames House 6 Duke Street, his statement of case from a previous appeal in respect of the 4th Floor on the 2010 rating list and photographs of the Valuation Officer's comparable properties.
8. Mr Makhdumi referred the panel to the rents in the building including the rent on the appeal property; this had been agreed at £18,000 per annum from February 2007, which he devalued to £445.54 per m². As regards the appeal in respect of the 4th floor, he contended that he had agreed that assessment based on the rent of the appeal property at £480 per m². However, the Valuation Officer had written the agreement up differently; showing a basic price of £551 per m² with a 12.5% end allowance for lower headroom, poor light and access problems; none of which he contended were discussed when he was negotiating the appeal. He accepted the lift opened directly into the offices on the 4th floor and stated that he had agreed a 2.5% allowance on the 2005 rating list to reflect this and nothing had changed in the building since.
9. He then referred the panel to his comparable property Ames House 6 Duke Street, which was a purpose built, modern office block, where the tone was agreed at £562.50 per m² and he contended that the differential of only £10 per m² between that property and the appeal property, which was a converted former domestic property, was insufficient. As regards the Valuation Officer's comparable properties, he contended that Masons Yard was not comparable as it was a Gallery and the properties at 1 Babmaes Street and 97 Jermyn Street were superior to the appeal property and were assessed at £568.75 per m² and £575 per m² respectively. He contended that based on the quality of those properties, the difference in values between them and the appeal property should be greater.
10. In conclusion, he stated that adding 2.5% to the basic price of the 4th floor of £480 per m², which he contended he had agreed, gave a revised main space price of £492.50 per m² for the appeal property; to reflect the fact that the appeal property did not suffer the

disability of the lift opening directly into the offices. Applying that figure to the agreed area and deducting the 7.5% allowance for building works gave him a revised rateable value of £18,250.

11. Mr Patel presented the panel with a submission containing his case and appendices including, a copy of the proposal, a photograph of the appeal property, location plans showing the appeal property in relation to his comparable properties, floor plans of the 3rd and 4th floors, a rental summary, an assessment summary and his revised valuation of the appeal property, incorporating the 7.5% agreed end allowance for building works. Mr Patel sought a revised rateable value of £20,500 with effect from 1 March 2012 based on a main space price of £551 per m², which was derived from a basic price of £525 per m² with an uplift of 5% for the fact that the office was a small take, in the range between 25 m² and 50 m².
12. Mr Patel argued that the rent passing on the appeal property was out of line with the general level of rents and contended that more weight should be given to the comparable properties referred to on his assessment schedule, where appeals in respect of the 1st and 2nd floors at the appeal property, had been dismissed by the valuation tribunal confirming the main space price of £551 per m². He also pointed out that three appeals in respect of units in excess of 50 m² at 97 Jermyn Street had been withdrawn or dismissed by a Valuation Tribunal leaving the main space price at £575 per m², which he compared to the basic price at the appeal property of £525 per m². He also referred to two appeals at Masons Yard, where appeals in respect of the basement and ground floor and the 1st floor, had been dismissed or withdrawn leaving the main space price at £525 per m², for the basement and ground and £475 per m² for the larger 1st floor.
13. Mr Patel believed the tone was agreed and considered the rent passing on the appeal property was below that tone. He also considered the 4th floor at the subject property to be inferior to the appeal property and referring to his rental summary, highlighted that while the 2nd floor had been let for £17,500 per annum on 27 May 2009, the 4th floor had let on the same day for only £12,100 per annum. Mr Patel therefore considered the appeal property had been correctly assessed at a basic price of £551 per m² and applying the agreed 7.5% reduction for building works sought a revised rateable value of £20,500 with effect from 1 March 2012.

Decision and Reasons

14. The panel gave careful consideration to all of the evidence presented and decided to allow the appeal in part and confirmed a revised rateable value of £18,750 with effect from 1 March 2012.
15. In arriving at its decision, the panel had regard to the basis of valuation contained in schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999.
16. The Panel also found authoritative guidance from the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* [1976] RA 141, regarding the weighting of evidence, in that, the passing rent, where available on the appeal property should be used as the starting point in its consideration of the rateable value for the appeal property. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it.

17. In this case, the panel noted that the appeal property had been let for £18,000 per annum with effect from 27 May 2009, which analysed to £445.54 per m². As this was also one year prior to the antecedent valuation date (AVD). Mr Makhdumi had accepted that there may be some rental growth from then until 1 April 1991 but not enough to take it to the price adopted of £551 per m² or the basic price before the small size uplift of £525 per m², which Mr Patel stated was the correct starting point. The panel accepted that this was only one rent but it was a clean rent, agreed in respect of the appeal property itself just prior to the AVD.
18. The panel noted that Mr Patel had contended that the rent was out of line with the general level of rents but had produced no rental evidence himself to confirm this was the case. The panel then had regard to the comparable properties referred to by both parties and accepted that Ames House 6 Duke Street, which was assessed at £562 per m² was superior to the appeal property, being a purpose built, modern office block rather than a converted 1890's property. In comparison to that property, the panel considered the £551 per m² or £525 per m² for the appeal property seemed high.
19. As regards Masons Yard, the panel noted this was assessed at between £475 per m² and £525 per m², Mr Makhdumi had contended that as an art gallery it was not comparable. The panel found it appeared similar in age and character but occupied a much less prominent position. The panel noted that 97 Jermyn Street looked similar to the appeal property but from the sales particulars, it appeared to have been extensively modernised and so was superior to the appeal property.
20. The panel noted that the majority of appeals on Mr Patel's schedule had either been withdrawn or dismissed by the Valuation Tribunal rather than being agreed. Mr Makhdumi had contended that the two appeals in respect of the 1st and 2nd floors at the appeal property had been dismissed by the Valuation Tribunal because the occupier who made the appeals had been unaware that he was required to serve a statement of case and the appeals had therefore been struck out without being prosecuted.
21. As regards the 4th floor of the appeal property, the panel accepted that it was the poorest floor in the property because the lift opened directly into the offices and it was located under the mansard roof, which affected the available headroom. The panel also noted that it had been let in 2009 for £5,400 per annum less than the second floor.
22. In conclusion, the panel had regard to the rent passing on the appeal property which devalued to £445.54 per m² and considered this provided the best evidence. It was accepted that as the rent had been agreed one year prior to the AVD, some rental growth could be expected. Mr Makhdumi had reflected this by basing his revised price for the appeal property, of £492.50 per m², on the agreement in respect of the 4th floor; which Mr Makhdumi stated he had resolved at £480 per m². He had then applied an uplift of 2.5% to the appeal property, to reflect the fact that unlike the 4th floor, the lift did not open directly into the offices. The panel considered this uplift to be insufficient and increased it to 5% to reflect the difference in quality between the appeal property and the 4th floor; this gave a revised price of £504 per m². Applying this to the agreed areas and deducting the 7.5% agreed building allowance gave a revised rateable value of £18,750, which the panel considered fair and reasonable.

Order

23. 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 amend the entry for the appeal property to rateable value £18,750 with effect from 1 March 2012.

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

Date: 17 September 2014

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