

THE VALUATION TRIBUNAL FOR ENGLAND



Non-Domestic Rating; 2010 Rating List; Complied List Entry; Rental Evidence; Office and Premises; Appeal Allowed in Part.

RE: 1st Flr West, 7 Curzon Street, London W1J 5HG

APPEAL NUMBER: 599017730065/058N10

BETWEEN

17 Capital (Caroline)

Appellant

And

Mike J Dunlevey BSc (Est Man) MRICS
(Valuation Officer)

Respondent

PANEL: Mr A Edwards (Chairman)

Mr P Careless

SITTING AT: Black Lion House, 45 Whitechapel Road, London E1 1DU

ON: Wednesday, 15 January 2014

APPEARANCES:

Mr H Berlin of Hammer Properties for the Appellant

Mr J Berlin of Hammer Properties – Expert Witness

Mr A Hickman of the Valuation Office Agency for the Respondent

Summary of Decisions

- 1 Appeal Allowed in Part: The Rateable Value of 1st Flr West, 7 Curzon Street, London W1J 5HG is £100,000 with effect from the 1 April 2010.

Introduction

- 2 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 being overlooked by the Panel.

- 3 This appeal has been brought in respect of the following: A proposal made by the Appellant to alter the entry made by the Valuation Officer (VO) into the 2010 Rating List for 1st Flr West, 7 Curzon Street, London W1J 5HG, at the date this List was compiled, of Office and Premises, Rateable Value £107,000, was received by the VO on the 24 November 2010. Agreement between the VO and the Appellant on this proposal had not been possible and the matter was therefore referred to the Valuation Tribunal for England as an appeal under Regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2268.
- 4 The appeal hereditament comprises office accommodation situated on the 1st floor of a mixed use building of offices and residential accommodation constructed in 1984. The subject offices are air conditioned and have perimeter trunking but do not have raised floors.
- 5 The location of the appeal building is not visible from Curzon Street because of its position behind a 'large period church'. Access to the building is from a landscaped courtyard situated behind the church.

Issues

- 6 The issue in dispute between the parties was the appropriate Rateable Value for the appeal property.
- 7 The fundamental difference of opinion between the parties was the basic main space price per m² to be applied in the valuation of the appeal property. At the hearing, the Appellant proposed that this should be at £635 per m², giving a revised assessment of £97,500, while the VO maintained that the basis of £700 per m² that is presently adopted in the list entry for this property was correct. He therefore contended for the current entry of £107,000 to be confirmed. Both parties valuations for the property showed a single line entry of office space measuring 154.1m² to which they each applied, in full, the price per m² they contended to be appropriate for this hereditament.
- 8 The arguments presented by the parties in support of their respective valuations were based on the weight to be given to rental evidence from comparable hereditaments.

Decision and Reasons

- 9 In deciding this appeal the Panel was governed by rating legislation laid down by Parliament which defines Rateable Value:

Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, defined that the Rateable Value of a non-domestic property shall be taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis 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 the 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.
- 10 For the purposes of the 2010 Rating List the date at which this hypothetical letting is assumed to take place, the antecedent valuation date (AVD), has been set by Parliament as the 1st April 2008.
- 11 As this appeal resulted from a proposal on the grounds that the entry in the list for the appeal property was incorrect on the day the list was compiled the 'material day', i.e. the date matters referred to in Paragraph 2 (7) of Schedule 6 to the Act have to be looked at, was the date the list was compiled, i.e. the 1 April 2010.
- 12 The Panel was reminded at the hearing of the principles established in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 and *Specialeyes Plc v Felgate (VO)* [1992] RA 387 in the weighing of evidence, in particular that of rental evidence with regard to the dates such rents were agreed in relation to the AVD. The Panel is familiar with these cases and these principles.
- 13 Both parties submitted rental evidence from lettings on other offices at 7 Curzon Street, which clearly meets the criteria of being from properties comparable in both nature and location to the subject hereditament. The main difference of opinion turned on the adjustments that might be required to the amount these rents showed to take into account the difference in the date they became effective and the AVD. Mr Hickman submitted that those rents agreed after AVD were of limited assistance in particular as the lettings were for relatively short periods reflecting, what Mr Hickman explained to be, some uncertainty regarding plans which the owners have for refurbishment of the building. The Panel notes that, on this last point, the planning application Mr Hickman referred to in his submission for these proposed works were made in 2013, some considerable time after even the latest effective date for any of the rental evidence that had been submitted, which, in fact, was on the appeal property itself in May 2010. Notwithstanding that observation, the Panel accepts that rents agreed after the AVD are normally of less weight than those that could have been in the mind of hypothetical parties to a tenancy agreement at the AVD, and clearly, a rent agreed in 2010 is going to reflect different market conditions than those which existed at the AVD.
- 14 The only evidence either party was able to provide of a rent agreed before the AVD was of a five year lease effective from the 1 January 2006 on the Bst Sth & Grd Flr East, 7 Curzon Street. Both parties included this in their submissions and had analysed this to a price of £651 per m². Mr Hickman argued that the market was stronger at the AVD than it had been at the time this lease was agreed and provided various indices of office rents in London to support this view. Indeed, he argued that this showed an increase of 35% in rental levels between first quarter 2006 and first quarter 2008. The Appellant referred to patterns of rents agreed at 7 Curzon Street post AVD to suggest that, in fact, the market would have been lower at the AVD and therefore adjusted for this in adopting their proposed basis to £635 per m².
- 15 While the Panel had regard to both parties approaches in endeavouring to support movement in the rental market both before and after AVD, it found that neither had shown conclusively what, if any, material difference there would be between the only relevant rental evidence available from a date before AVD and what that rent might have been had this been agreed at AVD. It is unfortunate that, at the AVD, economic circumstances in the UK were undergoing fundamental changes and it is therefore

extremely difficult to try and draw a consistent pattern of rental value changes around that date. Indices may assist but the Panel was not persuaded that they could be taken as a conclusive reliable basis on which to support an argument that at AVD the rental levels in 7 Curzon Street would have been substantially higher than the only pre AVD rental evidence showed. Similarly, while the post AVD rental evidence did appear to show prices in 7 Curzon Street had fallen away quite significantly from this level, these were all agreed more than a year after AVD, which is no doubt reflective of the extremely turbulent economic situation that existed at that time.

- 16 Having considered both parties arguments and the evidence presented, the Panel concluded that the only reliable indicator it had for determining the rental value of the appeal property was the rent agreed on Bst Sth & Grd Flr East, 7 Curzon Street. While this was effective more than two years before the AVD, in the absence of anything the Panel could find to persuasively show that a different level of rental value would have applied at AVD for this building, the Panel concluded that it should adopt this as the correct basis in the valuation of the appeal property. The Panel therefore decided that an appropriate price to be adopted in the valuation of the appeal property would be £650 per m² based on the most relevant actual rental evidence that had been provided.
- 17 Applying £650 per m² to the agreed area of 154.1 m² for the appeal property give a total of £100,165, which rounds to rateable value £100,000. In so far as this is a reduction in the assessment for the appeal property, this appeal was therefore allowed in part.

Order

Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Valuation Officer to alter the 2010 Rating List entry in respect of 1st Flr West, 7 Curzon Street, London W1J 5HG within two weeks of the date of this order to Offices and Premises, Rateable Value £100,000 with effect from the 1 April 2010.

Date: 12 February 2014

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