

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)**



**Neutral Citation Number: [2018] UKUT 331 (LC)  
Case No: RA/98/2017**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***RATING – valuation – learning centre – whether end allowance justified to reflect planning restriction of a class D1 use – comparables – appeal allowed – rateable value determined at £149,000***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE  
VALUATION TRIBUNAL FOR ENGLAND**

**BY**

**ANDREW RICKETTS (Valuation Officer)**

**Appellant**

**Re: Learning and Events Centre,  
82-96 Grove Lane,  
London  
SE5 8SN**

**A J Trott FRICS**

**Royal Courts of Justice, Strand, London. WC2A 2LL  
on  
12 September 2018**

Mr James Feltham, Technical Adviser at the Valuation Office Agency, for the Appellant

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The following case is referred to in this decision:

*Lotus and Delta v Culverwell (VO) and Leicester City Council* (1976) RA 141

## **Introduction**

1. This is an appeal by the valuation officer against a decision of the Valuation Tribunal for England (“VTE”) dated 28 November 2017 determining the rateable value of offices and premises at 82-96 Grove Lane, London SE5 8SN at £119,500 with effect from 3 June 2013.

2. In reaching its determination the VTE held that the main space rate should be £175 per m<sup>2</sup> and that an end allowance of 20% should be made for planning restrictions. The VTE also allowed a 10% reduction in value to a part of the second floor of the building known as the “Beguine Area” which only had external (uncovered) access. The valuation officer accepts the main space rate and the allowance for the Beguine Area but says there should be no allowance for the planning restriction. He contends for a rateable value of £149,000.

3. The appeal was heard under the Tribunal’s simplified procedure and was unopposed. The appellant was represented by Mr James Feltham, a technical adviser at the Valuation Office Agency (“VOA”), who called Mr Jonathan Humphreys MRICS, a chartered surveyor employed in the VOA’s Bromley Office, as an expert witness.

## **Facts**

4. The appeal hereditament is a modern (2013) four-storey concrete frame building with a basement. It has an area of 931.08m<sup>2</sup> (838.95m<sup>2</sup> in terms of main space (“ITMS”)<sup>1</sup>). The building has been designed to very high environmental standards and is rated as excellent by the Building Research Establishment Environmental Assessment Method (BREAM). It has won several architectural awards. It is used as a learning centre and was built by the Maudsley Charity for use by the South London and Maudsley NHS Foundation Trust and has planning permission for class D1 use, i.e. non-residential institutions including medical or health services premises.

5. The property is in Grove Lane, a few minutes walk (400 metres) from Denmark Hill Rail Station with services to London Victoria and Blackfriars stations (both 10 minutes journey time). Numerous bus services also serve the site.

## **The case for the appellant**

6. The appellant contended that the VTE was wrong to deduct an end allowance of 20% for planning restrictions. The VTE took account of a similar allowance made in respect of the rateable value of the British School of Osteopathy at 275-287 Borough High Street, London SE1 1JE. The description of this property in the 2010 non-domestic rating list was “training school and premises”. The property originally had an office use but was granted class D1 use in 1997. It was valued and settled in line with the local office tone at £247.50 per m<sup>2</sup> and the 20% end

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<sup>1</sup> Mr Humphreys said in his expert report that the area was 885.89m<sup>2</sup> ITMS but this appears to be incorrect according to his valuation.

allowance was said to be for the “planning restriction”. Mr Humphreys did not find the British School of Osteopathy to be a helpful comparable. It was significantly larger than the appeal hereditament (2,607m<sup>2</sup>); much older (built in the 1960s), located in the SE1 postcode over 2.5 miles away and was close to a tube station (Borough) in an established office area.

7. Mr Humphreys analysed comparables by reference to the guidance given by the Tribunal in *Lotus and Delta v Culverwell (VO) and Leicester City Council* (1976) RA 141, i.e. by reference to (i) the actual rent on the appeal hereditament; (ii) rents of similar properties; and (iii) settlements and assessments.

8. The appeal property is held on a 20-year FRI lease from 3 June 2013 at a rent of £348,000 per annum with a seven month rent free period. The tenant was Maudsley Learning CIC which was connected to the landlord, the Maudsley Charity. The rent was fixed over 5 years after the antecedent valuation date for the 2010 list and was not an arm’s length transaction. Mr Humphreys therefore placed little weight on this rental evidence.

9. The only other rental evidence was at 94-104 Denmark Hill, London SE5 9RS a 1920s building held on a 15-year lease from 1 December 2001 with the landlord liable for insurance. The tenant was Kings College Hospital Foundation NHS Trust and the property was in class D1 use. The rent was reviewed to £114,135 per annum from 1 December 2006. The area of the building was 929.91m<sup>2</sup> ITMS. Mr Humphreys analysed this rent at £118.44 per m<sup>2</sup>. In October 2007 £1m was spent on the fitout of the ground floor as a clinic. Mr Humphreys estimated that 20% of this expenditure was on moveable objects although he acknowledged that he had no breakdown of the refurbishment costs and the property had not been inspected by the VOA’s plant and machinery valuer. He made a rental adjustment in respect of the net expenditure of £800,000 to derive the virtual rent, or the true equivalent annual cost to the lessee. This comprised the rent payable plus the rental equivalent of the rateable alterations. Mr Humphreys made rental adjustments over two alternative periods; firstly, over a 21 year period which gave a virtual rent of £191.87 per m<sup>2</sup> and, secondly, over a nine year period (to the end of the lease) which gave a virtual rent of £240.56 per m<sup>2</sup>.

10. Apart from the British School of Osteopathy, the settlement evidence comprised Marina House, 63-65 Denmark Hill, London SE5 8RS a hereditament described as office and premises in the 2010 list but which Mr Humphreys said had planning permission for a D1 use (a community drug services centre) and had been used as such by South London and Maudsley NHS Trust. Located 0.4 miles to the north west of the subject hereditament it was of similar size (771.9m<sup>2</sup> ITMS) but 17 years older and comprised what Mr Humphreys described as an infill development rather than a free-standing building. The 2010 list rateable value was appealed and settled by agreement with Montagu Evans on behalf of the ratepayer at £110,000 or £135 per m<sup>2</sup> ITMS. There was no allowance for D1 use. Similar settlements were reached in the two previous lists.

11. Mr Humphreys also considered two pieces of assessment evidence. The SGDPRC Building, Kings College London, De Crespigny Park, London SE5 8AF was constructed in 2001 and is located adjacent to the appeal hereditament. It is a substantially larger building with an

area of 4,944m<sup>2</sup> ITMS<sup>2</sup>. The property description in the list is “laboratories, offices and premises” and was occupied by Kings College as the Social Genetic and Developmental Psychiatry Centre which Mr Humphreys said was a class D1 use. The rateable value in the compiled 2010 list, which was not appealed, was £700,000 or £162 per m<sup>2</sup> ITMS.

12. The second piece of assessment evidence was the Fetal Medicine Research Institute, 16-20 Windsor Walk, London SE5 8BB located a short distance to the south west of the appeal hereditament. It was constructed in 2016 and was entered in the 2010 list as a “lecture theatre and premises”. The planning permission stated the development to be a class D1 use. The area of the building was 438.40m<sup>2</sup> ITMS. It was entered in the compiled 2010 list at a rateable value of £104,000, i.e. a main space rate of £175 per m<sup>2</sup>. There was no planning use discount. The assessment was not appealed.

13. In reviewing the comparable evidence, Mr Humphreys placed most weight on the assessments of the SGDPRC building (£162 per m<sup>2</sup>), which he thought reflected an element of quantum for its large size, and the Fetal Medicine Research Institute (£175 per m<sup>2</sup>). Both properties were modern buildings close to the appeal hereditament. He thought these assessments supported a main space rate of £175 per m<sup>2</sup> for the subject property. Further support came from the analysis of the rent on 94-104 Denmark Hill (£240.56 per m<sup>2</sup>), a much older building but in the same locality. Marina House was also close by but was not a prestigious building and, being an infill development, did not appear to benefit from good natural light.

14. The VTE focussed on the settlement of the rateable value at the British School of Osteopathy in Borough High Street but Mr Humphreys gave this little weight because it was (i) a long way from the appeal hereditament; (ii) a much older building; and (iii) located in a predominantly office location and valued on an office tone which justified a discount for the restricted D1 use. The appeal hereditament was in an area with much less office demand and more D1 occupiers. The rental, settlement and assessment evidence supported a main space rate for a D1 use of £175 per m<sup>2</sup> and there was no reason to make an additional allowance for a restricted user. Adopting this rate, and adding the value of 10 car parking spaces, gave a rateable value of £149,000 for the appeal hereditament.

## **Discussion**

15. The issue in dispute is whether a main space rate of £175 per m<sup>2</sup> is appropriate for the appeal hereditament in its class D1 mode and category of occupation.

16. I agree with My Humphreys that the rent paid for the hereditament is of no assistance for the reasons he gave.

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<sup>2</sup> The valuation in Appendix 13 of Mr Humphreys’ report shows the area as 4,341.5m<sup>2</sup> ITMS.

17. The other rental evidence is the rent review at 94-104 Denmark Hill. I do not find helpful Mr Humphreys' analysis of the virtual rent following the fit-out of the ground floor as a clinic in October 2007. His educated guess about the cost of those works which comprised rateable alterations was based on the VOA's plant and machinery valuer interpreting photographs taken by a referencer. This exercise can fairly be described as heroic. At the hearing I referred Mr Humphreys to the guidance given about 2010 list rental adjustments in the VOA's Rating Manual Section 4: Valuation Methods, Part 1: Practice Note 1 at paragraph 14.3(b) "Extensions, Operations and Improvements":

"Generally more weight can be placed on an analysis which has been based on the rent paid disregarding the improvement works and relating to the details of the unimproved building, i.e. an analysis of the rent based on the original demise. The more significant the adjustment made, the less reliable the rent becomes."

In my opinion the adjustments made by Mr Humphreys, which increased the rent by over 100% in one case (from £118.44 per m<sup>2</sup> to £240.56 per m<sup>2</sup>), are too large to be reliable and I give them no weight. The only useful evidence from this comparable is the unimproved rent on review of £118.44 per m<sup>2</sup> for a building which is very different to the appeal hereditament.

18. I think Mr Humphreys was right to place little weight on the settlement at the British School of Osteopathy for the reasons I have summarised in paragraph 14 above. It is a D1 user but otherwise it is not a good comparable. The best evidence is the settlement at Marina House (£135 per m<sup>2</sup>) and the assessments of the SGDPRC building (£162 per m<sup>2</sup>) and the Fetal Medicine Research Institute (£175 per m<sup>2</sup>). All three are modern buildings in class D1 mode and category of occupation. They are much closer to the appeal hereditament than is the British School of Osteopathy.

19. Although modern, Marina House is 17 years older than the appeal hereditament and is an inferior building although of roughly equal size. The SGDPRC building is next door to the appeal hereditament, and was constructed in 2001, i.e. 12 years before the appeal hereditament. It is over five times larger and I accept Mr Humphreys' opinion that the main space rate reflects an element of quantum. The assessment of the Fetal Medicine Research Institute is said to be based on a main space rate of £175 per m<sup>2</sup> but this is shown in the VOA's valuation to be subject to an "uplift for shared space" of 36.1%. On the VOA website this is shown as an "adjustment for quality". Neither Mr Humphreys nor Mr Feltham could give a satisfactory explanation for this adjustment. It is not suggested by the appellant however that the appeal hereditament should be subject to a similar adjustment.

20. The appeal hereditament is a modern (2013), well-designed, energy efficient, free-standing building of recognised architectural merit. I think Mr Humphreys' adopted main space rate of £175 per m<sup>2</sup> is adequately supported by his comparables and I accept it. No discount was made for the D1 use of those buildings when assessing and settling their rateable value and I see no justification for making any such deduction in the case of the appeal hereditament. The circumstances in which a 20% discount was made to the rateable value of the British School of Osteopathy for planning restrictions can be distinguished and in my opinion it is not a precedent which should have been followed by the VTE.

21. I therefore allow the appeal and determine the rateable value of the appeal hereditament (which I think should be described as a learning centre and premises) at £149,000 with effect from 3 June 2013.

17 October 2018

A J Trott FRICS  
Member, Upper Tribunal (Lands Chamber)