THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of Compiled List RV in 2017 Rating List; Office and Premises; are works to interior space refurbishment or repairs/replacement of existing features; Appeal partly allowed.

Re: 27 Harrison Road, Halifax HX1 2AF

APPEAL NUMBER: CHG100038402

BETWEEN:	Shrewdd Marketing	Appellant
	and	
	Valuation Officer	Respondent

PANEL: Mr D Hayes (Senior Member)

Mr K Sutch

CLERK: Mechile Hempton

REMOTE HEARING on 21 October 2020

APPEARANCES: Mr S Hornby of Gerald Eve represented the appellant

The Respondent VO was represented by Mr R Postlethwaite

Summary of decision

1. The appeal is partly allowed, and the panel confirms a revised RV of £16,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £16,750 from 1 April 2017, with a description of Office and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. The appeal was made on 18 December 2019 against the Valuation Officer's (VO) Decision Notice of 19 September 2019 in respect of the appeal property (hereditament) and the RV of £16,750. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £16,750 RV was deemed as correct.

3. At the hearing the VO presented a revised valuation of RV £16,500 in recognition that the appeal property did not benefit from having raised flooring.

4. Mr Ken Whittington had been the surveyor who had dealt with the appeal at the Check/Challenge stage but when the appeal was made to the Valuation Tribunal, Shrewdd Marketing had transferred its instruction to Gerald Eve LLP and Mr Stephen Hornby was the new representative.

5. The panel was informed by Mr Hornby that the appeal property was a four storey period building used as offices, with two car parking spaces to the rear. Its location was to the south-west of Halifax town centre and ten minutes from Halifax railway station. The appeal property was situated to the southern end of Harrison Road, near the junction with Savile Road, and was part of a terrace of office buildings housing private and public sector organisations. He described the area as established office space but that there had been changes of use in recent years to the residential sector.

6. Mr Hornby appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Hornby's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

7. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit

9. 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.

10. 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.

11. 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 before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary Issue

12. Mr Hornby had provided attachments to an email sent on 16 October 2020 to the VO and the Valuation Tribunal (VT) which he wished to present at the hearing, this comprising: rental evidence on 9 and 19 Clare Road, photographs of the exterior and the interior of each floor of 27 Harrison Road, two photographs of the interior of 19 Clare Road, and an estate agent's brochure for 9 Clare Road dating from 2014. In the initial Challenge stage of the appeal, he said that the previous representative had referred to these two properties and Mr Hornby considered that this information and photographs satisfied the requirements of paragraph 16 of Practice Statement (PS) 2(b) in the Consolidated Practice Statement (CPS) for The Valuation Tribunal for England – namely, there was no need for parties to submit photographs and plans to the Tribunal before the hearing provided the parties agreed that any photographs and plans were a true reflection of the situation at the material day.

13. The VO accepted the rental evidence and photographs of the appeal property, but he had objections to the latter two pieces of information. His grounds were the brochure mentioned refurbishment of 9 Clare Road, and this was an issue which had a material effect on the case. If the Valuation Office Agency (VOA) had known that refurbished offices were to be produced as comparable property, it may have provided its own information and rent for refurbished offices to support its argument. Also, he was not persuaded that the photographs were a true reflection of the situation at the material day.

14. The panel asked Mr Hornby that if he was relying on the brochure to make a point on the level of refurbishment in office space in relation to the appeal property, why was it not produced before the proposal had been determined. His answer was that his predecessor Mr Whittington had made it very clear in the argument he had advanced for the appeal when in discussions with the VOA that the appeal property was no more valuable after works had been carried out than it had been before.

15. The panel adjourned to consider the matter. When the hearing was reconvened, the panel said that it would accept the photographs of 19 Clare Road but would exclude the brochure in its entirety. The letting brochure for a refurbished property did not fall under paragraph 16 of PS 2(b) but did fall under Regulation 17A of the Tribunal Procedure Regulations, and the panel was not satisfied from Mr Hornby's explanation that it met the threshold for acceptance as new evidence at the present day; the information had been available for exchange with the VO when the proposal was being discussed between the parties and it would have been the responsibility of the previous representative to include it in his representations. The fact that Mr Whittington had not chosen to rely on the content of the brochure did not allow Mr Hornby to enter this information for the first time five days before the hearing.

Issues

16. The matter before the panel was to determine the correct level of the RV for the appeal property having regard to the weight of evidence to be attached to the rental evidence in respect of the property and the levels of value placed on comparable assessments from the locality. This evidence was put forward to determine whether the internal works carried out at 27 Harrison Road increased its value as office accommodation; if it did not, the appeal property should be categorised and placed in a valuation scheme for unrefurbished office space, as Mr Hornby contended. If the works added value to the assessment, then Mr Postlethwaite's position was that the appeal property should be in a valuation scheme for refurbished offices.

17. The appellant's representative proposed a revised RV of £13,250 based on £66.50 per m² (ITMS). The VO had sought a revised the RV in the list of £16,500 with effect from 1 April 2017, based on a rate of £85 per m² for the refurbished ground and first floors and with the basement, lower ground floor and second floor having allowances to reflect back to an unrefurbished state.

Evidence and submissions

18. The appellant's representative argued that the works carried out to the appeal property in 2012/13 consisted of the replacement of the existing central heating system and electrics, the removal of asbestos and with some internal structural alterations made to reconfigure the office space to the current occupier's needs. The rateable value of the appeal property had been reduced by the VOA to £0 from 29 October 2012 to 14 February 2013 as it was incapable of occupation on safety grounds during this time; there had been redecoration undertaken on the ground and first floors. Mr Hornby stated the works were repairs or replacement of existing features such as were necessary from time to time in the maintenance of a building, or to make the building safe. His conclusion was that it was inappropriate to increase the property's valuation on the strength of the works.

19. His rental evidence to support the view that the works did not add value was the rent passing on the appeal property itself: in October 2012 (prior to the works) the initial rent was £13,000 per annum for a five year period, and with the renewal lease in October 2017 (post works) for the same rent. He also referred to a Chartered Surveyor's report compiled by Walker Singleton in July 2018, who expressed an opinion that the market rent for the appeal property was £12,000 per annum, further reinforcing the representative's point that the works to the appeal property would not add value to the rent that the property could command.

20. His two main comparable properties were 9 and 19 Clare Road, both nearby offices in the unrefurbished office scheme. Their rents dated a few months pre and post the antecedent valuation date and the analysis of their rents suggested, in his opinion, that his client's property was no different.

21. Mr Postlethwaite's case was that the rent passing on the appeal property was between two connected parties and therefore unreliable as evidence as it could not be tested on the open market. He said that there had been extensive works to the appeal property, as evidenced in

the Walker Singleton report, and that the property had been taken out of the list for a short period whilst the works were ongoing.

22. The works included plastering, new light fittings, new electrical floor sockets, new toilet/shower room with a lowered ceiling (he added that though parts like toilets were not part of the valuation, they reflect on the other parts that are valued), and the removal of asbestos. He stated that structural works had been undertaken in what had been cellular offices; a RSJ had been set up along the ceiling to create open plan office space and bring the ground and first floors up to a modern standard.

23. Refurbishment had been carried out on the ground and first floor area totalling 132 m^2 and it was these parts that had been valued at £85 m^2; the appeal property was 240 m^2 overall in size and had been valued in the refurbished scheme but with allowances for the basement, lower ground floor and second floor to reflect back as unrefurbished parts.

Decision and reasons

24. The appeal 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 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

25. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

26. The panel considered that over half of the appeal property had been subject to refurbishment and that it had to decide to what extent the works would have an effect on the rental value. The panel was not assisted by the rent passing on the appeal property as in its view it was a rent between connected parties and untested in the open market. It found that the Walker Singleton report did not recognise the lack of an arm’s length transaction between the landlord and the tenant and simply stated that the rent was a market value.

27. Within the Walker Singleton report an analysis of the rent on the appeal property produced an adjusted rate of £7 per sq ft, slightly higher than the rates for 9 and 19 Clare Road, Mr Hornby’s smaller comparable properties in the unrefurbished valuation scheme.

28. Turning to the £85 per m^2 value adopted by the VO for refurbished space in the appeal property, this figure fell just slightly higher when converted into square feet than the range given by Walker Singleton for commercial office lettings in its report analysis.

29. Staying with the report’s findings, the inspection in June 2018 gave the following conclusion: “Internally the ground and first floor accommodation has been substantially upgraded in recent years and presents extremely well throughout. The second floor/attic level is currently unrefurbished and in a state of disrepair. The basement level is basic but serviceable condition.”

30. Therefore, though the panel was not presented with rents for refurbished offices to substantiate the values the VO had given for improved areas, the panel did have the evidence

from the representative of rents for unrefurbished offices. And the analysis the panel has made from that evidence was that the value applied by the VO was not unreasonable or excessive for refurbished office space in the appeal property when compared to the values held on unrefurbished office space in the area.

31. The nature of the works undertaken to the appeal property were significant enough to ensure that the property was taken out of the list whilst the works were in progress, and it is the panel's assessment that structural changes to open up the office space into a modern work environment were also an opportunity to make improvements. The size and the extent of the refurbishment works on the ground and first floors would have an effect on the rental value and the VO has, in the current valuation, distinguished between those floors that are refurbished and those floors that are not refurbished.

32. Therefore, given the VO's revised valuation, the Panel is satisfied that the valuation of the hereditament is unreasonable, but only to that extent. Accordingly, the appeal is allowed to the extent that the VO's revised valuation is confirmed at £16,500 with effect from 1 April 2017.

Order and refund of appeal fee

33. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the appeal property's entry in the Rating List to £16,500 Rateable Value with effect from 1 April 2017. The Valuation Officer must comply with this Order within two weeks of its making.

34. As the Appellant has been successful in their appeal, albeit to the limited extent above, in accordance with Regulation 13E of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 the Appellant's appeal fee must be refunded.

Date: 16 November 2020

Appeal number: CHG100038402