

UPPER TRIBUNAL (LANDS CHAMBER)



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UTLC Case Number: LC-2021-201

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – VALUATION – first floor former office in Chinatown – rent of appeal property - comparable rental evidence – no tone of the list - rateable value determined at £21,750

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

BETWEEN:

SAINTTA GLOBAL LAWYERS (UK) LIMITED

Appellant

-and-

MR ANDREW RICKETTS (VALUATION OFFICER)

Respondent

**Re: First Floor,
2 Gerrard Place,
London
W1D 5PB**

**P D McCrea FRICS FCI Arb
Royal Courts of Justice
8 September 2021**

Mr Zuoqi Lu for the appellant
Mr David Alford for the respondent

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Introduction

1. This is an appeal by the ratepayer, Saintta Global Lawyers (UK) Ltd, against a decision of the Valuation Tribunal for England (Mr A V Clark, Vice President) dated 17 March 2021 in which the Vice President dismissed the appellant's appeal in respect of the rateable value of a first-floor office at 2 Gerrard Place, London, W1D 5PB ("the appeal property"), confirming the rating assessment at the compiled 2017 list figure of £23,000.
2. I heard the appeal under the Tribunal's simplified procedure at the Royal Courts of Justice on 8 September 2021. On the afternoon before the hearing, I conducted an unaccompanied walking tour of the relevant area, noting the location of the appeal property and of the comparable properties referred to by the parties.
3. The appellant company was represented by its director, Mr Zuoqi Lu, the respondent Valuation Officer by Mr David Alford, who called Mr Michael O'Brien IRRV (Hons) to give expert evidence. Mr Lu contended for a rateable value of £14,000. While the Valuation Office declined to alter the compiled list assessment of £23,000 during the Check and Challenge steps under the 2017 List regulations, and successfully defended that figure before the VTE, before me Mr O'Brien accepted that the compiled list assessment was slightly high. In his opinion the correct level of assessment was £21,750.

Brief facts

4. The basic facts in this appeal are agreed. The appeal property, since converted to residential use and taken out of the relevant rating list, was a first-floor office at 2 Gerrard Place, London, W1D 5PB. Gerard Place is a short road in Chinatown, linking Shaftesbury Avenue to the north with Gerrard Street and Newport Place to the south. The property had a net internal area of 48.7 sqm, including a kitchen and wc. Heating was by wall mounted electric units. Access was from a staircase and passageway onto the street, and there was no lift.
5. The property's assessment for rating was entered into the relevant compiled 2017 rating list at £23,000 RV before being deleted on 19 January 2021. The assessment was based on a rate of £500 per sqm.
6. A lease of the appeal property was held by the appellant from Shaftesbury Chinatown Ltd, a company which Mr Lu told me owns a great deal of property in the area. At the hearing Mr Lu said that the appeal property was held on a lease of five years which ended in June 2019 at a rent of £21,000, plus a service charge and insurance contribution. There had been a previous lease from June 2011 at a rent of £16,800. Both leases were contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954. Neither side could produce a copy of the lease, and whilst Mr Lu's evidence was slightly at odds with the rent return form submitted to the Valuation Office (of which more below), the Valuation Officer did not dispute what Mr Lu said.

Case for the appellant

7. Mr Lu submitted that the appeal property should be assessed using a base rate of £300 per sqm. He relied on three assessments of office buildings on Great Newport Street which had been valued by the Valuation Officer adopting that rate. While Great Newport Street is located on the eastern side of Charing Cross Road, Mr Lu said that it was still within Chinatown, which anyway did not have an official boundary. He drew similarities between the appeal property and his three comparables – all were within a short walk of Leicester Square underground station; all contained upper floor office units without lifts; and none had air conditioning.

8. His first comparable, an office of 91.8 sqm on the second floor of Trafalgar House, 8-9 Great Newport Street, had been assessed in the 2017 list at £285 per sqm. His second was a multi floor building at 5 Great Newport Street. Of the 440 sqm of space, the first, second and third floors had been assessed at £300, £285, and £270 per sqm respectively. Mr Lu said he did not dispute the Valuation Officer's approach of reducing the rate applied to each ascending storey by 5%. His third comparable was again at 8-9 Great Newport Street, comprising a first-floor office of 86.2 sqm which had been assessed at £350 per sqm (although at the hearing Mr Lu distanced himself from reliance on that property as comparable evidence).

9. As for his rent from 2014, equating to £431 per sqm, Mr Lu said that because Shaftesbury Chinatown owned many properties in the area, and because his lease was contracted out of the 1954 Act, the landlord could control rent levels across its estate. At the time he considered the rent to be too high and above market value, but the costs involved in relocating, amending company stationery, marketing and letting clients know the company had moved, all outweighed paying a lower rent at another property. In his view, an incoming tenant would not be prepared to pay the level of rent that he had agreed.

10. In short, Mr Lu said that it was unfair for the appeal property to be assessed using a rate which was 66% higher than other, very similar, properties in the area, and all of which used Leicester Square underground station. In his view the rateable value should be £14,000. As for the valuation officer's comparables, Mr Lu's position was simple – they were too high. He criticised the valuation officer's evidence, none of which he said was in the same scheme reference as the appeal property.

11. Mr O'Brien had access to some rental returns for Mr Lu's comparables. At 5 Great Newport Street, there had been a five-year lease from February 2012 at £110,000 per annum. When adjusted to FRI, the rent equated to £281 per sqm. There appeared to have been a lease renewal for a further five years from April 2017 at nil increase. At 8-9 Great Newport Street, the first floor was subject of an "open ended" lease at a rent of £36,000 per annum, which commenced on 1 January 2015. Adjusted to FRI, this equated to £285 per sqm. There was no rental evidence for the third-floor office which Mr Lu referred to. Mr O'Brien submitted a copy of decision to grant planning permission to redevelop the block including 5-9 Great Newport Street, and considered that this would have had an impact on the rents achieved.

Case for the respondent

12. In support of his valuation of £21,750, Mr O'Brien relied upon the rent passing on the appeal property, together with evidence of rents on 17 comparable properties. In his view, a tone

of this rating list had not yet been established, and therefore he did not place weight on other rating assessments as evidence.

13. As regards the rent on the appeal property Mr O'Brien had relied upon the rent return submitted by Mr Lu. This indicated that the property was held on an eight-year lease from June 2011, and that there had been a rent review in June 2014 to £21,000, which Mr O'Brien analysed to be £431 per sqm. He noted that the lease was contracted out of the 1954 Act and considered that this might have had a slightly depressing effect on the rent. In fact, the 2014 transaction was a lease renewal, but this did not alter Mr O'Brien's view.

14. Mr O'Brien referred to 23 other transactions across 17 properties, all of which were in the Chinatown area, west of Charing Cross Road. The rents achieved in these transactions ranged from £361 to £653 per sqm (omitting an obvious outlier at £831 per sqm), over a period between March 2011 and December 2019.

15. Mr O'Brien was able to demonstrate rental growth over the period either side of the antecedent valuation date (AVD) of 1 April 2015, because in respect of six of his comparable properties he had evidence of consecutive transactions on the same office suites. Briefly, these were: first floor, 6 Gerrard Street (letting at £500 per sqm February 2013, rent review at £588 per sqm February 2018); first floor, 19 Gerrard Street (letting at £535 per sqm March 2013, lease renewal at £642 per sqm March 2018); third floor, 19 Gerard Street (lease renewals June 2011 at £361 per sqm, and again in August 2015 at £515 per sqm); first floor, 23 Gerrard Street (letting in June 2011 at £451 per sqm, lease renewal in April 2015 at £528 per sqm); second floor 36 Gerard Street (lease renewal May 2012 at £404 per sqm, and again in March 2016 at £517 per sqm); and finally floors 1-3 at 40 Gerrard Street (letting in December 2014 at £386 per sqm, lease renewal in March 2019 at £437 per sqm).

16. Mr O'Brien placed little weight on those of his comparables that fell outside a window of fifteen months either side of the AVD. He relied mainly on the following transactions:

- a) The lease renewal of the first-floor suite at 23 Gerrard Street, referred to above, which took place on the AVD, for a new five-year lease of a first-floor office which, like the appeal property, did not have central heating. The rent equated to £528 per sqm when adjusted to FRI terms.
- b) A letting of a first-floor office at 36 Gerrard Street on 29 September 2015, six months after the AVD. The rent achieved when adjusted to FRI was £17,100, equating to £459.67 per sqm for 37.2 sqm.
- c) A rent review on a first-floor office at 4 Macclesfield Street on 25 December 2015 at £429 per sqm for 29.11 sqm. Mr O'Brien thought the rent reflected the poor access to the suite, which was from a side entrance on Dansey Place.

17. Mr O'Brien placed limited weight on a letting of a second-floor suite at 36 Gerrard Street on 1 January 2015. While only three months before the AVD, he considered the rent achieved of £653 per sqm was high and out of kilter with the other evidence, especially the letting of the first floor referred to at b) above.

18. Having regard to all the evidence, Mr O'Brien considered that a basic rate of £475 per sqm was applicable, which after a deduction of 5% for lack of central heating, resulted in a rateable value of £21,976, say £21,750 RV.

Discussion

19. Chinatown does not have official boundaries as such, but when I walked to the area, I was struck by the stark difference between the areas on either side of Charing Cross Road. There was a hint of Chinatown flavour to Great Newport Street, but immediately upon crossing the Charing Cross Road there was a much busier atmosphere. The main thoroughfare of Gerrard Street was bustling and thriving; its pedestrianisation allowing outdoor dining and seating. I have no reason to believe that this has differed since the material day.

20. Mr O'Brien countered Mr Lu's evidence about the assessments on Great Newport Street by observing that they were in a different locality, but it is not necessary for me to review the caselaw or discuss the concept of locality. This decision simply turns on rental evidence.

21. An analysis of the rent on the appeal property is the starting point in assessing rateable value. In this case, two factors might call into question its robustness in the light of the hypothetical tenancy we are required to assume. The first is the contracted-out status of the lease, and Mr Lu's submission that the freeholder owned much of the property in the area and could, to an extent at least, control rental levels. That is possible, but of course tenants are not forced to take leases so there must be, albeit perhaps begrudging, acceptance of the level of rent. And while the hypothetical landlord might include the actual landlord, it can't necessarily be assumed that the hypothetical landlord also owns sufficient of the surrounding properties in the hypothetical world to be able to control rental levels. That might be an arguable assumption in say an out-of-town shopping centre, but I am not persuaded that it can be safely assumed in this area of central London.

22. The second factor is that we must assume a new letting, the appeal property having been vacant and to let. Mr Lu's evidence was that the level of rent that he agreed to pay at lease renewal to avoid the inconvenience and cost of relocating was more than an incoming tenant would be prepared to pay. That might be the case, but to assess whether that is right requires the rent to be considered in the light of the other available evidence. At this stage, all that be concluded is that the rent on the appeal property is not the end of the story.

23. I first deal with Mr Lu's evidence and submissions. From the evidence, it is immediately noticeable that there is a step change between rental levels at Great Newport Street, where £300 per sqm has not been achieved, and the area to the west of Charing Cross Road, where the lowest rent is £361 per sqm. I am satisfied that this demonstrates that Mr Lu's comparable rating assessments do not provide a reliable basis upon which to value the appeal property, because the general level of rents to the east side of Charing Cross Road are significantly less than those to the west. As for Mr Lu's point on scheme references, I don't think there is anything in this. As Mr O'Brien explained, these are just tools used by the Valuation Officer as a convenient method of grouping together the very many non-domestic properties that he or she is required to value, and a busy area such as Chinatown is covered by numerous scheme references.

24. Turning to Mr O'Brien's evidence, the letting of the first floor of 23 Gerard Street at £528 per sqm must be afforded weight, as it took place on the AVD. While the property is on the

opposite end of Gerard Street to the appeal property, there is no discernible pattern within Gerrard Street or the roads immediately off it that would cause an adjustment to be made for location. Of his two other main comparables, in my judgment the rent review on the first-floor suite at 4 Macclesfield Street at £429 per sqm provides limited assistance. The basis of the review is not known, for example whether the lease contains a restrictive user clause, and significant adjustment would be required to reflect the poor access.

25. That leaves the new letting at 36 Gerrard Street which despite occurring three months after the letting of 23 Gerard Street in a rising market was at a lower rent of £459 per sqm. This immediately demonstrates that two transactions in isolation do not provide a reliable guide, and it is necessary to have regard to the wider picture in coming to a conclusion.

26. As I indicated above, Mr O'Brien produced evidence of 23 transactions over 17 properties in the tight geographical area of Gerrard Street and the side streets off it, which includes Gerrard Place. They appeared to be fairly similar – upper floor offices above shops, restaurants etc in period buildings. I am satisfied that Mr O'Brien's adjustments for first floor against second floor etc, and for central heating, air-conditioning, etc, are reasonable.

27. His transactions ranged from £361 to £653 per sqm, averaging something in the order of £525 per sqm. While this is over an eight-year period, tightening the range makes little difference. The transactions from say January 2013 to September 2016 generate an average of just over £520 per sqm. But Mr O'Brien relies mainly on his three comparables closest to the valuation date. As I indicated above, the rent review at 4 Macclesfield Street is of questionable utility. Given his other two comparables at £528 and £429 per sqm, I am satisfied that Mr O'Brien's assessment at £475 per sqm was reasonable, and not inconsistent with the actual rent on the appeal property of £431 per sqm set ten months before the AVD in a rising market.

28. I am satisfied that after his deduction for lack of central heating, Mr O'Brien's assessment of rateable value at £21,750 is sound.

Determination

29. The appeal against the VTE's decision is allowed, and I determine a rateable value of the appeal property at £21,750 with effect from 1 April 2017.

30. The appeal was determined under the Tribunal's simplified procedure, and I make no order for costs.

P D McCrea FRICS FCI Arb

23 September 2021

