RA/63/2007

LANDS TRIBUNAL ACT 1949

RATING – valuation – city centre offices – 2005 Rating List – tone of list – comparables – end user allowance – disabilities – appeal allowed in part – Rateable Value determined at £18,250

IN THE MATTER of an APPEAL from a DECISION of the NOTTINGHAM VALUATION TRIBUNAL

BETWEEN **SUSAN MARY GREGSON-MURRAY** **Appellant**

and

RICHARD JOHN EBURY **Respondent**
(Valuation Officer)

Re: 11 Regent Street, Nottingham NG1 5BS

Before: P R Francis FRICS

Sitting at: Nottingham Magistrates Court, Carrington Street, Nottingham NG2 1EE
on
18 July 2008

Ms S M Gregson–Murray, the appellant in person.
Mr R J Ebury, respondent Valuation Officer, with permission of the Tribunal

The following cases were referred to in argument:
Fir Mill Ltd v Royton UDC and Jones (VO) (1960) 7 RRC 171
R F Williams (VO) v Scottish and Newcastle Retail Ltd [2001] RA 41
Lotus & Delta Ltd v Culverwell (VO) (1976) RA 141

DECISION

Introduction

1. This is an appeal by the ratepayer, Susan Mary Gregson-Murray (the appellant), from a decision of the Nottingham Valuation Tribunal (the VT) dated 17 August 2007, which reduced the assessment in the 2005 local non-domestic Rating List on the premises known as 11 Regent Street, Nottingham NG1 5BS (the hereditament) from £20,500 to £18,500 Rateable Value. The effective date for the assessment was 1 April 2005.

2. The appeal was conducted in accordance with the Tribunal's simplified procedure (Rule 28, Lands Tribunal Rules 1996). The appellant is the freehold owner of the hereditament, having purchased it on 5 April 2006 and occupied it as a solicitor's practice from 30 January 2007. The respondent Valuation Officer, Richard John Ebury MRICS, of the Valuation Office – East Midlands Group, appeared with permission of the Tribunal. I carried out an accompanied inspection of the hereditament, and external inspections of the nearby comparables referred to by the parties, immediately following the hearing.

3. The appeal to the VT arose from a proposal made by the ratepayer on 11 January 2007 seeking a reduction from the assessment of £20,500 RV (which had been reduced from an earlier assessment of £22,250) to £15,400 RV. The VO did not seek to defend the £20,500 RV, having re-calculated it at £19,000 RV. The VT determined the assessment at £18,500 RV which was principally based upon a "tone of the list" of £105 per sq m (psm), adjusted for relativities accordingly. In this appeal, the appellant contends that the VT was wrong in fact and law on 5 grounds, and argues for the assessment to be reduced to £15,917. The VO responds to the effect that the VT decision was correct, that the appeal should be dismissed, and that the assessment should be confirmed at £18,500 RV.

Facts

4. The parties were unable to provide an agreed statement of facts (although there was no dispute as to the issues), but from the evidence including the parties' draft statements of fact, Mr Ebury's expert witness report and appendices and my inspection of the hereditament, I find the following facts. 11 Regent Street comprises a Grade II listed, mid-terrace 4 storey (plus basement) office building of brick construction with ornate stone façade, under traditional slated roofs. It is part of a long parade of 19th Century buildings of similar appearance on the south side of the street in an area that has become established as a professional office district to the west of Nottingham City Centre, and is about 10 minutes walk from Old Market Square. The ground floor entrance to the front, which is above pavement level, is approached over 6 steps, and the accommodation comprises:

> Ground floor: Entrance hall, two office rooms, a rear lobby with door to rear courtyard and access to the basement storage area, together with an additional office in a modern ground floor extension.

First floor: Two offices and a wc.

Second floor: Two offices and a wc.

Third floor: Store room and further store/kitchen accommodation.

Basement: Store room, passageway and small kitchen/scullery and boiler room.

Outside: To the rear, approached over a narrow roadway off Oxford Street, there is a small courtyard with parking for two vehicles.

The hereditament has all main services connected, and contains a traditional gas-fired central heating system to radiators with an additional stove located in the single storey rear ground floor extension.

The total net internal area is agreed at 219.90 sq m, and is made up as to:

Ground floor offices (original building)	40.91 sq m
Ground floor office (rear extension)	18.38 sq m
First floor offices	51.29 sq m
Second floor offices	48.14 sq m
Third floor storage	19.01 sq m
Third floor kitchen/storage	13.20 sq m
Basement storage/filing room (front)	20.38 sq m
Basement storage area (rear)	5.23 sq m
Basement kitchen/scullery	3.36 sq m

5. The antecedent valuation date is 1 April 2003, and the effective date in respect of the proposal is agreed at 1 April 2005.

Grounds of Appeal

6. Ms Gregson-Murray appealed the VT's decision on 5 grounds:

1. The VT should have rounded its valuation of £18,462 down to £18,250 rather than, as it did, up to £18,500.

2. The VT should not have included the kitchens in the assessment.

3. The VT was wrong to refuse a 20% allowance for the fact that the heriditament was used as a Legal Aid practice.

4. The VT was wrong to include the rear single-storey office extension at 100% of its adopted base value/tone.

5. The base value/tone adopted by the VT was, in any event, wrong.

Preliminary

7. At the commencement of the hearing, the appellant made an application to the effect that Mr Ebury's report should not be accepted, under Rule 42 of the Lands Tribunal Rules 1996, as an expert witness report, as he could not be deemed impartial (being an employee of the Valuation Office), and was acting in the dual role of advocate and expert. That, she said, conflicted with the Tribunal's guidance in respect of representation [of parties] set out in para 17.1 of the Practice Directions dated 11 May 2006. Whilst she accepted that he might be an expert in his field, Ms Gregson-Murray said that in terms of my decision, he should not be afforded the "special badge" of expert witness due to his being the respondent as well. Mr Ebury, in response, said that he was fully aware of the requirements, but was acting within the guidelines set down by his professional institution, and in accordance with the RICS *Surveyors Acting as Expert Witnesses: Practice Statement*.

8. I refused the application, and explained that whilst the Lands Tribunal actively discouraged, and was, indeed, wholly opposed to a party's representative at a hearing acting in the dual role of advocate and expert witness in cases being heard under either the Special Procedure or the Standard Procedure, exceptions were made in Simplified Procedure cases. Para 3.3 of the Practice Directions states, under the heading "Simplified Procedure":

> "The purpose of this procedure is to provide for the speedy and economical determination of cases in which no substantial issue of law or valuation practice, or substantial conflict of fact, is likely to arise"

Para 3.4 goes on to say:

> "The objective is to move to a hearing as quickly as possible and with the minimum of formality and cost....The hearing is informal, and strict rules of evidence do not apply."

9. The relevant part of para 17.1 states:

> "In simple cases, permission will usually be granted for a surveyor or valuer to represent a party in order to avoid the additional costs of separate representation. In those cases allocated to the simplified procedure under LT rule 28, such representation may well be the norm. In general, however, it is difficult and undesirable for the same person to act both as advocate and expert witness. Accordingly, permission will not be granted for a non-lawyer to represent a party in any case where the Tribunal considers that the responsibilities of advocate and expert witness are likely to conflict."

In my view, this appeal clearly falls into the simple category, no substantial issue of law or valuation practice arises and the sums at stake are small. Valuation Officers regularly appear before this Tribunal in the aforementioned dual-role in Simplified Procedure cases, and I see no reason why that practice should not continue. Although the appellant in this case, as a practising solicitor, appeared for herself and called no expert evidence, she was perfectly entitled to have been represented by a surveyor or valuer, whose evidence, so long as it complied with the RICS Practice Statement, would have been equally acceptable to the Tribunal.

The issues and evidence

10. For the sake of brevity, I consider the evidence and arguments of the parties, and draw my conclusions, on each of the five issues in turn.

Rounding up

11. Ms Gregson-Murray said that it was well-established convention that VTs routinely rounded valuations down to the nearest £250. Their valuation, which in any event she did not agree with, was £18,462 and should have been rounded down to £18,250. The valuation also contained a mathematical error in connection with its determined relativity of 45% of the tone for the whole of the third floor accommodation. 45% of £105 is £47.25 and not £47.78 which, on the agreed floor areas, gives a value of £1,522 and not £1,538, a reduction of £16 from the RV to £18,446. The appellant said she was unaware of any other properties in Regent Street that had been rounded up and, although she acknowledged that the sums in question were not large, acceptance of a rounded up figure would set a dangerous precedent and was "tantamount to overcharging".

12. Mr Ebury said it appeared that the VT had adopted a common sense approach, rather than following convention which, in fact, they had done in the case of 21 Regent Street where their valuation of £15,436 RV was reduced to £15,250. He acknowledged the mathematical error that the appellant had pointed out.

13. It is not possible for me to say that the VT was wrong in law but, in my view, it was certainly wrong in terms of valuation practice. Not only did it round down the assessment on 21 Regent Street in almost identical circumstances, but I could not find a single example in the substantial body of evidence presented by Mr Ebury where a valuation had been rounded up. I therefore conclude that, whether or not the determination was correct (in terms of the other appeal grounds), the (corrected) valuation figure should have been rounded down to £18,250.

Kitchens included in assessment

14. The appellant said that, as a matter of principle, it was wrong to include kitchens in rating assessments. They were no different to areas such as stairs, passageways or wcs which were not included in the rating hypothesis. The third floor kitchen, which had been included by the VT at the same rate as storage, was in need of attention, although it was accepted that it had to be valued on the assumption it was in a reasonable state of repair. Whereas the VT had said that due to its size, it could also be used for storage, Ms Gregson-Murray had assessed it at nil to reflect her opinion that, as a kitchen, it should not be included. Her main issue, however, was with the small basement area that included a sink. The walls were not fully plastered, it was not used for cooking, was damp and difficult to decorate. She said it had been described as a scullery/kitchen. A scullery which, according to the Oxford English Dictionary, is "a small room attached to a kitchen in which the washing of dishes and other dirty work is done" was the most apt description in this case. A kitchen, on the other hand, is described as "that part of a house where food is cooked". It did not form part of the earning capacity of the business (whereas a restaurant or hotel kitchen would), and is a facility purely for the use of the

staff. In her view the guidance set out in the RICS Code of Measuring Practice was just that - guidance, and the Valuation Office Code of Measuring Practice which allowed for kitchens to be assessed, was wrong. This, she said, was an opportunity for the Lands Tribunal to set the record straight.

15. Mr Ebury pointed out that all hereditaments have been analysed and subsequently valued on a net internal area (NIA) basis in accordance with the VOA Code of Measuring Practice (based upon the RICS code), which defines NIA as *"The usable area within a building measured to the face of the internal finish of perimeter or party walls ignoring skirting boards and taking each floor into account."* Section 3 of the code, under the heading "core definitions", specifically lists kitchens under inclusions. The Code, he said, was published on the VOA website, and was thus available for all to see. He said that to exclude kitchens in the appeal hereditament would not be comparing like with like, and would distort the tone of the list, thus producing an incorrect and likewise distorted assessment on this property.

16. The argument that kitchens should be excluded from an assessment for rating purposes as a matter of principle must be rejected. The RICS Code of Measuring Practice, upon which the VOA Code is based, was developed in consultation with practitioners in all fields of valuation and surveying, and has been universally adopted and utilised by the property profession for many years. The consequence of a finding by this Tribunal such as is being sought by the appellant would, as Mr Ebury rightly said, produce a distorted assessment on 11 Regent Street, and would also potentially (if such a finding were not challenged), bring into question every non-domestic rating assessment of a hereditament (containing a kitchen) in the country. There can, in my judgment, be absolutely no question that the VO was right to follow the Code, and I therefore reject the appellant's argument for a nil assessment on kitchen areas as a matter of principle.

17. There is then the question of whether the basement kitchen should be so described. Having considered the evidence, and having viewed the area for myself, I reject the appellant's suggestion that a more apt description would have been a scullery (which would thus be excluded even if I did not find for her on the point of principle). There is, in my view, nothing to stop the basement kitchen being used for cooking and the fact that it is in poor decorative order, unheated and only partly plastered is something that could be remedied without major expenditure. Furthermore, I note that a scullery is a room "attached to a kitchen", but as this is the only such facility in the basement area, that would not be the case if that definition were applied. The appellant said that this area, together with the storage rooms within the basement, had been affected by flooding and I accept that there was clear evidence of this. However, as Ms Gregson-Murray admitted, this had been a one-off occurrence in July 2007. That was the occasion when large parts of central and western England (including in particular Tewkesbury and Cheltenham), suffered serious and disastrous flooding after a long period of exceptional rainfall. It was not suggested flooding was a regular occurrence, or that the basement area could not be used for storage. I note that the VT rejected the differential that the VO had applied (35% of tone for the storage areas and 25% for the kitchen due to its size) and adopted a uniform rate of 25% throughout the basement areas to reflect that these areas were "poor". The appellant accepts this percentage (for the storage areas) and I am satisfied that the VT took a pragmatic, and correct approach to this issue. I determine, therefore, that the basement kitchen should be included at 25% of the tone.

18. As to the third floor kitchen, I think the VT was correct to adopt the same percentage of tone that it did for the rest of the third floor storage areas, due to the fact that the room is certainly large enough to be used for that purpose also. I thus determine that it should be included in the assessment at 45% of the tone.

Allowance for Legal Aid practice

19. The appellant said the VT had been wrong in its decision to attach "little weight" to her evidence supporting a 20% end allowance (reduction) for the fact that she was operating a Legal Aid practice. In that evidence she had referred to 26 Regent Street, which was a dental practice, and for which the tone of the list had been set at £71.25 psm, rather than the £105 applied to her own building. Whilst she was not saying her practice was identical to a dental practice, and she was not seeking such a large reduction, Ms Gregson-Murray said that the fact Legal Aid solicitors are carrying out socially useful work should be taken into account by the VO. It was clear that occupation by dental practices was treated as a special case, and it was her view that her own business should be treated likewise. The VO, she said, has discretion and such discretion should be applied here.

20. Mr Ebury said that the premises are to be valued as vacant and to let at the material day, 1 April 2005, on the basis of rental values applying at the antecedent valuation date, 1 April 2003, "*rebus sic stantibus*", having regard to the matters set out in para 2(7) of Schedule 6 to the Local Government Finance Act 1988. These include, matters affecting the physical state or physical enjoyment of the hereditament and its mode or category of occupation. Whilst mode or category of use is not specifically defined by legislation, it does not mean the precise use of the occupier, but a use within the same class (Town and Country Planning Use Classes Order 1999). Thus, as defined in *Fir Mill Ltd v Royton UDC and Jones(VO)* (1960) 7 RRC 171 and approved by the Court of Appeal recently in *R F Williams (VO) v Scottish and Newcastle Retail Ltd* [2001] RA 41, it follows that an office must be valued as an office, but not any particular type of office eg, the office of a legal practitioner. As to 26 Regent Street, Mr Ebury had said at the VT that the assessment referred to by the appellant had been in line with other dental practices in the City of Nottingham, but it had recently been reviewed, and the rating list had been altered to show an increased rateable value, effective from 8 February 2008, of £25,000 RV which was based upon a tone of £105 psm. That new assessment had not, he said, been appealed.

21. I accept the respondent's arguments. There is no possible basis on which the use of an office for a solicitor's legal aid practice could constitute a separate mode or category of occupation. The relevant mode or category in this instance is simply an office.

Ground floor rear office

22. Ms Gregson-Murray said that the VT had misdirected itself when considering this point. It did not consider the extra heating costs that were incurred because the extension had three outside walls, nor did it address the lack of natural light. It had been necessary, she said, to install additional space heating and it was also necessary for the lights to be on all day. This office was clearly of lesser quality than those on the rest of the ground or first floor – and even the first floor warranted a 10% reduction from the tone. In her view, the extension should also be assessed at 90%.

23. The respondent VO said that the extension was a modern, good quality brick and part tiled/part flat roofed single storey extension. It is of cavity wall construction with two windows on the west side, one to the rear, and two roof lights. Natural light was, in his view, reasonable and it was noted that there were two radiators provided off the main central heating system. Mr Ebury said that no evidence had been produced to substantiate the contention that any increased heating costs were attributable to this extension. In forming his view that the additional accommodation should be assessed at 100% of tone, he said he had taken into account the assessment on 13-15 Regent Street, where a similar extension had been assessed at the full, £105, rate.

24. During the inspection, the appellant pointed out to me how much better the natural light was in the first floor front office than it was in the rear extension. In my view, the light in that front office was exceptionally good, this being particularly due to the very large, and deep, Georgian style sash windows. I did not find the light in the rear extension to be any worse than would be found in many other offices, and it seemed to me that there were an adequate number of windows that were enhanced by the existence of the roof lights. As to heating, I noted that the office area was open to the main access corridor/copier lobby and that may be a reason why it appears colder than other, enclosed, rooms. On balance, therefore, I reject the appellant's arguments, and determine that the rear extension should be assessed at 100% of tone.

Base value/tone of the list

25. Ms Gregson-Murray said that the VOA website, from which she obtained details of the assessments of the comparable properties in Regent Street that she had referred to at the VT, gave no indication of a base value or tone of the list at £105 psm, nor the discounts that Mr Ebury said had been applied. For instance, nos. 1,3 and 5 Regent Street were shown to have a base rate of £94.50 psm, no. 26 was £71.25 psm and nos. 13/15 were £99.75 psm. Why was it, she asked, that the alleged discounts were not shown on the summary valuation? Furthermore, the reasons he gave for the discounts on 1, 3 & 5 and 13/15 (because formerly separate, adjoining premises were occupied as a single hereditament) did not bear scrutiny. Nos. 8, 16 and 20 Regent Street were 3 properties occupied by Actons' Solicitors but no such allowance had been made on their assessments. Also, the discount applied to 10/12 Ropewalk (10%) did not appear to match that said to have been applied to 13/15 Regent Street (5%), both of which were formerly 2 buildings, now occupied as one.

26. Mr Ebury had also said there were discounts applied to no. 9 to reflect the fact that one floor had a shared wc but, the appellant explained, no such allowances appeared to have been made for the disabilities suffered at her own premises. For example, access from the street was up 6 steps and this created difficulties for the disabled; access to the attic (not correctly described as "third floor" by the VO) is over a steep and narrow staircase, and the basement is only suitable for storage – again incorrectly described on the original assessment as "filing room".

27. It was clear, the appellant said, that there were inconsistencies in the assessments on a number of the Regent Street and Ropewalk comparables that had been set out in considerable detail in Mr Ebury's report (far too much for a Simplified Procedure case), and that, as was apparent from the website, there was no evidence that a tone of list had, in fact been

established at £105 psm. The VO, she said, had discretion under the legislation but it appeared that whilst it may have been exercised in respect of other hereditaments, no such discretion had been applied to no. 11, resulting in its assessment being too high. There was also the nagging doubt that, with details of the alleged discounts for disabilities not appearing on the website, there was no guarantee that the explanations now being given correctly reflect how the published figures were actually arrived at. She concluded that now would be a good opportunity for the Lands Tribunal to determine that the VOA should, in future, include full information on the website. This would create the requisite transparency and would assist ratepayers in checking the accuracy or otherwise of assessments.

28. Mr Ebury had produced a report which was, indeed, of epic proportions, and set out in considerable detail the background to the appeal, the statutory framework, the valuation approach, a number of comparables (rather more than had been before the VT), and an analysis of rental evidence that was available in the vicinity in accordance with the principles set out in *Lotus & Delta Ltd v Culverwell (VO)* (1976) RA 141. The evidence, he said, clearly demonstrated that a tone of the list had been established in Regent Street at £105 psm, although he readily acknowledged that this would not be evident from the summary analysis that appeared on the website.

29. In response to the appellant's criticisms that more evidence was before me than had been available to the VT, Mr Ebury said that his report had been drawn up in order to provide as much information as possible to assist the Tribunal. He had looked farther afield (Ropewalk, for example) to establish that the tone did not just apply to Regent Street, but was also the adopted level in similar office locations in the city. He produced, at the hearing, copies of the original detailed valuation sheets relating to 1-5 and 13/15 Regent Street that were held on the VOA database, these showing precisely how the valuations were built up, and that the base rate adopted (from which any discounts or allowances were made to reflect disabilities or other factors) was indeed £105 psm. This information tallied exactly with the devaluation sheets that had been provided within his report at Appendix VO6. The appellant asked why these sheets had not been provided sooner, to which he responded that he was introducing them now to demonstrate that the specific adjustments that did not show on the website summary were not afterthoughts. He accepted that the precise nature of the make up of individual valuations was not apparent from the website summary (although details of end-allowances were shown), and acknowledged that inclusion of the additional information sought would be helpful. However, he said, the decision as to what was included in the summary was taken at a "much higher level", and in any event, members of the public were entitled to see the detailed valuations that lay behind what was on the website if they asked for them. Mr Ebury also accepted that, as was pointed out by the appellant, the summary valuation of the subject hereditament currently appearing on the website was inaccurate, and he would take steps to ensure it was corrected.

30. As to the specific points raised by the appellant relating to 1-5, 13/15 Regent Street, the Actons' offices and 10/12 Ropewalk, Mr Ebury explained that allowances were made to reflect the disadvantages associated with the adaptation and occupation of formerly separate properties. 1-5 Regent Street had previously been 3 conjoined buildings and, between 1-3 and 5, there was only a single intercommunicating door at second floor level. A 10% discount was, therefore, appropriate. As to 13/15, there was a 5% discount to reflect the disadvantages of adapting and occupying what had formerly been two, rather than 3 separate premises. There

were two staircases, and there were no intercommunicating doors at basement or third floor levels. As to 10/12 Ropewalk, a 10% allowance was made when merging the assessments of 8 and 10/12 to reflect that whilst 10/12 had intercommunicating doors, there were none into no.8, even though it adjoined. The reason why no such discount had been applied to 8, 16 and 20 Regent Street was because, although occupied by the same firm, they were all separate hereditaments, each having a building in separate occupation between.

31. Regarding the disadvantage of having an approach to the ground floor accommodation over 6 steps, Mr Ebury pointed out that a number of the adjoining hereditaments and comparable properties have the same problem, and as such there was nothing to support a separate allowance, or discount being made.

32. I am entirely satisfied from the evidence and from Mr Ebury's explanations that the tone of the list is clearly established at £105 psm. The reasons for the discounts applied to the comparables where buildings have been converted from previously separate units also seem to me to be fully justified, and I reject the argument put forward by the appellant that such a discount is not justified on the grounds that ratepayers appear to be being penalised for occupying single buildings.

33. On the question of the information available on the VOA website, I have some sympathy with the appellant and agree that it would be helpful to ratepayers in general if the summary valuation included the figure used as the base value, or tone of the list. Whilst, as Mr Ebury said, paper copies of the fully detailed valuations are available upon request, it seems to me that there is a strong argument for improving the content of the web summary. It is, of course, not for this Tribunal to direct the VOA on this matter, but it is hoped that the comments herein might be noted for future consideration.

34. This determines the substantive issues in this appeal, and it is only on the question of the "rounding up/down" that I have found for the appellant. I therefore determine that the entry on the non-domestic Rating List for 11 Regent Street, Nottingham shall be amended to £18,250 with effect from 1 April 2005.

35. The appeal, having been heard under the Simplified Procedure, the question of costs would only arise under exceptional circumstances. I conclude that there are none, and thus make no order for costs.

DATED 13 August 2008

P R Francis FRICS