VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) LVC/376/1975; *shop and premises; rental evidence; Appeal allowed in part.*

RE: The Grain Store, Statfold Barn Farm, Ashby Road, Tamworth, B79 0BU

APPEAL NUMBER: CHG100055735

BETWEEN:	Statfold Seed Oils Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

BEFORE:	Mr M Aspinall (Senior Member) Mr M Mistry
CLERK:	Mr R Gath
REMOTE HEARING:	
ON:	26 October 2020
APPEARANCES:	Mr F Smith (Appellant's representative) Mr A Connolly (Valuation Office's representative)

Summary of Decision

1. Appeal allowed in part. The rateable value is reduced to £105,000 effective from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: The Grain Store, Statfold Barn Farm, Ashby Road, Tamworth, B79 0BU (the 'appeal property'), which was entered in the 2017 rating list as 'factory and premises' at rateable value £153,000 effective from 1 April 2017. However, following the challenge the Valuation Office Agency (VOA) subsequently conceded that the rateable value was too high and reduced it to £117,000. However, Mr Smith was seeking a rateable value of £100,000.

3. The appeal property had an area 4569m^2. It was located within a farm and consisted of old barns that had originally been used to make rapeseed oil, but, the farm owner's daughter and son in law developed the business to make oils for use in pharmaceuticals and health care products. The farm owner had passed the running of the factory to concentrate on his other pursuits.

4. 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.

5. 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.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Smith made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 20 February 2020 following the Valuation Officer's Decision Notice of 24 January 2020 in respect of the appeal property (hereditament).

8. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Smith's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

9. The panel had accepted this expert witness evidence on the above basis as 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 (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

10. The panel hearing the evidence will thus consider the "expert" evidence and assess what weight, if any, it shall give to it in the context of the matters in issue before it.

11. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Issues

12. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

13. The appellant had provided the Tribunal with both parties' submissions. The evidence included the following: his statement of case, a copy of the challenge proposal, the Valuation Office Agency's decision notice, copies of correspondence that had passed between the parties, an aerial photograph of the appeal property and photographs of Mr Connolly's comparable properties.

14. Mr Smith argued that the main space price of £30pm^2 for the appeal property was too high compared with the VOA's comparable properties. He was asking for a main space price of £25pm^2 and asked the panel to allow the appeal.

15. Mr Connolly was representing the Valuation Officer as advocate and expert witness. He contended that based on its own scheme, the rateable value for the appeal property was correct. The VOA had already conceded that the rateable value was too high and had reduced the main space price to £30pm^2 which was at the lower end of its scheme.

16. In his opinion, no further evidence had been presented to prove that the main space price was incorrect and he asked the panel to dismiss the appeal.

Decision and reasons

17. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

18. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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;
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> 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"

19. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* LVC/376/1975 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. The appeal property was in a rural location. The appeal property comprised of old barns which had poor insulation; there was a lack of heating; limited mains utilities and poor road links. Mr Smith argued that with these disabilities, the appeal property was not as valuable as Mr Connolly's comparable properties and therefore requested that the main space price was reduced from £30pm^2 to £25pm^2.

21. However, Mr Connolly contended there was no evidence to support Mr Smith's argument that the rateable value was still too high and he provided the following comparable properties to support his contention:

Property	Area	Rent	Main Space Price
The Grain Store (appeal property)	4569m^2	£60,000	£30pm^2
Stormking, Marlborough Way, B77 2HA	6858m^2		£40pm^2
Unit 2, Tripark, Mariner, B79 7UL	3286m^2		£40pm^2
Creative Paper Products, Millfield House, Litchfield Road, B79 7SP	2699m^2	£82,000	£30pm^2

22. Mr Connolly explained that the rateable value was reduced to £117,000 when the VOA had received his challenge. This revised rateable value was based on a main space price of £30pm^2 which was the lowest range of its' scheme, which was for factories in Litchfield but not located in industrial estates. He referred to the factory where Creative Paper Products was located which was also in the same scheme as the appeal property. This factory was also valued with a main space price of £30pm^2 and it too suffered from disabilities as it was a 1940's building.

23. Mr Connolly also contended that the 5% rural allowance had been granted to reflect the fact that the appeal property was in a rural location. However, he contended that the appeal property did not justify any higher reduction as the quieter, rural roads made it easier for transportation of goods and that being in a rural location was not such a disadvantage.

24. Although the appeal property was leased, it was not an arm's length tenancy as the factory was run and operated by the daughter and son in law of the farm owner. Furthermore, it was agreed in 2006, with no rent reviews. Both parties accepted that the rent was unreliable and therefore the panel applied no weight to it.

25. The panel treated Mr Connolly's comparable properties with caution as they were not like for like comparisons. Therefore, they did not help the panel to determine

whether the rateable value for the appeal property was unreasonable. However, the panel did note that Stormking had been given a 10% allowance for reduced access as the delivery area was in very close proximity to a supermarket delivery area which caused issues when they both had deliveries.

26. The panel did find the rent for Creative Paper Products to be useful as it was a new letting effective from 1 June 2015, which was around the AVD. It analysed at £30pm^2. This property was in the same valuation scheme as the appeal property, although it noted that this property was brick built and located very close to an industrial estate.

27. Given the above comparable property, and the fact that the appeal property also suffered from similar disabilities, the panel concluded that the main space price of £30pm^2 was correct. Furthermore, the panel noted that £30pm^2 was the lowest price of the VOA scheme and both properties therefore had been valued at the same main space price.

28. Although Mr Connolly had explained that the scheme was for factories that were not located in an industrial estate, no evidence was presented by him to show that the scheme took into account other issues such as age or lack of heating and insulation.

29. Therefore, the panel concluded and accepted Mr Smith's argument that the rateable value for the appeal property was not reasonable, given its various disabilities. It therefore allowed a 7.5% allowance for its lack of mains services as this would be seen as a disadvantage to a potential tenant coming fresh to the scene.

30. The panel also noted that the factory was located in old barns and not purpose built brick buildings and awarded a further 2.5% allowance due to its age.

31. The revised valuation is:

Floor	Description	Area m^2	£ per m^2	Value
Ground	Storage building	1136.81	29.25	33,252
Ground	Blending room	58.65	29.25	1,716
Ground	Area under supported floor	24.89	20.48	510
Mezzanine	Mezzanine storage	24.89	14.63	364
Mezzanine	Mezzanine storage	58.65	14.63	858
Ground	Chilled storage	427.33	33.64	14,375
Ground	Production area	800.98	29.25	23,429
Ground	Offices	402.06	36.00	14,474
Ground	Bottling area	244.68	31.50	7,707
Ground	Production area	77.40	34.65	2,682
Ground	Production area	93.79	30.71	2,880
Ground	Production area	47.29	34.65	1,639
First	Production area	45.28	22.52	1,020
Ground	Area under supported floor	99.64	20.48	2,041
Mezzanine	Mezzanine storage	99.64	13.89	1,384
Ground	Area under supported floor	15.75	20.48	323
Mezzanine	Office	15.75	29.25	461
Ground	Area under supported floor	25.78	20.48	528
Mezzanine	Mezzanine storage	454.45	13.89	6,312
Mezzanine	Mezzanine storage	244.68	13.89	3,399

Mezzanine	Mezzanine storage	171.19	13.89	2,378
	Plant and machinery			1,951
			Sub total	123,683
	Rural location		-5%	-6,184
	Lack of mains services		-7.5%	-9,276
	Age allowance		-2.5%	-3,092
			Total	105,131
			Rateable value say	105,000

Order:

32. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list as follows:

    To rateable value £105,000 with effect from 1 April 2017.

33. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

34. The appellant is entitled to a refund of the appeal fees paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 10 November 2020

Appeal number: CHG100055735