THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating list appeal; challenge to entry in the compiled rating list; rental analysis; comparable properties; appeal dismissed

Re: Unit 2b Brimscombe Port Business Park, Brimscombe, Stroud, Gloucestershire, GL5 2QQ

APPEAL NUMBER: CHG100054236

BETWEEN: Richard Cooper Bronze Ltd Appellant

(represented by Altus Group)

and

Dal S Virk Respondent

(Valuation Officer)

PANEL; Mr I Lonsdale (Senior Member)

Mr M Farooq

CLERK: Mrs A Sloan

REMOTE HEARING: 26 October 2020

ATTENDEES: Mr R Storr (Advocate for the Appellant)

Mr M Gittins (Expert Witness for the Appellant)

Mr K Davidson (representative for the Valuation Officer)

Introduction

1. 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. 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.

2. 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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

3. The Appellant’s representative confirmed that his firm will receive a conditional fee or some other success related arrangement if the rateable value (RV) is reduced as a result of the panel’s decision. The panel accepted the evidence on the basis that the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is allowable due to the Tribunal’s rules on admissibility of evidence (reg 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel heard the evidence and assessed what weight it should give to it in the context of the matters at issue before it.

4. 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.

Background

5. The subject property is an industrial unit originally constructed in 1984 and refurbished in 2015. The Appellant made a proposal to challenge the entry in the 2017 rating list which resulted in a reduction in RV from £25,250 to £22,000 with effect from 1 April 2017. An appeal was then lodged with the Tribunal to dispute the RV of £22,000 as the Appellant considered this excessive and a reduction was sought to £14,500.

Issue

6. The issue for the panel to determine was the correct price per square metre to be applied to the valuation of the subject assessment.

Evidence

7. The parties presented evidence of rents agreed on the subject building and other units on both the Brimscombe Port Business Park and the adjacent Brimscombe Industrial Estate plus units on other estates in the GL5, GL6 and GL10 postcode area. Photographs and maps were provided to assist the panel which had been agreed prior to the hearing by the parties.

8. The Appellant’s representatives considered the best rents on which to value the subject property were the passing rent on Unit 2b and others in the immediate locality. The VO’s representative disagreed and considered similar units further afield provided the best evidence due to local influences in Brimscombe.

Decision and Reasons

9. Schedule 6 of the Local Government Finance Act 1988 provides the assumptions to be made when considering rents as follows –

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 this 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.

10. In this appeal, the Antecedent Valuation Date (AVD) is 1 April 2015, when the rental levels and economic climate must be considered. The Material Date is 1 April 2017, when the physical aspects of the subject property and its locality must be considered.

11. Mr Storr provided details of the subject property and others nearby to support his case for a reduction in RV. He considered the tone adopted was too high and felt that the price per m^2 should be £34 rather than the £52.50/m^2 used in the current valuation. The rent on the subject property was agreed at £15,000 per annum with effect from 21 June 2016 for a term up to 17 January 2019. Mr Storr disputed that the comparable properties used by the Respondent were useful and argued that the passing rent on the subject property plus rents on neighbouring units were the best evidence of value at the AVD. He pointed out that most of the rents on the Respondent's comparable properties were renewals rather than new open market leases and all were valued under a different scheme to the subject property.

12. Mr Davidson, for the VO, presented details on other units which he considered comparable to the subject property from the wider area. He explained that Brimscombe Port Business Park and Brimscombe Industrial Estate had been identified for demolition to enable redevelopment of the site for residential and retail use. He highlighted that the leases agreed on the units were all outside the Landlord and Tenant Act 1954 and, in his opinion, rents were influenced by the uncertain future of the site. In particular, Mr Davidson drew the panel's attention to a clause in the lease for the subject property which made specific reference to the planned future of the site. Clause 33a of the lease states –
"*The Landlord covenants with the Tenant to keep the Structure of the Property in reasonable repair and condition during the subsistence of this lease and in determining what is reasonable in the context of this clause the Landlord shall be entitled to take into account its intention to re-develop the Estate after the expiry of the Contractual Term*."

13. Mr Davidson explained that, although at the time the proposal was made for the subject property, there was no firm plans in place for the re-development, a planning application had since been lodged and the intention to demolish the units had been common knowledge for many years. He highlighted that concessions in the rents agreed appeared to have begun in 2016 and drew the panel's attention to the rent on Unit 2 Brimscombe Port Business Park. Unit 2 is around six times larger than the subject unit and is older, having been constructed between 1965-1970. It is used as an indoor football venue and a 15-year lease was agreed at £48,043 per annum from 17 January 2014. The lease specified stepped increases in rent, but it was subsequently altered by a deed of variation dated 24 August 2016 reducing the rent by half to £24,000 with effect from 1 September 2016. Mr Davidson stated that, in his opinion, this demonstrated the landlord's pragmatic management of the estate to encourage continued occupation and avoid liability for empty units in the face of the proposed re-development.

14. The Appellant’s representatives stated that Units 2 and 3 Brimscombe Port Business Park are occupied for leisure use and are important assets to the local community. They contended that the reduction in rent on Unit 2 was in fact due to the limited finances of the occupier and the landlord’s concession in lowering the rent was to enable the tenant to continue providing valued services to the local population. Mr Storr pointed out that the planning application for the site had not been approved yet and was in fact contested by some of the occupiers of the estate. He confirmed that leases on the site continued to be agreed and renewed as occupation continued and maintained that the rents passing on the estate remained the best examples of value in the immediate locality of the subject property.

15. The Appellant’s submission also referred to the case *Dawkins (VO) v Ash Brothers and Heaton* [1969] 2 AC336. This case concerned a demolition order and the House of Lords held that the order became ‘an essential characteristic of the hereditament’, meaning the rents on the appeal property and those surrounding it should be considered valid. Mr Davidson disagreed that this case was relevant to the subject appeal as there is no demolition order in place and planning permission is yet to be granted. However, he considered that the intention to re-develop the site had been known for many years and would influence the rents negotiated on the subject property and those on the same estate.

16. Following the proposal to challenge the RV of £25,250, the VO had re-assessed the valuation for the subject property and included a 2.5% allowance for poor access, resulting in the current RV of £22,000. Mr Davidson explained, due to the issues regarding the re-development of the subject estate, he felt that consideration of a wider basket of rental evidence was required. He provided details on a number of industrial units located in the GL5, GL6 and GL10 postcode areas which he felt supported the current valuation for the subject property. He acknowledged that some of the properties to which he referred could be considered to be superior locations in terms of access for HGVs but an allowance had been given for the subject unit to reflect its restricted access. Whilst he acknowledged that the properties he had presented were somewhat distant from the subject property, he did not consider them so far removed as to be irrelevant.

17. After considering all of the evidence, the panel concluded that the rents in Brimscombe Port Business Park and Brimscombe Industrial Estate are blighted by the prospect of re-development. Whilst it acknowledges that, in accordance with *Lotus and Delta v Culverwell (VO)* [1976] RA141, the starting point for any valuation should be the passing rent on the subject property, in this case the panel was of the opinion that rent was not in line with the statutory definition. The lease on the subject unit was agreed some time after the AVD, is outside the Landlord and Tenant Act 1954 and was agreed with the knowledge that the future of the estate was uncertain. The panel concluded that these factors mean the passing rent is not a useful measure of the rent that would be agreed by a hypothetical tenant and is not a true reflection of the open market as a whole. It considered that the findings in the *Dawkins* case are not truly reflective of the situation at the subject property as there is no definitive order to demolish but nevertheless the planned re-development remains a factor which would negatively affect rental values in the estate.

18. Whilst the panel noted that the rents outside Brimscombe referred to by Mr Davidson are all renewals rather than new lettings, bar one, it found that the units are all closer in size to the subject property and are industrial in nature. Units 2 and 3 Brimscombe Port Business Park cannot be considered comparable to the subject unit, in the panel’s opinion, because they are much larger and occupied for leisure use rather than industrial. The panel is mindful that, in the absence of useful comparable properties in the immediate locality, one must look

further afield for true arm's length rental evidence. It found that Unit K Stonedale Road and Unit 6 Oldends Industrial Estate in Stonehouse, GL10 were the best comparable properties. Both are slightly larger than the subject property and perhaps better located and more accessible but the 2.5% allowance given on the subject property to reflect this balances out any additional value in that respect. These two units are also older than Unit 2 Brimscombe Port Business Park, constructed in 1979 and 1981 respectively but without the benefit of the 2015 refurbishment seen at the subject property.

19. The panel has also considered the Respondent's example of Block 3 Griffins Mill Estate in Stroud GL5, which was the subject of a revised valuation following an inspection by Mr Davidson after the Appellant's representatives raised an issue with the survey data. However, the panel placed less weight on this example as the property was constructed between 1955-1964 and is smaller than the subject property. It concluded that the age and poorer quality of this unit makes it less comparable to the subject unit than other properties presented.

20. The panel concluded that the best evidence is the rent for Unit 6 Oldends Industrial Estate and placed more weight on this lease than that on the subject property. The rent was agreed as a new letting from 1 July 2016 at £24,000 on an industrial unit of slightly larger size than the subject property. The panel concluded that, based on this older unit, the current entry in the list for the subject property is fair and reasonable. Therefore, the appeal is dismissed and the RV of £22,000 from 1 April 2017 is confirmed.

Date: 3 November 2020
Appeal number: CHG100054236