THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; compiled list appeal; warehouse and premises; level of value; rental evidence; comparable properties; appeal dismissed.

Re: 27 Lockwood Way, Leeds LS11 5TH

APPEAL NUMBER: CHG100067729

BETWEEN: Hughes Electrical Ltd Appellant

and

Ms J Moore Respondent

(Valuation Officer)

PANEL: Mr R Cammidge (Senior member) and Miss L Westwell

CLERK: Mrs S Morgan IRRV (Hons)

REMOTE HEARING: Monday 9 November 2020

PARTIES PRESENT: Mr C Diamond of Altus Group on behalf of the appellant as expert witness.

Mr J Abbott of Altus Group on behalf of the appellant as advocate.

Miss D Wilson representing the Valuation Officer as both advocate and expert witness.

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a warehouse and premises at £34,250 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This appeal was brought in respect of 27 Lockwood Way, Leeds (the appeal property). The appeal property is a warehouse and premises built in the late 1960s, as an industrial building of standard portal frame construction. The property has a total area of 823.35m^2 and is located on an established industrial estate with good access and road connections to the motorway.

3. This is a 2017 Rating List appeal and the RV of the appeal hereditament was £34,250 with effect from 1 April 2017. The appellant's representative sought a reduction to £30,000 RV at the hearing.

4. The challenge submission was received on 11 January 2019. The grounds for the challenge were the RV does not represent the rental value of the hereditament under the rating hypothesis at the antecedent valuation date (AVD) of 1 April 2015. A Challenge Case Decision Notice was issued on 2 March 2020.

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

6. Mr Diamond also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

7. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

8. 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.

9. 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.

10. 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.

Issue

11. The appellant's representative contended that the unadjusted main space rate adopted in the assessment was excessive. He sought a reduction to £37.00/m² whilst the Valuation Officer contended that £42.00/m² was reasonable.

Evidence and submissions

12. Mr Abbott referred to the subject property as having a lease for a term of 20 years on full internal/repairing (FRI) terms at a rent of £40,000 per annum (pa) commencing on 18 July 2016, with five yearly reviews. Upon questioning, Mr Abbott confirmed that the terms included external repairs in addition to internal repairs. He contended that as the lease was with connected parties, this was not a reliable rent. In his view, an agreement between two interested parties should not be seen as an open market rent. He was seeking a reduction of around 10%, reducing the current main space price of £42.00/m² down to £37.00/m².

13. Mr Diamond confirmed that he had inspected the appeal property on 10 August 2017. He confirmed that the building was of a standard portal frame construction with office and warehouse accommodation.

14. The subject property is part of valuation scheme 396579. This is applicable to industrial units in Leeds Billing Authority postcodes LS10 and LS11 built between 1955 and 1970 inclusive, and up to 5,000m². Mr Abbott referred to nine rents within the same valuation scheme with commencement dates of between 2014 and 2016. The units included were located in Upper Westland Square, Lesser Industrial Estate, Westland Square, Parkside Industrial Estate, Lockwood Way, Brown Place and Grape Street, Leeds. The analysed rents for these properties ranged between £34.07/m² and £47.57/m². Taking the average of these confirmed rents on his comparable properties, Mr Abbott had calculated a decrease of 15.39% against the appeal property's unadjusted rate, which gave an unadjusted price of £35.74/m². By applying this rate to the area in terms of main space for the appeal property, gave a revised RV of £29,051, say £29,000, the figure originally sought by the appellant's representative.

15. In relation to the eight comparable properties put forward by the Valuation Officer, Mr Abbott argued that these properties were not all situated within the same locality. There were only three rents that were on or above their current adopted tone. Two of these rents were lease renewals with long term tenants, which were likely to have involved premiums. The other was a shop and premises with a passing rent that was 16 months post AVD. Mr Abbott contended that little weight should be placed on these rents. He added that other comparable property evidence suggested that the adopted tone across each size matrix in the scheme was excessive with rents from pre and post AVD analysing below the adopted price.

16. Mr Abbott believed that the best of the Valuation Officer's rental evidence were the two rents passing on 2, Lockwood House, Lockwood Way between September 2014 and June 2016. This property had a total area of 551.6m². The rental value between the two dates showed a fall from £45.17/m² in 2014 to £34.12/m² in 2016. This, in his view, suggested that the adopted main space price of £45.32/m² for the appeal property, was excessive.

17. Having regard to the evidence provided, Mr Abbott was of the opinion that there should be a reduced overall tone across the size matrix. The main space price of £37.00m^2 that he was seeking, was in line with the rent passing on Unit 8, Westland Square, which had been valued alongside the size matrix and supported his proposed RV for the appeal property.

18. In addition, Mr Abbott referred to new settlement evidence which had become available after the challenge was submitted. He believed that these settlements supported the reduction sought for the subject property. The Valuation Officer's representative, Miss Wilson, had not objected to this evidence being introduced, as such, the panel allowed the evidence to be admitted.

19. The new evidence included properties in Hudswell Road and Elland Way in Leeds. Units 10 and 11 Hudswell Road were in valuation scheme 393609, which covered industrial properties in LS10 postcode, which had been built between 1971 and 1979 inclusive, and up to 5,000m^2. These properties were within a mile of the appeal property. Although more modern in design than the appeal property, they were of a similar size to it. The unadjusted main space price had been reduced from £45.00/m^2 to £40.00/m^2.

20. 2E Elland Way, Leeds was part of valuation scheme 393181 which included properties within LS11 built between 1980 and 1989 inclusive and up to 5,000m^2. This again was built to a more modern design than the appeal property. The unadjusted main space price had been reduced from £50.00/m^2 to £45.00/m^2.

21. Miss Wilson appeared as both advocate and expert witness. She confirmed that she had only inspected the property externally.

22. In relation to the subject rent, Miss Wilson understood that this was a tenants' pension scheme, where the parties acted independently of each other. She believed that it should be treated as an open market rent, as supported by the Form of Return (FOR). The analysed rent for the appeal property was £47.22/m^2, against the current main space price of £42.00/m^2.

23. Miss Wilson made comments on other comparable evidence.

    i) The 2014 rent on 2, Lockwood House was closer to AVD and therefore of more assistance than the 2016 rent on this property. The 2014 lease was a new letting agreed on the open market on the basis that the landlord covered the insurance and external repairs and had been adjusted to FRI.
    ii) Pinewood House was similar in size, location and age to the subject property. It has a total area of 668m^2. There was a lease renewal in 2014 at £33,600pa, which analysed to £49.44/m^2. This rent is also an open market rent adjusted to FRI.
    iii) Unit 2, New Craven Gate Industrial Estate is also similar in size, age and location. It has a total area of 604m^2. There was a lease renewal in 2014, where the rent analysed to £53.97/m^2.

24. With regard to the new evidence submitted for Elland Way and Hudswell Road, Miss Wilson accepted they were not dissimilar in construction to the appeal property however, it should be noted that they had been placed in different valuation schemes.

25. Miss Wilson believed that the rental evidence she had submitted did not support a reduction. The three rents closest to the subject property, in terms of size, supported the current valuation. In addition, the subject rent was higher than its RV and as it was calculated as an open market rent, it should not be discounted as rental evidence, even though the parties were said to be connected.

Decision and reasons

26. The main issue in dispute concerned the level of value to be adopted for the appeal property.

27. The term 'rateable value' is defined in paragraph 2(1), 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;
> >
> > 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".

28. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

29. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

30. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment 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.

31. The appellant's representative had proposed a valuation for the subject property based upon the rents achieved on a number of properties in the locality, in the same valuation

scheme, that averaged £35.00/m^2. He also referred to settlement evidence in Elland Way and Hudswell Road which, although were in different valuations schemes to the appeal property, showed a similar reduction to that which he was seeking. The Elland Way property was assessed at £3/m^2 more than the subject property which showed only a small difference for them being 20 years apart in age. In addition, there were two leases on 2, Lockwood House, one in 2014 and the other in 2016, which demonstrated that rents in this location were falling between those dates. In his opinion, this suggested that the appeal property was overvalued and that a main space price of £37.00/m^2 was more appropriate.

32. The respondent, on the other hand, believed that the main space price of £42.00/m^2 was in line with similar sized properties in the locality that were within the same valuation scheme. The respondent contended that the current RV of £34,250 was reasonable.

33. Having examined all of the rental evidence, the panel found that those properties on Parkside Estate were smaller units, less than a third of the size of the appeal property and therefore, not directly comparable due to their size. They showed slightly higher main space prices, which was to be expected. Units 12 and 13 Lesser Industrial Estate had 999-year leases and therefore not directly comparable to a standard lease. Unit 15/16 Upper Westland Square was closer in size to the subject property at 538m^2. The adjusted price per m^2 had been analysed by the appellant's representative to £43.09/m^2. This was close to the Valuation Officer's figure of £44.17/m^2 and therefore supported the current value applied to the appeal property as being reasonable. The panel were unable to place any significant weight on the rental information given for Unit 8, Westland Square, as there were no details of how the adjusted rate was arrived at.

34. The panel also took into account the various arguments put forward by the parties in relation to other rental evidence presented at the hearing. With regard to the rent passing on the appeal property itself, the panel noted that even if this was taken as an open market rent, there was a rent-free period to take into account. Furthermore, the rent was 13 months post AVD and therefore required more adjustment. The panel therefore weighted this rent accordingly.

35. Having considered all the evidence submitted, the panel determined that the assessment should not be reduced. The price per m^2 that had been applied to others in the same locality, on the same valuation scheme and within the same size matrix supported the level of value adopted of £42.00/m^2 for the appeal property. With this in mind, the panel was not persuaded to reduce the level of value for the appeal property, sought by the appellant's representative.

36. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value. Consequently, the panel were satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Monday 7 December 2020

Appeal number: CHG100067729