THE VALUATION TRIBUNAL FOR ENGLAND

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

Re: Mines Rescue Services Ltd, 1-3 Rawdon Business Park, Swadlincote, Derbyshire DE12 6EJ

APPEAL NUMBER: CHG100068643

BETWEEN: Mines Rescue Services Ltd Appellant

and

Ms J Moore Respondent

(Valuation Officer)

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

CLERK: Mrs S Morgan IRRV(Hons)

REMOTE HEARING: Monday 9 November 2020

PARTIES PRESENT: Mr J Hart of Hart Commercial Surveyors Ltd – Appellant's representative

Mr C Luckhoo – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a workshop and premises at £36,750 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The appeal was brought in respect of Units 1-3, Rawdon Business Park, Swadlincote, Derbyshire DE12 6EJ, (the appeal property). The appeal property is a workshop and premises built in 2002 as part of Rawdon Network Centre. The property is situated two miles south of Swadlincote and measures 844m^2. There are 13 units on this site, the appellant occupies Units 1-3.

3. This is a 2017 Rating List appeal and the RV of the appeal hereditament was £36,750 with effect from 1 April 2017. The appellant's representative sought a reduction to £32,000 RV.

4. The challenge submission was received on 19 January 2019. The grounds for the challenge were "The rateable value shown in the rating list on or after the 1 April 2017 is wrong". A Challenge Case Decision Notice was issued on 2 March 2020.

5. Mr Hart 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 Hart confirmed that he was not instructed under a conditional fee arrangement. He 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 the client's case.

6. 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).

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 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

10. The appellant's representative contended that the rate adopted in the assessment was excessive. He sought a reduction to £37.42/m² whilst the Valuation Officer contended that £43.00/m² was reasonable.

Evidence and submissions

11. Mr Hart had challenged the original RV of £45,000 with effect from 1 April 2017. After discussions with the Valuation Officer's representative the assessment was reduced to £36,750, as a result of the price per m^2 being reduced from £50.00/m^2 to £43.00/m^2. The reduction also included a 5% fragmentation allowance, which had been agreed on the 2010 Rating List. However, Mr Hart contended that the revised rateable value was still excessive when compared with other industrial units in the locality.

12. The subject property is part of valuation scheme 348823. This is applicable to industrial properties in North West Leicestershire District Council usually built from 1990 and includes Ashby-de-la-Zouch and Coalville. From personal experience, Mr Hart was aware that those properties in Ashby-de-la-Zouch and Coalville, although covered by the same valuation scheme, achieved higher rents than in the more rural location of Moira where the subject property was located. Furthermore, he argued that the transport links from Moira were inferior to those in Coalville and Ashby-de-la-Zouch. He believed that the rental evidence supported these differences.

13. For the reasons above, Mr Hart argued that it was better to examine comparable properties that were on the same development as the subject property. He referred to the new letting at Units 7 and 8 Rawdon Business Park, Marquis Drive, Moira. This property measured 488m^2. It was a new lease letting for a 6-year term from 25/7/2014 with a stepped rent. Year 1, £10,504 per annum (pa); year 2, £15,756 pa and year 3, £21,008 pa. This devalued to £21.50/m^2 for year 1; £32.25/m^2 for year 2 and £43.00/m^2 for year 3. On a straight-line basis this equated to £32.25/m^2. This property has since been split back into two separate units.

14. The best comparable evidence, in Mr Hart's view, was that of Unit 6 Rawdon Business Park, Marquis Drive, which measured 295.02m^2. This was a new lease on a letting for 5 years at £12,697.66 pa on a full repairing and insuring lease (FRI). There was a three-month rent-free period. The rent devalued to £43.04/m^2 without the analysis of the rent-free incentive. This was a smaller unit than the subject property, suggesting that no quantum had been applied to the appeal property. Mr Hart therefore believed that there was an argument to adjust for quantum. Based on the current scheme, it showed a differential of 13.05% compared to the subject property, which would result in a price of £37.42/m^2. He had applied this in his proposed valuation of £32,000 RV.

15. With regard to the appeal property, this is subject to a lease. Units 1 and 2, effective from 8/10/2013 at £29,385 pa FRI and Unit 3, effective from 8/10/2013 at £12,750 pa FRI. There was no rent increase at the renewal stage. Mr Hart believed that as the appellant was not represented at the time of the review, it had been "over rented". Mr Hart had been involved with the renewal lease in 2018 and the merger of Units 1-3.

16. In relation to the comparable properties put forward by the Valuation Officer's representative for Goldline Building, Samson Road, Coalville and Unit 2 Garden Court, Whitwick Business Centre, Coalville, Mr Hart contended that these were better units than

those at Rawdon Network Centre, with head office style accommodation. Both units included office space, on self-contained sites and were located within 3 miles of motorway connections.

17. It was agreed by the parties at the hearing that the evidence pertaining to Naturex site of former Park House, Occupational Road, Swadlincote could be ignored, as this evidence was not helpful.

18. Mr Luckhoo stated he was appearing as advocate only. He had not inspected the appeal property or its locality. He explained the history of events surrounding the appeal. He stated that according to the website, Rawdon Network Centre had "excellent nationwide transport links". On that basis, he believed that location was not an issue.

19. With regard to the appeal property itself, Mr Luckhoo accepted its actual rent was a good starting point. The information on the Form of Return stated a rent of £42,135 pa from 8/10/2013. It was a 5-year lease with no rent reviews, no connected parties and no rent-free period. It was an open market value on FRI terms. In terms of main space (ITMS), this equated to £46.57/m^2, compared to Mr Hart's details of Units 1 and 2, where the rent devalued to £48.30/m^2 and for Unit 3, Rawdon Business Park to £48.27/m^2. In relation to Units 7 and 8 Rawdon Business Park, this unit was split in October 2017. Before the split it was 495.78m^2 ITMS. This property was smaller than the appeal property and the main space price applied in this assessment of £55/m^2, had not been challenged.

20. Unit 6, Rawdon Business Park was also smaller than the subject property. Mr Luckhoo had no further details of how the rent was arrived at, which would have been helpful. The level of value in this assessment was also based on a main space price of £55.00/m^2, which had not been challenged.

21. In relation to his own rental evidence, Mr Luckhoo stated that Goldline Building, Samson Road and Unit 2, Garden Court had both been challenged and agreed with professional representation. Each property was within the same valuation scheme as the appeal property. Like the appeal property, Goldline Building sat within the 810m^2 to 1,000m^2 size band. This was a new lease as at 1/8/2013 which devalued to £51.40/m^2. Unit 2, Garden Court fell within the size band 500m^2 to 750m^2. The rent in this case was a new lease from 1/10/2013, which devalued to £45.50/m^2. Additionally, Mr Luckhoo referred to Pura Bathrooms, Samson Road, which fell within size band 810m^2 to 1,000m^2. This was a new lease from 16/3/2015, which devalued to £43.37/m^2.

22. The challenges recently agreed in Coalville showed that similar sized properties in the same valuation scheme, started at £43.00/m^2. Although Mr Luckhoo accepted that his comparable properties were some distance away from the appeal property, they were however, similar in type and character to the subject property. He was of the opinion that when looking at the basket of rents available, the main space price of £43.00/m^2 for the subject property, giving an RV of £36,750, was not unreasonable.

Decision and reasons

23. The main issue in dispute concerned the level of value to be adopted for the appeal property. The issue regarding fragmentation had already been agreed and was included as a 5% allowance within the £36,750 RV with effect from 1 April 2017.

24. 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”.

25. 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).

26. 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.

27. 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.

28. The appellant’s representative had proposed a valuation for the subject property based upon the rents achieved at the Rawdon Network Centre. He argued that within the Centre there were other properties that fell within the same valuation scheme as the subject property which had an analysed rent of around £43.00/m^2. These properties were much smaller by comparison, ranging from 295m^2 to 488m^2 in size. As the appeal property was nearly three times larger than the smallest of these properties, the appellant’s representative believed that an allowance for quantum was justified. Based on a figure of £37.42/m^2, he sought a revised valuation of £32,000 RV.

29. The respondent, on the other hand, believed that the main space price of £43.00/m^2 was in line with similar sized properties in the locality that were within the same valuation scheme. He had also referred to a number of appeal settlements of properties within the same

scheme which had been reached with other ratepayers' representatives. The respondent contended that the current RV of £36,750 was reasonable.

30. The panel accepted that the settlements in Coalville, put forward by the respondent, although in the same valuation scheme, were some distance away from the subject property. In addition, some of the comparable properties were of a slightly different nature having office/head office style accommodation and superior access to the motorway network. Accordingly, although these settlements provided some guidance, the panel attached more weight to those comparable properties at Rawdon Network Centre, where the appeal property was situated.

31. Having examined the rents at the Rawdon Network Centre, the panel found that although the rent for Units 7 and 8, Rawdon Business Park was close to the antecedent valuation date (AVD), this was a stepped rent and therefore it required more adjustment to bring it back to the statutory definition of rateable value. The panel therefore placed less weight on this arrangement.

32. The lease on Unit 6, Rawdon Business Park was 3 months post AVD. This property measured 295.02m^2, nearly three times smaller than the subject property. Although this rent was close to the AVD, there were no details as to how the rent was arrived at and therefore some doubt was cast as to its reliability. The analysed rent provided was around £43.00/m^2. However, the main space price applied in the valuation of this property was £55.00/m^2 and this figure had not been challenged.

33. With regard to the rent passing on the appeal property itself, both parties had analysed this October 2013 rent to within £2 of each other, with the lowest figure being £46.57/m^2. However, because this was some considerable time before AVD, the panel found it to be of very limited assistance.

34. In addition to the rental evidence, the panel noted that the comparable evidence from Rawdon Network Centre showed that properties measuring between 96.90m^2 and 675.42m^2 varied in price between £70.00/m^2 for the smallest unit to £54.00/m^2 for the largest unit according to the current level of value that had been applied to these assessments. The panel was also aware that the appeal property had been valued as part of a size matrix used by the Valuation Officer to maintain consistency. The size matrix showed that properties measuring between 810m^2 and 1,000m^2 had a current main space price of between £43.00/m^2 and £54.00/m^2. The appeal property was assessed at the lowest level of value within this size matrix. Units E-F Rawdon Business Park, measuring 948.38m^2, also sat within the same size band and had been assessed at £43.00/m^2. The panel found that the evidence from the locality supported the figure adopted by the Valuation Officer for the subject property.

35. Having considered all the evidence presented at the hearing, 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 £43.00/m^2 for the appeal property. This was the lowest price per m^2 that had been applied to properties of this nature. With this in mind, the panel was not persuaded to reduce the level of value any further for the appeal property.

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: Thursday 3 December 2020

Appeal number: CHG100068643