

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



**Neutral Citation Number: [2016] UKUT 423 (LC)  
Case No: RA/59/2015**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*RATING – valuation – office suite in building within cul-de-sac – rental evidence within cul-de-sac and elsewhere – reliability of evidence derived from Forms of Return – assessment evidence – discrepancies between evidence submitted and summary valuations on the VOA website – appeal dismissed – respondent Valuation Officer’s higher valuation also rejected – Schedule 6 to Local Government Finance Act 1988*

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

**BETWEEN:**

**E.L.S. INTERNATIONAL LAWYERS LLP**

**Appellant**

**- and -**

**EDMOND PREKOPP (VALUATION OFFICER)**

**Respondent**

**Re: 1<sup>st</sup> Floor,  
10 Ely Place,  
London,  
EC1N 6RY**

**Hearing date: 3 August 2016**

**Peter D McCrea FRICS**

**Royal Courts of Justice, London WC2A 2LL**  
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Mr Michael Moon MRICS for the Appellant  
The Respondent appeared in person

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The following cases are referred to in this Decision:

*Barnard and Barnard v Walker (VO)* [1975] RA 383

*Special Eyes (Optical Services) Ltd v Felgate (VO)* [1994] RA 338

*The Assessor for Orkney and Shetland v Beattie* 1987 S.C. 68

*Go Outdoors v Lamb (VO)* [2015] UKUT 366 (LC)

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

## DECISION

### Introduction

1. This is an appeal by the ratepayer, ELS International Lawyers LLP, against a decision of the Valuation Tribunal for England (“the VTE”) dated 1 October 2015, in which the VTE determined that the rateable value of premises known as 1<sup>st</sup> Floor, 10 Ely Place, London, EC1N 6RY (“the appeal property”) should be £68,000 with effect from 19 April 2011. The appeal to the VTE arose from a proposal made on behalf of the appellant against an alteration by the Valuation Officer with effect from 19 April 2011, by which the appeal property was entered into the 2010 non-domestic rating list at a rateable value of £71,500. It had previously been part of a combined assessment with premises on the second floor, which had a rateable value of £134,000.

2. The appeal was heard under the Tribunal’s simplified procedure. The appellant was represented by Mr Michael Moon MRICS, a Partner of Newton Perkins, who also gave expert evidence. The respondent Valuation Officer, Mr Edmond Prekopp FRICS, acted as advocate and gave expert evidence. Mr John Harding of the Valuation Office Agency made a submission on a minor matter but otherwise played little part in the proceedings.

3. Mr Moon contended for a reduction from the VTE’s decision to a rateable value of £56,000. Mr Prekopp also considered the VTE’s decision to be wrong, and submitted that the rateable value should be increased to £74,000.

4. On the afternoon of 2 August 2016, I made an internal inspection of the appeal property, accompanied by Mr Moon and Mr Prekopp. I then made an unaccompanied external inspection of the comparable properties.

5. The antecedent valuation date (“AVD”) is 1 April 2008. The material day and effective date are both 19 April 2011.

### Facts

6. From the evidence, I find the following facts.

7. The appeal property is situated in Ely Place, a cul-de-sac which runs south to north immediately opposite Holborn Circus in London, EC1. Ely Place runs parallel to Hatton Garden to the west, and Farringdon Road to the east. It has a gated entrance, with a central porter’s lodge. It lies within the Hatton Garden conservation area.

8. 10 Ely Place (also described in the evidence as 10-12 Ely Place or Wallis House, and which for convenience I shall refer to as the appeal building), is an inner-terraced building which provides accommodation over five storeys plus a basement. The original building dated from the 19<sup>th</sup> Century, but was reconstructed post-war following bomb damage. It has been

modernised within the last 20 years. The appeal building has an attractive exterior, with sash windows and a main entrance surrounded by an imposing portico. In common with many other buildings in Ely Place, the style of the property is similar to those within the Inns of Court.

9. The appeal property comprises the first floor suite. It has suspended ceilings with inset lighting, solid floors, and perimeter trunking. It has a comfort cooling system provided by ceiling-mounted cassettes, and gas-fired wall mounted radiators. The appellants have converted the open plan accommodation to cellular offices by installing partitioning. There is lift and stair access from a communal entrance lobby.

10. The appeal property has a net internal area of 197.67 sqm, measured in accordance with the RICS Code of Measuring Practice (6<sup>th</sup> edition).

11. The appellant entered a lease of the appeal property with effect from 10 October 2011 for a period of ten years with a tenant-only break at the end of the fifth year. The commencing rent was £75,145 per annum, subject to a 12 month rent free period.

### **Statutory Framework**

12. Section 56 of the Local Government Finance Act 1988 (“the Act”) gives effect to Schedule 6 to the Act which sets out the statutory basis on which the rateable value of a non-domestic hereditament is determined. The statutory assumptions for determining rateable value, as far as relevant to this appeal, are set out in paragraph 2 of Schedule 6, as follows:

“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 the 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.

....

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

....

(7) The matters are—

(a) matters affecting the physical state or physical enjoyment of the hereditament;

(b) the mode or category of occupation of the hereditament;

....

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there; and

(e) the use or occupation of other premises situated in the locality of the hereditament.”

### **Case for the appellant**

13. I outline below the case for the appellant including, for convenience, relevant rebuttal submissions from the respondent.

14. Mr Michael Moon MRICS has been the Partner in charge of the rating department of Newton Perkins since April 2001, following 17 years in private practice and six years at the Valuation Office. He submitted that the rateable value of the appeal property at the effective date should be £56,000 RV. Mr Moon relied upon the following seven comparables.

#### *Audrey House, 16/20 Ely Place*

15. Mr Moon described this as a late 19<sup>th</sup> century building comprising seven floors of modern offices of superior specification, with full air conditioning and a magnificent 24-hour manned reception. He said that the common parts were refurbished six months prior to the AVD. Mr Moon said that the building, which was immediately and directly comparable to the appeal property, had been assessed by the VO at £285 per sqm. He noted that in the 2005 rating list, Audrey House and the appeal property had been valued on virtually the same basis, and said that there was no rental evidence to suggest that the basis of assessment in the 2010 list should be any different. He relied upon *Barnard and Barnard v Walker (VO)* [1975] RA 383.

16. In response, Mr Prekopp submitted that *Barnard and Barnard* was a case in respect of the 1973 rating list, before the passing of the Act, and to limit assessments on one list to the same relative values in a previous list would prevent the valuation officer from exercising his statutory duty to maintain an accurate list. He said that *Barnard and Barnard* had been superseded not only by the Act, but by more recent decisions including *The Assessor for Orkney and Shetland v Beattie* 1987 S.C. 68.

17. In any event, Mr Prekopp said that Audrey House had been refurbished since the 2010 rating list had been made, and that the current assessment did not reflect its refurbished state.

His view was that Audrey House was a 1970's building, which was inferior, or at any rate inferior pre-refurbishment, to the appeal property. Until this appeal, he had been unaware that Audrey House had been refurbished, and said that he would wish to revisit its assessment in due course.

#### *34 Ely Place*

18. Mr Moon said that the whole of this property had been let on a five-year lease from November 2008, on an FRI basis. The property was in a fully modernised condition when let. Mr Moon did not have details of the extent of the modernisation, but relied upon letting particulars from 2014, which he assumed reflected a similar specification to that in 2008. The rent for the first two years was £62,790 per annum, with a fixed increase to £83,722 per annum for the remaining three years. The average rent was therefore £75,349.20 per annum, which equated to £344.69 per sqm for 218.6 sqm, adopting the VO's half rate for the basement. Mr Moon considered it likely that terms would have agreed in June or July 2008, a matter of months after the AVD.

19. Mr Prekopp could not corroborate this evidence from his records, but noted that the assessment for the fourth floor had been agreed at £360 per sqm, plus 5% for comfort cooling, less a 5% allowance since the lift did not go up to the fourth floor. This suite was very small, at 35.19 sqm, and that the transaction did not provide useful evidence.

#### *7 Ely Place – 1<sup>st</sup> floor, rear*

20. Mr Moon said that this suite was let in February 2008, just prior to the AVD. The rent was £12,255 per annum, which he said equated to approximately £315.00 per sqm, based on the VO's floor area of 38.9 sqm. Mr Moon said that the letting was an underlease from an existing occupier, and he considered it very unlikely that the letting was on an FRI basis, but in the end made no adjustment for this. He considered the letting to be an important open market letting shortly before the AVD.

21. There was a dispute between the parties as to the length of the lease, in respect of which neither produced documentary evidence. Mr Moon said that the lease was for three years with a rolling break after 12 months, Mr Prekopp said that the VO's records showed a two-year term. Mr Prekopp considered that the small floor area, of under 50 sqm, rendered the evidence less helpful. Mr Moon said that according to his research (not offered as evidence), the length was typical, as over 70% of lettings in the central London market were for less than five years, and for small suites of 200 sqm or less, located in multi-let buildings.

22. The remainder of Mr Moon's comparable evidence was in respect of buildings in the wider locality. He considered that properties in Ely Place were in "the same market" as those in the surrounding streets, and that adjustments were only required to reflect age, specification etc. As a general comment, Mr Prekopp did not consider the properties involved to be comparable to the appeal property in terms of style, age, quality or location, and he considered the locations to be markedly different.

*20/23 Greville Street*

23. Mr Moon said that this was a purpose-built office building, constructed in 1977. It benefited from considerably more modern amenities than the appeal property, including full air-conditioning and raised floors. He said that there were various rental transactions throughout the building which showed rents ranging from £188.37 to £296.44 per sqm. The VO had adopted a base value of £270.00 per sqm, plus additions for air conditioning, for what Mr Moon said was a superior building in the near vicinity of the appeal property.

24. Mr Prekopp said that he had been unable to confirm Mr Moon's evidence from his records, but said that he had a note of a rent on a fourth floor suite from March 2009 which was after the market crash and was therefore not useful. The suite had comfort cooling and raised floors, and the rent of £99,000, on a floor area of 327.50 sqm equated to £302.29 per sqm. He also had a note of a suite on the first floor, from January 2009 at an annual rent of £69,523 with eight months' rent free period. Allowing three months for fit out, the rent equated to £191.56, but this was again after the market crash.

*40/42 Hatton Garden*

25. Mr Moon said that this was another purpose built building on the east side of Hatton Garden close to Ely Place. The VO had assessed the property at £285.00 per sqm as recently as 1 April 2012. Mr Prekopp said that the building was of a different style and character to the appeal property, and some distance away. He did not consider the location to be comparable.

*86 Hatton Garden*

26. Mr Moon said that this purpose-built office building was constructed in the mid-90's, offering a considerably more modern specification than the appeal property. The building's location, on the west side of Hatton Garden close to its junction with Greville Street, was far superior to that of the appeal property. The VO had assessed the property at £270.00 per sqm, plus 10% for air-conditioning. This assessment had been agreed with the ratepayer. Mr Moon said that Hatton Garden was inferior to Ely Place. His records showed that the Rateable Value of £50,500 was based upon £285.00 including comfort cooling, rather than air conditioning.

*16 Kirby Street*

27. Mr Moon considered 16 Kirby Street to be superior to the appeal property, with good natural light and having a better reception area. Mr Moon said that it was reported that part of the 1<sup>st</sup> and 2<sup>nd</sup> floors of this building were let at a rental equivalent to £394.71 per sqm in September 2007, some 6 months before the AVD. The rateable value had been agreed at £335.00 per sqm, compared with a 2005 rating list assessment based upon £276.00 per sqm. Mr Moon said that this 2005 list assessment was 9.5% higher than the established basis on 10 Ely Place at £252.00 per sqm, whereas the relativities under the 2010 rating list were completely reversed.

28. On a stand back and look approach, Mr Moon averaged the relativities of rateable values to rents for 20-24 Ely Place, and 26-28 Ely Place, and applying these to the appeal property, he arrived at a rate of £306 per sqm. However, he said it was necessary to have regard to the wider evidence.

29. In his expert report, Mr Moon had indicated that the rent paid by the appellants had been subject to a rent free period of 18 months, on which basis he had devalued the rent to an annual average £52,601, equating to £266.11 per sqm. However, having agreed that the rent free period was only 12 months, his devaluation up to the first review date equated to a straight-line average of £60,116 per annum, which he devalued to £304.12 per sqm on the agreed floor area of 197.67 sqm.

30. Mr Moon said that there wasn't a single piece of comparable rental evidence which devalued to £346.48 or above, and the range of directly comparable assessments being between £188.00 and £285.00 per sqm. On this basis he concluded that a basis of £270.00 per sqm was fair and correct.

31. Accordingly, his valuation was:

197.67 sqm @ £270.00 per sqm	£53,371
Plus 5% for comfort cooling:	<u>£2,669</u>
	£56,039
(say)	£56,000 RV

### **Case for the Respondent**

32. Mr Edmond Prekopp FRICS is employed as a complex caseworker in the London Non-Domestic Rating Unit of the Valuation Office Agency. His experience dates back to the 1973 Rating List, and in his current role he has been involved in rating appeals on offices in central London. He considered the correct rateable value for the appeal property was £74,500 – higher than the assessment that was subject to the original appeal to the VTE. His evidence, together with Mr Moon's submissions in rebuttal, was as follows:

#### *10 Ely Place – 3rd floor*

33. Mr Prekopp relied upon a transaction in respect of the un-refurbished third floor suite in the appeal building, which extended to 169.24 sqm. He thought the transaction was a lease renewal with effect from 29 September 2007, at a rent of £59,500. Deducting one car parking space at the scheme rate of £2,250, the net rent of £57,250 equated to £338.28 including comfort cooling. After deducting 5% for comfort cooling, and then adding 15% (to the net of comfort cooling rate) to compare with the refurbished nature of the appeal property, he arrived at an equivalent rental of £369.57 per sqm.



34. Mr Moon referred to the Form of Return (“FoR”) which the occupier had submitted to the VOA. This indicated that the tenant had been in occupation since 1977, and that the rent effective from 2007 was as a result of a rent review, rather than a lease renewal. Mr Moon said that this was therefore not an open market transaction, the rent review machinery was not known, and therefore the evidence less reliable than that from a market letting. Mr Moon also took issue with Mr Prekopp’s level of deduction for the car parking space. Elsewhere, Mr Moon said that the VO had adopted values for car parking spaces of up to £3,500, for instance at 40 Holborn Viaduct. Using this, the net rent would be £56,000, equating to £330.89 per sqm, for a rent review from 29 September 2007, six months prior to the AVD. But overall he accepted that this was clearly an important rent, within the same building as the appeal property.

35. Mr Moon also compared the rateable value of £58,500 with the rent of £59,500. He noted that it was only on 10 Ely Place that the rateable value was higher than the rent passing.

36. Mr Moon said that the market for offices in this locality peaked at some point in 2007 – in his view between June and September - and said that accordingly the rent of £330.89, should be adjusted downwards to account for changes in market levels between late 2007 and the AVD. He thought that such adjustment should be in the region of 5 or 6%. In answer to a question from me, he said that there was an argument that post-AVD evidence should, on the same basis, be adjusted upwards, but had not done so since the time periods involved were so short.

37. Mr Prekopp’s analysis of the market was that office rents in central London rose significantly during 2007, peaking in the latter half of that year. Rents then levelled off from around the end of 2007 and began to fall gently from about the second quarter of 2008 (after the AVD), until September 2008 when the collapse of Lehman Brothers precipitated a major change in market sentiment, with rents falling steeply thereafter. He attached an economic overview prepared by the VOA which supported his analysis. Relying on *Special Eyes (Optical Services) v Felgate (VO)* [1994] RA 338 Mr Prekopp placed little weight on rental evidence from the latter part of 2008 onwards.

#### *22-24 Ely Place – ground floor*

38. Mr Prekopp relied upon a transaction, which he said was either a rent review or lease renewal, with effect from 27 September 2007 at £63,350 per annum, and which he said equated to £404.28 per sqm including air conditioning (superior to comfort cooling and which attracted an addition of 10% in the VO valuation scheme). He had originally thought that the review pattern was for six years, but corrected this at the hearing since there was a rent review after the end of the third year. Making a deduction for air-conditioning, and a 2% adjustment for three-year rent reviews (as opposed to five), he arrived at an adjusted rent of £355.77 per sqm.

39. Mr Moon had read the Form of Return (“FoR”) that had been completed by the occupier, and took issue with Mr Prekopp’s analysis. Mr Moon noted that the lease commenced on 27 September 2007, and that the tenant first occupied on 1 October 2002. He therefore concluded,

correctly in my view, that the 2007 transaction was a lease renewal. Mr Moon said that the most important part of the FoR was section 10, relating to repairs. The tenant had indicated that the landlord was responsible for outside repairs and insurance, and that the rent included an amount for water charges. He said that Mr Prekopp's analysis made no allowance for these factors. Mr Moon adjusted the rent down by 12.5% (10% for outside repairs and 2.5% for insurance) to give an adjusted rent of £55,431.25, which equated to £353.74 on the VO's floor area, but even this included an element of water rates. He therefore thought that the net rent would be in the region of £340 to £350 per sqm.

40. Mr Moon noted that the rateable value of £59,000 was around 93% of the rent of £63,350.

*22-24 Ely Place – 2<sup>nd</sup> floor*

41. Mr Prekopp relied upon a rent review of a second floor suite, with effect from 15 May 2008, at a rent of £83,500 per annum. Based on a floor area of 199.8 sqm, the rent equated to £417.92 per sqm, including air conditioning. Having deducted 10% for air conditioning, Mr Prekopp arrived at an analysed rent of £376.13 per sqm.

42. Mr Moon had inspected the brief supplementary FoR. At the hearing, a copy of this was submitted by Mr Harding. The form asked the occupier to confirm whether there had been any changes to the rent of £61,075.50, to which the tenant had responded stating a new rent of £83,500 with effect from May 2008. The second statement on the form was "2. This rent first became payable under the terms of the lease or agreement on 7-Jan-2004", to which the occupier had ticked "Yes". In response to the third statement: "3. This rent was actually agreed or set on [No data held, please submit details]", the occupier had written "July 2003".

43. Mr Moon said that the supplementary FoR document was ambiguous, in that it was uncertain whether the date of agreement, July 2003, referred to the rent of £61,075.50, payable from January 2004, or the rent of £83,500, payable from May 2008. It would be natural to assume that it was from the earlier date, but could not be certain. It might have been that the May 2008 rent had been agreed five years previously. There was also uncertainty as to the basis of the lease -whether it was internal repairing or that there was a service charge. In Mr Moon's view there was too much uncertainty to ensure the transaction was reliable.

44. Mr Prekopp said that it was highly unlikely that the July 2003 date referred to the May 2008 rent. His interpretation of the FoR was that July referred to the July 2003 rent.

45. In any event, Mr Moon noted, the current rateable value of £79,000 was again below the rent of £83,500 which had an effective date which was only six weeks after the AVD.

26-28 Ely Place – 4<sup>th</sup> floor

46. Mr Prekopp relied upon a new letting of 4<sup>th</sup> floor space of 159.40 sqm, for ten years from 15 May 2008, with 5-yearly rent reviews, at £72,000 per annum with nine months' rent free period. Allowing three months for fitting out, Mr Prekopp calculated an annual rent of £63,491 on a DCF basis, assuming an all-risks-yield of 7 %. However, the space had a mansard roof, which in the rating assessment had been reflected in an adjustment of 5.5%. Adopting the same adjustment, the rent would equate to £421.49 per sqm, including comfort cooling, and having allowed 5% for comfort cooling, equated to a net rent of £400.42 per sqm.

47. In answer to a question from me, Mr Prekopp accepted that there was no direct evidence in this case that showed that the market standard, in terms of analysis, was to allow a three-month rent-free period for fitting out, but said in his experience it did so.

48. Mr Moon took issue with Mr Moon's devaluation, having previously inspected the FoR completed by the tenant. Mr Harding was unable to locate a copy of it, but Mr Moon said that from his notes, the tenant had indicated that it had not carried out any fitting out, and that it first occupied the property on 21 June 2008, some five weeks after the commencement date – contrasting with the three months adopted by Mr Prekopp in his analysis. Mr Moon said that his inquiries showed that the property was let as “fitted out offices”, and therefore the entirety of the nine-month rent free period was an incentive, and on this basis the average rent was £61,200, which he said equated to £383.94 per sqm. He said that the letting agents quoted a floor area of 167.4 sqm, upon which the rent would equate to £365.60 per sqm. Mr Moon said that the agents had told him that the property had air-conditioning, rather than comfort cooling, and raised floors, although he accepted that that might not be wholly reliable. Mr Moon said that this rent, of £365.60, some weeks after the AVD, and for a clearly better building, must set a ceiling as to rental value.

49. As regards the mansard roof adjustment, Mr Moon said that whilst many properties in Ely Place, including 10 Ely Place, had similar roofs, not all of these had resulted in an adjustment for the purposes of rateable value, for example there was no adjustment at 34 Ely Place, nor at the 4<sup>th</sup> floor of 10-12 Ely Place. He therefore considered Mr Prekopp's approach to be inconsistent. In any event, Mr Moon said, no adjustment should be made as it was a rent which was being analysed rather than a rating assessment. In answer to a question from me, Mr Moon did not consider that his rejection of the mansard roof adjustment, but his adoption of the VO's 50% rate for basements was in itself inconsistent, as he felt that 50% was a fair adjustment for a basement with little or no natural light.

50. Mr Moon also compared the rent of £72,000 with the rating assessment of £64,500, some 89.58% of the rent.

51. Mr Prekopp said that he had disregarded a rent on the basement to first floor at 26-28 Ely Place, as it analysed at £602.46 which he considered unrealistic. He had also ignored a rent on the second floor at 1 Ely Place, as the form of return was unclear as to the amount of a capital

sum which was stated to have been paid for the lease, and to the extent of some basement space said to have been included.

52. As regards the lease to the appellants, Mr Prekopp allowed three months for fitting out, and adopting a DCF basis, based upon a 7% all-risks-yield, came to an average rent of £62,191, which he devalued to £323.13 per sqm. However, Mr Prekopp said that the letting was after the market crash of late 2008, when values fell by as much as 50%, and in his experience rents did not recover to their pre-crash levels until at least 2013, and that values in 2011 were significantly below those achieved around the AVD.

53. In respect of evidence of other rateable values, Mr Prekopp produced a schedule of settlement evidence comprising 25 appealed assessments within Ely Place. Of these, four were noted as “agreed”, seven “withdrawn” and the remainder dismissed or struck out by the VTE. With the exception of two hereditaments within the appeal building – on the second and fourth floors, each of which had a base value of £330.00 per sqm – the other 23 were each listed in that schedule as having a base figure of £360.00 per sqm. Mr Prekopp said that he had excluded from his schedule those properties having a floor area of less than 50 sqm, assessments which had been reduced to nil value, or decisions of the VTE.

54. Mr Moon observed that other than four assessments listed at 1 Ely Place, which was at the entrance to the cul-de-sac with the assessments located above a bank, there was only one actual agreement with a ratepayer. The remaining assessments were in respect of appeals that had been withdrawn or struck out by the VTE. They were not, he submitted, evidence of a level of assessments being agreed. There were many reasons why appellants withdrew, sometimes simply because there was no financial incentive to continue owing to transitional phasing.

55. Mr Moon also highlighted differences between how Mr Prekopp had chosen to show various assessments in his schedule, and how those assessments were shown in the summary valuations on the VOA’s website. For example, Mr Prekopp’s schedule indicated that the 1<sup>st</sup> floor of 1 Ely Place had been agreed at a rateable value of £92,000, which Mr Prekopp had indicated was based upon a unit rate of £360 per sqm, with adjustments of -5% for varying floor levels, and -15% for being “above bank”. However, the summary valuation on the VOA website referred to an unadjusted rate of £306 per sqm, with the actual valuation being 290 sqm @ £318.79 per sqm, giving £92,449 say £92,000 RV.

56. Mr Moon said that in other cases Mr Prekopp’s apparent £360.00 per sqm, was in fact £306.00, and whilst Mr Prekopp’s schedule provided what might be the reason for the discrepancy, this was the first time that the reason for the adjustment had been made available by the VO – there was no mention or breakdown of adjustment on the VOA summary valuation. Mr Moon suggested that the data within the schedule had been manipulated to appear to show agreements at the higher figure.

57. Mr Moon said that this was a constant problem with the VOA website. There appeared to be two valuations for any particular assessment, one that appears on the VOA summary valuation, and another which is advanced for the purposes of Tribunal evidence – he felt that

this was inconsistent with the expert obligations under which Valuation Officers gave evidence.

58. All of Mr Prekopp's comparable properties were in Ely Place. He was of the opinion that the surrounding streets were locations which were not comparable to Ely Place, which he said was a gated cul-de-sac comprising period office buildings which speak of elegance, refinement and prestige. He considered that those of Mr Moon's comparable properties which lay outside Ely Place were mostly in back streets, having a mix of residential and commercial properties of different ages and styles, many with retail frontages and of a very different character to Ely Place.

59. Mr Moon said that Ely Place was a comparable location to the surrounding area including Hatton Garden, Greville Street and Kirby Street, and the levels of rent only altered depending on the specification of the property concerned.

60. Mr Prekopp, having had regard to the settlement evidence within his schedule, and the rental evidence available to him, considered that the VTE's decision to determine an assessment of £68,000 was wrong. He contended that the correct rateable value of the appeal property at the effective date was £74,500 RV, based upon:

197.67 sqm @ £360.00 per sqm	£71,161
Plus 5% for comfort cooling:	<u>£3,338</u>
	£74,719
(say)	£74,500 RV

## **Discussion and Conclusions**

61. As I indicated in *Go Outdoors v Lamb (VO)* [2015] UKUT 0366 (LC), the propositions of the Lands Tribunal (Mr J H Emlyn Jones FRICS) in *Lotus and Delta Limited v Culverwell (VO)* and *Leicester City Council* [1976] RA 141 should not be treated as rules which impose a straitjacket on the analysis of the available evidence. However, they do provide a useful framework within which to consider the valuation in the round.

62. Ordinarily the rent on the appeal property might provide the best evidence as to rateable value, and provides a starting point. However, I am not persuaded that significant weight can be placed on it in this case, since the transaction occurred three and a half years after the AVD, during which time there had been volatility in the market. The circumstances of the letting are not sufficiently close in relation to the statutory assumptions, in terms of time and conditions, for it to be afforded weight. In passing I note that, in any event, following Mr Moon's recalculation having regard to the correct rent free period, the parties were not that far apart in their devaluations – Mr Moon's £304.12 per sqm playing Mr Prekopp's £323.13.

63. The next step is to consider available rental evidence, a summary of which is as follows:

Transaction	Address	Date	Mr Prekopp's Rate psqm	Mr Moon's Rate psqm
Letting	34 Ely Place	Nov 08		£344.69
Letting	7 Ely Place	Feb 08		£315
RR	3 <sup>rd</sup> fl, 10 Ely Place	Sep 07	£369.57	£330.89
Lease Renewal	Grd fl, 22-24 Ely Place	Sep 07	£355.57	£340 -£350
Letting	4 <sup>th</sup> fl, 26-28 Ely Place	May 08	£400.42	£365.60
Lettings	20-23 Greville Street	Various	£302.29 (March 09) £191.56 (Jan 09)	£188 - £296.44
Letting	16 Kirby Street	May 08		£365.60

64. In respect of the letting of 34 Ely Place, Mr Prekopp did not particularly take issue with Mr Moon's analysis of the rent at £344.69 per sqm. However, this included comfort cooling, and I have therefore reduced this rate by 5% to arrive at a rate of £328.28 per sqm, with effect from November 2008.

65. As regards the letting of the small suite on the first floor of 7 Ely Place, there is some doubt in my mind as to its direct comparability, owing to its small size, but I have placed some weight on the letting at £315.00.

66. As regards the rent review of the top floor of the appeal building, I place less weight on this than had the transaction been an open market letting. However, it is plainly useful as evidence of a notional transaction in the same building as the appeal property, sharing the same location, reception etc. Mr Prekopp's 5% deduction for comfort cooling is unarguable, and consistent with both valuer's adjustments. I accept Mr Prekopp's deduction for the single car parking space. Whilst Mr Moon made a larger adjustment, this reflected car parking spaces in different locations which I do not consider to be correct.. Mr Prekopp's addition for refurbishment was a subjective judgement, but I accept it. Mr Moon's adjusted figure of £330.89 is too low, in my view, as it makes no adjustment for the un-refurbished state of the suite. Accordingly, I prefer Mr Prekopp's £369.57, but it must be noted that the rent review date was in a better market than that at the AVD.

67. In respect of the lease renewal of 22-24 Ely Place, there is a sufficient degree of ambiguity in the FoR to cast some doubt on Mr Prekopp's £355.57. However, even on Mr Moon's figures, the rent equates to something in the region of £340-£350. I have adopted £350 per sqm.

68. As regards the letting of the fourth floor of 26-28 Ely Place, there is some doubt in my mind over Mr Prekopp's method of devaluation, although I see no inconsistency in his treatment of the mansard roof. There was no direct evidence in respect of his chosen 7% all risks yield, nor his method of reflecting the rent free period. I prefer Mr Moon's £383.94 (allowing for the whole rent free period of nine months), but I reject his chosen floor area of 167.4 sqm. I have reduced his £383.94 by 5% to account for comfort cooling, to arrive at £365.65 per sqm.

69. Having made these findings, the rental evidence within Ely Place, in chronological order, is as follows:

Property	Date	Rent per sqm
Grd fl, 22-24 Ely Place	Sep 07	£350.00
3 <sup>rd</sup> fl, 10 Ely Place	Sep 07	£369.57
7 Ely Place	Feb 08	£315.00
4 <sup>th</sup> fl, 26-28 Ely Place	May 08	£365.65
34 Ely Place	Nov 08	£328.28

70. These can be compared with the rental evidence at surrounding locations. Whilst some criticism was made of Mr Moon's evidence by Mr Prekopp for lack of substantiating material, I am prepared to attribute weight to it. However, I discount the evidence in respect of 16 Kirby Street, which even Mr Moon caveated with "it has been reported that...". That leaves 20-23 Greville Street, within which Mr Prekopp recorded transactions at £191.56 to £320.39, and Mr Moon £188.00 - £296.44. However, Mr Prekopp's £320.39 was for a suite which included air-conditioning and raised floors, and an adjustment for this would result in there being no rental evidence in the surrounding streets which exceeds £300 per sqm.

71. It is clear from this that rents achieved in Ely Place were higher than those achieved in the surrounding area. Having inspected all of the locations cited by the parties, I prefer Mr Prekopp's view that Ely Place is a superior location, and am satisfied that this is borne out by the rental evidence. That is not to say that Ely Place necessarily caters for a different market – the hypothetical tenant may be interested in both this and surrounding locations, but in my judgement he or she would be willing to pay more per sqm for a property in Ely Place than in surrounding locations, other things being equal.

72. Mr Moon said that, based purely on the rental evidence, he would value the appeal property at £306.00 per sqm. Following an analysis of the evidence above, in my judgement that figure is clearly too low.

73. It is now necessary to consider the available assessment evidence, and I deal first with the evidence advanced by the appellant.

74. Mr Moon placed considerable reliance on the assessment of Audrey House, and its assessment at £285 per sqm for a refurbished building. The assistance that could be derived from this assessment vanished, in my view, once Mr Prekopp confirmed that the VOA was unaware of the refurbishment of the building, and that it would be reconsidered following the conclusion of this appeal. The best that might be said is that it shows an assessment at £285 per sqm for a building that had not been refurbished, and I derive little assistance from it.

75. As for Mr Moon's other assessment comparables – 40/42 Hatton Garden at £285 per sqm, and 86 Hatton Garden at £270 per sqm – in my view all these show is that these locations outside Ely Place command lower values than those within it. The assessment of 16 Kirby Street, the rental of which I have discounted, at £335 per sqm included full air-conditioning at 10%, and raised floors at 5%. Net of these the value would be something in the order of £290 per sqm.

76. As the Tribunal has confirmed on many occasions, in a rating appeal the onus is on the appellant to show that a decision of the VTE is incorrect. I do not consider that any of the evidence adduced by Mr Moon has shown that it was. Even on his analysis of Mr Prekopp's evidence, rents in Ely Place were substantially above £300 per sqm. Once he had recalculated his analysis of the rent passing on the appeal property, and Audrey House has been excluded, Mr Moon's case effectively collapsed. The appeal is therefore dismissed.

77. As for Mr Prekopp's view that the assessment should be increased from £68,000 to £74,500 I do not consider, on the evidence, that this has any merit. I am not convinced that he has shown that the ratepayers on his schedule actually agreed or withdrew appeals on the basis of £360 per sqm.

78. I consider that Mr Moon's criticisms of both the FoR's and the summary valuations shown on the VOA website have some merit. The wording of the FoR's invite ambiguity, as the evidence in this case has shown. I can also entirely understand Mr Moon's frustration at the lack of transparency on the VOA website, which appears to show assessments valued at say £330 per sqm, whereas the "real" value was at £360 per sqm less allowances. This opacity, which Mr Prekopp accepted was a shortcoming, puts ratepayers and their agents at a disadvantage in negotiations and may lead to fruitless appeals. It is to be hoped that the new regime of Check Challenge and Appeal, coupled with the impending rating revaluation, will adopt a clearer way of presenting evidence to ratepayers.

## **Disposal**

79. The appeal is dismissed, and I confirm the Rateable Value of premises at the First Floor, 10 Ely Place, London, EC1N 6RY at £68,000 with effect from 19 April 2011. The appeal was heard under the Tribunal's simplified procedure, under which costs are only awarded in



exceptional circumstances. Neither party suggested that there were any such circumstances, and I therefore make no award on costs.

Dated: 27 September 2016

A handwritten signature in black ink, appearing to read 'P D McCrea', with a long horizontal flourish extending to the right.

P D McCrea FRICS