

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2017 Rating List appeal; Fitness Centre and Premises; mode and category of occupation at the material day; comparable evidence; the evidence did not show that the appeal property's assessment was unreasonable; appeal dismissed.

RE: 114 London Wall, London EC2M 5QD

APPEAL NUMBER: CHG100174481

BETWEEN:	The Light Practice Ltd	Appellant
	and	
	Mr A Ricketts	
	(Valuation Officer)	Respondent

PANEL: Mr P J Hickson (Presiding Senior Member)
Dr J Johnson (Senior Member)

CLERK: Mrs A Keohane

REMOTE HEARING ON: 19 October 2022

APPEARANCES: Mr S Carter of Altus Group on behalf of the Appellant as
advocate and expert witness
Mr C Cates on behalf of the respondent as advocate only

Summary of decision

- 1 Appeal dismissed. The panel made no change to the rateable value (RV) ascribed to the appeal property.

Introduction

- 2 This is a 2017 rating list appeal that has been brought in respect of 114 London Wall, London EC2M 5QD, (the 'appeal property'), which had been entered into the rating list as 'Fitness Centre and Premises' at £140,000 RV with effect from 1 April 2017.
- 3 The challenge proposal was submitted by Altus Group on behalf of the Appellant and was received by the Valuation Officer on 5 March 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £84,500 RV was proposed with effect from 1 April 2017. This was based on a rate of £160/m² in accordance with the Valuation Office

Agency's (VOA) Rating Manual, Section 6, Part 3, section 965, which covered Sports and Leisure Centres (Private).

- 4 The Valuation Officer issued a challenge case decision notice on 24 August 2021, which stated that based upon the evidence and information available, the current rating assessment based on an adjusted rate of £267.50/m² (£375/m² unadjusted), was considered to be reasonable.
- 5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal was made on the grounds that the valuation for the hereditament was not reasonable. The appeal was received by the Tribunal on 15 December 2021.
- 6 The appeal property is a fitness centre situated within the lower ground floor of a mixed use period building known as Salisbury House. Salisbury House has office accommodation on the upper levels and extends to nine floors. The appeal property has a total area of 530.58m² which equates to 393.26m² in terms of main space (ITMS). It is located on the north side of London Wall, overlooking Finsbury Circus and close to the junction of Moorgate. Moorgate, Liverpool Street and Bank provide nearby British Rail and underground services.
- 7 Mr Carter appeared on behalf of the Appellant as advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Carter declared that he was instructed on a contingency fee basis. He declared that he understood and accepted 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 the evidence supported the client's case.
- 8 The panel 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. The panel therefore considered the "expert" evidence and attached such weight as it saw fit.
- 9 This hearing was held remotely and Mr Cates experienced connection issues. However, these were resolved when he participated in the hearing via audio only.
- 10 This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement or item of evidence placed before it by the parties, should not be construed as it being overlooked.

Issue

- 11 The issue was the level of value applicable in the appeal property's assessment. The rating representative proposed £84,500 RV, reflective of a rate of £160/m², based upon the VOA Rating Manual for gym type properties and comparable assessments in the same mode or category of occupation. The Valuation Officer considered the current entry of £140,000 RV, based upon an unadjusted rate of £375/m² (adjusted to £267.50/m²) and on an office basis, was reasonable.

Evidence and submissions

- 12 The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with the rating representative's expert witness report. The bundle included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges; rental and assessment evidence for comparable properties cited by both parties; photographs; location plans; the definition of rateable value, and the Valuation Officer's challenge case decision notice. The rating representative also provided photographs which Mr Cates accepted on the day. The following case law was specifically referred to:
- *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141 (referred to hereafter as *Lotus and Delta*)
 - *Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* RA-480-[1993] (LT) and the subsequent Court of Appeal decision in *Williams (VO) v Scottish & Newcastle Retail Ltd and another* [2001] EWCA Civ 85 (referred to hereafter as the *Williams* cases)
- 13 Mr Carter explained that the appeal property's description had been changed by the Valuation Officer to fitness centre and premises. However, its valuation had remained on an office basis at an adjusted rate of £267.50/m²
- 14 Mr Carter confirmed that the appeal property was held on a 15-year lease with five yearly reviews, effective from 2 February 2013. The rent was £130,569.50 per annum and a six months' rent-free period had been given at the outset. As the rent had been set over two years prior to the AVD, Mr Carter considered it had limited relevance.
- 15 Mr Carter argued that the appeal property's current assessment was excessive and that the correct approach to its valuation was set out within the VOA Rating Manual Section 6, part 3, section 965: Sports and Leisure Centres (Private). He provided the valuation scheme he considered to be appropriate and believed the appeal property fell within Band 4, which gave the maximum value applicable as £160/m². Mr Carter considered this value was supported by the evidence of his comparable properties in the same mode or category of occupation, that had been valued on a gym/fitness basis.
- 16 Mr Carter referred to the findings of the Lands Tribunal and the Court of Appeal in the *Williams* cases. Having regard to these, he argued that the mode or category of occupation of the appeal property at the material day was that of a gym and premises and it was required to be valued as such in accordance with the case law. He therefore sought confirmation of his revised assessment of £84,500 RV with effect from 1 April 2017.
- 17 On behalf of the Valuation Officer, Mr Cates referred to the VOA Rating Manual, and stated there were two general categories of gymnasium property, Leisure and Sports Centres (Private), and Local Gymnasiums. An explanation of the nature of the properties these categories covered was outlined in the Valuation Officer's decision notice. Mr Cates pointed out that a proposal against the appeal property's 2010 rating list assessment had been made when it was valued on a gym/leisure basis. It was revalued on an office scheme for the location in which it

was situated. Following the vacation of the Appellants, the appeal property had also been advertised as office space.

- 18 Mr Cates accepted that the appeal property's assessment was based on office levels of value. However, having regard to its character and locality he did not consider this to be unreasonable. With reference to the mode or category of occupation, he held that the *Williams* decisions clarified that evidence relating to the rents or assessments of other hereditaments may be taken into account provided it was relevant to the valuation. Also, there was no rule that evidence relating to a property in a different mode or category of occupation was irrelevant.
- 19 Referring to the appeal property's rent as shown on the Form of Return, Mr Cates confirmed that after adjustment the rent had analysed to £302/m². Although it was set prior to the AVD, he believed it to be relevant and did not show the rate adopted in the appeal property's assessment to be excessive. He considered the adopted level of value was also supported by the rents for offices of a similar size located within the same building as the subject. Having regard to the evidence, he considered the current assessment to be correct and sought dismissal of the appeal.

Decision and reasons

- 20 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, 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.
- 21 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. The material day (the date by which physical factors have to be taken into account as set out in Schedule 6 to the Local Government Finance Act 1988) was 1 April 2017 in this appeal. One of the factors to be given consideration under Schedule 6 para 2(7), was the mode or category of occupation of the subject property.

- 22 Mr Carter had suggested that the appeal property should be valued by reference to the VOA Rating Manual Section 6, part 3, section 965: Sports and Leisure Centres (Private), Band 4, and in line with the comparable properties he had provided. The appeal property was valued in office scheme 375751, which related to offices in Salisbury House, the building in which the appeal property was situated.
- 23 When considering the mode or category of occupation the appeal property was in at the material day, it was necessary to look at the property as it stood, or *rebus sic stantibus*. As outlined in the Lands Tribunal and Court of Appeal decisions in the *Williams* cases, there were two strands to the *rebus sic stantibus* or reality principle, namely, the use to which a property was put, in effect, its mode or category of occupation and that its physical state was the same as at the material day. It was also determined that only the possibility of minor alterations should be allowed for on the occasion of its hypothetical letting. Within the *Williams* decisions reference was also made to *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960] R&IT 389, in which it was indicated that only two assumptions were permitted, namely, that the hereditament was vacant and to let and its mode or category of occupation by the hypothetical tenant must be conceived as the same mode and category as that of the actual occupier. With regard to evidence, the *Williams* decisions indicated that:

“Any evidence relating to the rents or assessments of other hereditaments may be taken into account provided it is relevant to the valuation. There is no rule that evidence relating to another hereditament is irrelevant if that other hereditament is in a different mode or category of occupation”.

- 24 In this appeal Mr Carter provided comparable properties in the same mode or category of occupation as the appeal dwelling. These were in various locations and of between 160.25m² and 1,124m² in size. Their assessments were based on values of between £110/m² and £192.50/m². Of these assessments, Mr Carter considered the following were the most comparable in terms of location and facilities, the Valuation Officer's comments have also been included:
- 7-11 Moorgate, London, EC2R 6AD. This was situated 350 yards from the appeal property, similar internally with free standing equipment. Its assessment was based on £192.50/m². The Valuation Officer submitted that this level of assessment was supported by comparable rental evidence.
 - Bst 4-6 Copthall Avenue, London, EC2R 7DA. This was 350 yards from the appeal property but smaller in terms of size. Its assessment was based on £175/m² and had been agreed at challenge stage. The Valuation Officer submitted that this level of value was supported by comparable rental evidence.
 - LGND Floor, 117-119 Houndsditch, London, EC3A 7BU. This property was half a mile from the subject and its assessment was based on £190/m². However, the assessment had been subsequently reduced. The Valuation Officer stated this property's assessment was based on an office matrix at £400/m² (unadjusted). The reduction in RV was due to a change in the floor areas and not a reduction in the rate/m².

- 25 Mr Carter considered that a tone was being established for properties in the same mode or category of occupation as the appeal property, situated within

close proximity. The panel noted that the rate proposed by Mr Carter was lower than those applied in the comparable assessments closest to the appeal property. Whilst he indicated this was due to its less desirable access via an alleyway, no evidence was provided to show the effect this would have on its value and thus support his revised rate.

- 26 Ultimately, the panel was not persuaded that the appeal property fell to be valued in accordance with the VOA Manual for Sports and Leisure Centres (Private). It also found little assistance from the assessments of Mr Carter's comparable properties. The panel was not convinced that the various rates applied to properties within different locations assisted in determining the correct level of value for the appeal property, in its specific location. It considered the rental evidence for the appeal property was the starting point in its valuation as outlined in the Lands Tribunal decision in *Lotus and Delta*, and the rate this rent analysed to was substantially higher than the rates adopted in the assessments of the comparable properties.
- 27 Upon consideration of the case law and the available evidence, the panel concluded that the best evidence on which to determine this appeal was the rental evidence for the appeal property, together with that of offices situated in Salisbury House. Although the appeal property was occupied as a fitness centre at the material day, the panel considered that the appeal property's rent suggested that its value as a fitness centre was not too dissimilar to the level of value for office use in the same locality. It was therefore accepted that office values were relevant in this appeal.
- 28 In this case, Mr Carter had expressed the view that the appeal property's rent was of limited relevance. Upon consideration, the panel found this to provide good evidence. The property had been subject to a new 15-year lease set just over two years prior to the AVD on 2 February 2013, at a rent of £130,569.50 per annum. Once adjusted, this rent had analysed to £302/m². In the panel's view, this did not show the level of value adopted in the appeal property's assessment by the Valuation Officer as at the AVD, to be unreasonable.
- 29 The panel then looked at the schedule of rental evidence provided by the Valuation Officer, which set out the following:
- Rms 481-499 at 2nd floor Salisbury House (354.59m² ITMS), had been subject to a new lease for a term of 10 years with effect from 6 January 2014. The adjusted rent had analysed to £432.36/m².
 - Rms 801-803 & 851-859 at 6th floor Salisbury House (344.97m² ITMS). This was subject to a lease renewal for a term of 10 years with effect from 24 June 2014. Once adjusted the rent analysed to £511.83/m².
 - Rms 542-559 at 3rd Floor Salisbury House (474.39m² ITMS). This was subject to a new letting for a term of 10 years with effect from February 2016. The adjusted rent analysed to £636.50/m².
- 30 The rents of the offices in Salisbury House had analysed to rates higher than that of the appeal property. The panel considered this could reflect that the appeal property's rent was set prior to the AVD, and the others were set in 2014 and 2016 and therefore would reflect changes to the rental market during that time. The rents for the comparable properties would also most likely reflect their positions within Salisbury House on upper floors and any benefits this would

bring, such as more natural light. Whilst the appeal property and the offices had assessments based on the same unadjusted rate of £375/m², the factors pertinent to the appeal property, such as its position within the building and any quality issues, had been reflected by allowances.

- 31 A further argument contained in correspondence between the parties was that appeal property would require more than minor works to facilitate office use, and this would offend the *rebus* principle. The panel noted that the *Williams* case referred to no more than minor alterations being envisaged at the time of the hypothetical letting. There was no evidence to show the amount of work that had been undertaken to enable the appeal property's use as a fitness centre, it appeared from the photographs that the equipment was free standing. The appeal property was in a building containing office space, attracted a level of rent not too dissimilar to that of the offices and vacant and to let could be viewed by the hypothetical tenant as office space. The Valuation Officer had confirmed that it had been valued in the previous rating list on an office basis and following the Appellant's vacation of the property, it had been marketed as an office. Whilst noting all of the above, the panel was satisfied that the level of value adopted in the appeal property's assessment reflected the use to which it was put at the material day.
- 32 Ultimately, the onus was on the Appellant's representative to demonstrate that the appeal property's existing assessment was unreasonable. On balance, the panel had not been persuaded that he had done so. Consequently, the subject appeal was dismissed.

Date 18 November 2022

Appeal Number CHG100174481

Right of 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.