THE VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; office and premises; main space price in dispute; comparable properties; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed in part

Re: Ilkeston Co-Op Travel, Mercian Close, Ilkeston, DE7 8HG

APPEAL NO: CHG100021750

BETWEEN	Mr Frank Smith	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mr A Backway (Senior Member)
Ms J Morton

CLERK: Ms R Muller

REMOTE HEARING ON: Monday 30 November 2020

APPEARANCES: Mr F Smith, Appellant
Mrs S Howson, Representative of the Respondent

Summary of decision

1. Appeal allowed in part. The panel determined the assessment of the subject hereditament at £107,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 compiled rating list appeal. The assessment of the subject hereditament was originally £141,000 RV, with effect from 1 April 2017 and described as office and premises. For this appeal, matters that affect the physical state or enjoyment of the property or the locality were to be taken as at the material day, which was 1 April 2017.

3. A check had been completed on 27 July 2018 and a challenge submitted on 23 October 2018. The challenge stage was completed on 12 December 2019 with no change to the RV of the subject hereditament, therefore an appeal was received by the Tribunal on 14 January 2020.

4. The subject hereditament comprised a two-storey purpose-built office building of 1,751.9m^2 constructed in 2001. Both parties were in agreement that the subject hereditament was constructed to meet the requirements of the initial occupier and it was accepted that the office accommodation of this size was not commonplace.

5. There were 77 car parking spaces, which had been reflected in the unit price adopted for this hereditament, as specified within the Valuation Scheme reference 323066 description. It was situated in an out of town location on Manners Avenue Industrial Estate, circa one mile from the town centre.

6. The present valuation of £141,000 RV was based upon a main space price of £75/m^2, with an uplift of 2.5% for a raised floor and 5% for air conditioning.

7. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

8. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

9. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issues

10. The issue in dispute was the main space price to be adopted in the valuation of the subject hereditament.

Evidence and submissions

11. The appellant, Mr Smith submitted a bundle of evidence which included details of the subject hereditament, the issues in dispute, details of comparable properties. With reference to his analysis of the subject rent, the reverse premium paid and together with the comparable properties provided, he proposed a revised assessment of £90,000 RV with effect from 1 April 2017. However, no breakdown of a main space price had been included with his submission for the panel to consider.

12. The Valuation Officer's representative, Mrs Howson had stated that she was fresh to the case, not having been involved at either the check or challenge stage and she disagreed with her colleague's defensive position. However, she had been able to internally inspect the subject hereditament and the comparable properties provided by Mr Smith before the hearing.

13. Having considered the comparable properties that Mr Smith had submitted, she offered in open Tribunal a reduction in the main space price of £75/m² to £60/m², which would achieve a revised assessment of £112,000 RV, which had included an uplift of 2.5% for a raised floor and 5% for air conditioning.

14. As a result, Mrs Howson did not refer to the comparable rental evidence submitted within the Regulation 17 Notice, as this evidence related to the current assessment of £141,000 RV and was no longer relevant to her case. She formally asked the panel to allow the appeal in part and confirm her revised assessment of £112,000 RV with effect from 1 April 2017.

15. The panel adjourned the hearing in order for Mr Smith to consider the offer that Mrs Howson had proposed. However, on reconvening, Mr Smith stated that in his opinion the £112,000 RV offered was still too high. Therefore, the panel continued with the hearing in order to make a decision. With the £112,000 RV on the table, the panel considered the evidence from Mr Smith in support of his contention that the subject hereditament warranted a reduction in its assessment to £90,000 RV.

Decision and reasons

16. The subject hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD).

17. The panel had regard to the Lands Tribunal judgment of Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976, as referred to by Mrs Howson. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    (1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

    (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

(3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful, but in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

18. The panel was aware that in accordance with Lotus v Delta, the subject rent was only the starting point, and needed to be considered alongside the rental evidence of similar properties.

19. Mr Smith informed the panel that the subject hereditament was originally built specifically to meet the requirements of Ilkeston Co-operative Society, who had a large multi-branch travel agency business. The original rent at £170,000 was dictated by the land and construction costs, together with the developer's profit. As such, this was not an arm's length transaction.

20. In 2006, Ilkeston Co-Op got into financial difficulties, and the property was vacated and put on the market in 2007.

21. Erewash Borough Council bought the empty property five years later to originally consolidate several offices. A reverse premium was paid to the Erewash Borough Council on completion of the assignment on 10 December 2013.

22. Therefore, Mr Smith states that due to the scarcity of open market evidence of office properties of this size in this town, the reverse premium would still be considered very pertinent evidence of value, as it was paid 15 months prior to the AVD of 1 April 2015.

23. The property was let on a leasehold basis for a period of 25 years from 29 September 2000 at an initial rent of £170,000 per annum, far removed from the Antecedent Valuation Date (AVD) of 1 April 2015. Mr Smith stated that the 2005 rent review was a retail price index (RPI) increase in accordance with the lease terms, then it was increased by £10,000 in 2007 as a result of the Deed of Variation, which allows sub-letting in parts and a further RPI increase in 2010 to the current rent of £215,746. He stated that the RPI did not apply in 2015 when a rent review was undertaken and therefore the passing rent remains until the lease expires in 2025.

24. Mr Smith submitted that the panel consider the terms of the lease and reverse premium with regards to the subject hereditament for determining the main space price to be adopted with in the assessment.

25. The panel considered that the terms of the lease, as outlined in Mr Smith's evidence, was outside the normal terms for a lease on similar types of property and so would require some adjustment to fit within the definition for calculating an RV and the rent alone could not be used to set the price. The panel upheld Mrs Howson's contentions that little weight should be attached to the subject rent, as it could not be considered an open market rent.

26. Mrs Howson suggested that the subject hereditament could be split and sublet, however, Mr Smith contended that if the building was to be split, the way it was laid out would not create an appropriate separate hereditament to be used as an office or any other such unit for alternative use. No further details were discussed on this matter and no evidence supplied in support of each parties' statement.

27. The panel noted that Mr Smith stated that occupation of a hereditament such as the subject property in the Ilkeston location itself was restricted to public sector organisations. However, Mrs Howson was not in agreement with this statement and stated that there was no evidence to support this statement. She stated that the accommodation was available for occupation by both public and private sector organisations, of which the panel agreed.

28. Mr Smith further submitted that the evidence of comparable properties demonstrated that some weight should be attached to the subject rent, which he analysed at £34.37/m². He stated that although his analysis of the rent was simplistic, his calculations did show that is was much lower than the current main space price of £75/m². The panel noted however, that Mr Smith had used the reverse premium of £1.2 million within his calculation, which made his calculations unreliable for consideration.

29. The panel considered in detail the following comparable properties referred to by Mr Smith:

- 58 South Street, Ilkeston, DE7 8TU, which was an office building built in the 1970's in a good secondary location in the town centre. It had a Net Internal Area (NIA) of 1,714m², which analysed at £45/m² and had an assessment of £74,500 RV.

- Town Hall, Market Place, Ilkeston, DE7 5RP, which accommodated mixed aged offices and was located within the town centre. It had a NIA of 1,917m², which analysed at £50/m² and had an assessment of £116,000 RV.

- Bramley House, Bramley Road, Long Eaton, NG10 3SX, which was an office building, built in circa 1990's, similar in size to the subject hereditament at 1,430m², which analysed at £75/m² and had an assessment of £116,000 RV. However, this comparable property was in a much better location than the subject hereditament even though it was an older property.

- Tomlinson House, Duffield Road, Little Eaton, DE21 5DR, which was an office building, built in the late 2000's, one mile from the city centre. It was smaller in size to the subject hereditament at 1,289m², which analysed at £90/m² and had an assessment of £113,000 RV. This property was in a much better location than the subject hereditament and this was reflected in the rental value of £225,000. However, the effective date of the rent was 12 November 2007, too far removed from the AVD of 1 April 2015 to be of any use.

30. Mrs Howson informed the panel that she had come to the revised main space price using the comparable properties above, taking into consideration the age and location of the subject hereditament and the large number of accommodated parking spaces provided within its confines.

31. Mrs Howson stated that the comparable properties above were much older properties and that the subject hereditament was a modern building which accommodated a large number of parking spaces. Therefore, to lower the main space price by more than what she was offering at £60/m² would not reflect the fact that the subject hereditament was of a higher quality than the comparable properties detailed above.

32. The burden of proof rests on the appellant to show that the current RV is incorrect. In the appeal before it, the panel held that the comparable evidence did suggest that the current RV and revised £112,000 RV proposed by Mrs Howson was excessive.

33. The panel paid particular attention to the comparable properties of 58 South Street and Town Hall, which were both similar in size to the subject hereditament. They were older buildings, therefore did not benefit from the modern facilities or the same parking facilities as the subject hereditament, but they were located within the town centre. The panel noted that the main space price adopted for each of these two comparable properties were £45/m² and £50/m².

34. The panel found that the comparable assessment evidence provided did support a reduction in the main space price below the £60 offered by Mrs Howson, but not to the extent as requested by Mr Smith due to its more modern construction and the 77 car park spaces.

35. Therefore, the panel determined that the main space price of £57/m2 was fair and reasonable, which with the uplifts detailed above, resulted in a revised assessment for the subject hereditament of £107,000 RV.

36. Accordingly, the panel allowed the appeal in part and determined a revised assessment of £107,000 RV, with effect from 1 April 2017. A breakdown of the assessment has been shown below:

Floor	Description	Area m²/unit	Price per m²/unit	Value
Ground	Office	833.90	£61.28	£51,101
Ground	Reception / entrance	34.60	£58.36	£2,019
Ground	Staff toilets	0	£0	£0
Ground	Plant room	0	£0	£0
Ground	Kitchen	11.10	£58.36	£648
First	Office	834.50	£61.28	£51,138
First	Reception / entrance	34.60	£58.36	£2,019
First	Staff toilets	0	£0	£0
First	Plant room	0	£0	£0
First	Kitchenette	3.20	£58.36	£187
	Total area	1,751.90 m²	Valuation sub-total	£107,113
			Say	**£107,000 RV**

Order

37. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry of the subject hereditament, known as Ilkeston Co-Op Travel, Mercian Close, Ilkeston, DE7 8HG to £107,000 with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of appeal fees

38. The appellant is entitled to a refund of the appeal fees in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 4 December 2020

Appeal number: CHG100021750