VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Factory and Premises; accuracy of rateable value in list; price per m² to be adopted; increased allowance for layout sought by appellant; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal dismissed.

RE: 27-31, Allen Street, Sheffield, S3 7AW

APPEAL NUMBER: CHG100071221

BETWEEN:	Egginton Bros Ltd	Appellant
and	Valuation Officer	Respondent

PANEL: Mr F Stuart (Senior Member)
Ms R Punia

CLERK: Mr D Jefferies

REMOTE HEARING ON: 9 November 2020

APPEARANCES: Mr J Abbott of Altus Group for the appellant (Advocate)
Ms E Saunders of Altus Group (Expert Witness)
Mr N Green for the Valuation Officer

Summary of decision

1. Appeal dismissed. The existing valuation is not unreasonable and the entry in the rating list is confirmed at £35,250 rateable value (RV) with effect from 1 April 2017.

Introduction

2. 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.

3. 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.

4. Mr Abbott appeared on behalf of the appellant as advocate and Ms Saunders as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), both Mr Abbott's and Ms Saunders' declaration of truth included a statement that they were instructed on a contingency fee basis. They declared that they understood and accepted that their duty was to the Tribunal in giving their evidence and they would comply with this as well as the requirements of their professional body, regardless of whether or not the evidence supported their client's case.

5. The panel accepted the 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

6. Mr Green, for the Valuation Officer (VO), appeared in the dual role of advocate and expert witness.

7. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £38,250 from 1 April 2017, with a description of Factory and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £35,250 and altered the rating list with effect from 1 April 2017. The appeal was made on 3 April 2020 against the Valuation Officer's (VO) Decision Notice of 4 March 2020 in respect of the appeal property and the RV of £35,250. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £35,250 RV was deemed as correct. The proposed RV sought by the appellant was £19,250.

8. The subject hereditament comprises a brick built industrial premises. It has industrial space over ground and first floor levels. The property was built on a piecemeal basis between 1955 and 1964 with later additions in 1972, 1976 and 1986, these being consistent in style and construction to the earlier parts of the property. The property is located on Allen Street which is approximately one-mile North West of Sheffield town centre.

9. Prior to the hearing the appellant had submitted a bundle containing photographs and plans provided to assist the panel as per VTE Consolidated Practice Statement (VTE CPS 2020). This document was also provided to the VOA for approval that the contents are a true reflection of the circumstances at the material day. At the hearing Mr Green raised no objection to the

appellant's submission of plans and photographs, and this had been confirmed in writing prior to the hearing.

10. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issues

11. The matter before the panel was to determine the correct level of the RV for the appeal property, having regard to the weight to be attached to the rental evidence and levels of value placed on comparable assessments in the immediate and wider locality. Mr Abbott, acting as advocate for the appellant, proposed a revised RV of £19,250, based on a valuation of £20/m^2. Mr Green, for the VO, defended the existing RV of £35,250, which was based on £19.50/m^2 for survey Unit 2 and £40/m^2 for survey Units 1, 3 & 4.

12. Also, in dispute was the level of allowance for layout which is currently 2.5%. Mr Abbott sought an increase to 5% for fragmentation. The VO contended that no further allowance was warranted and sought dismissal of the appeal.

13. All relevant factual information was not disputed by the parties.

Evidence and submissions

14. Firstly, Mr Abbott informed the panel that at the date of the proposal the property was held on a freehold basis. He felt that the subject property's assessment is out of line compared to other properties in the locality, when considering the differences in the physical attributes between these properties. He argued that the whole of the subject property is dated in its appearance and is consistent with the quality, look and specification of a 1960s built property, but it has been valued in a scheme for post 1970 properties. He felt that the subject should be moved into scheme (317245), which is for properties in this locality, i.e., 'properties built between 1955 and 1970 inclusive (or of a similar standard to property of this age)'.

15. Mr Abbott said that the subject and his comparable properties appear, to all intents and purposes, as if they were constructed between 1955 and 1970 inclusive, or of a similar standard to properties of that age. He said that this has been reflected in the valuation scheme they have been placed in. However, the VO has placed the subject property into a more modern scheme and valued it accordingly, with no consideration appearing to have been given to the non-standard structure itself. Mr Abbott felt that valuation scheme (317245) was more appropriate for the subject property.

16. In support of his client's case, Mr Abbott referred to the available rental evidence. 36 Catley Road, Sheffield, is a Warehouse and Premises constructed in the late 1960s, with a total area of 1,356.9m^2. He said a lease was agreed on this property in November 2014. The start date of this lease was 30 January 2015, with a devalued unadjusted rent of £14/m^2. However, this property has been valued at a base rate of £20/m^2. Having considered this evidence, Mr Abbott believed that the subject property should also be valued at the same unadjusted rate of £20/m^2. In addition, Mr Abbott referred the panel to his comparable evidence in support of the appeal. This evidence was for either properties that are in the same valuation scheme as the subject, or similar in age/specification to properties in other schemes. He said it can be clearly seen that

the unadjusted base rates for his comparable properties are considerably lower than that applied to the subject property.

17. Mr Abbott also referred to Johnson & Allen Ltd, Sheffield. This is a Factory and Premises where the newer part of this assessment has been valued in the same 1980s scheme as the subject, yet the VOA has agreed to reduce the base value from £40/m^2 to £35/m^2. Mr Allen said that the higher quality of Johnson & Allen Ltd shows that the subject property is clearly in the wrong scheme.

18. Secondly, Mr Abbott said that the subject property currently has a layout allowance of 2.5% applied. He did not believe this reflects the hindered layout of the property, which is over ground and first floor level as well as being an amalgamation of more than one building. He sought the panel determination at an increased allowance of 5% in line with his comparable evidence provided and to reflect the hindered layout of the premises.

19. Mr Green, for the VO, explained to the panel that the subject property is a mixed age industrial unit. The assessment is made up of two prices £/m^2 that reflect the different ages of the building. He summarised those prices below:

- Survey Unit 1: Built 1986 - 490.01m^2 at £40
- Survey Unit 2: Built 1955/1964 - 186.96m^2 at £19.50
- Survey Unit 3: Built 1972 - 184.92m^2 at £40.00
- Survey Unit 4: Built 1979 - 325.76m^2 at £40.00

20. Mr Green noted that the appellant has disregarded the mixed age aspect of the property in his valuation and has instead submitted one price of £20/m^2 for the whole assessment. Mr Green did not agree with this approach. He believed that a reasonable landlord of an industrial property would expect to receive higher rent for the more modern areas their property and a lower rent for the older areas. He also considered that a reasonable tenant would also expect to agree a rent on this basis. Mr Green said that the appellant also believes that the overall quality of the subject property is of one built in the 1960s. To evidence this, he said that the appellant has provided only one external photograph of the subject property from which few, if any conclusions can be drawn.

21. Mr Green said that the appellant has stated in his submission that the subject property has been placed in the wrong valuation scheme. He explained to the panel that the rating hypothesis makes no reference to valuation schemes. He said a valuation scheme simply gives an explanation as to how the VOA has approached the valuation and that it is neither prescriptive nor restrictive.

22. Mr Green provided the panel with an assessment summary of four comparable properties in Sheffield. In particular, he referred to Unit 2, 58 Upper Allen Street, S3 7GW. This assessment, in his view, supported his approach to the remaining survey of Units 1, 3 & 4 of the subject property's assessment where he had adopted a rate of £40/m^2. He noted that the appellant has provided little evidence to support his view that the entire subject property is of a quality of a building built in the 1960s. However, Mr Green accepted the comparable properties cited by the appellant appears to support the VO's approach to value of the 1950s - 1960s Survey Unit 2, which has been priced at the lower rate of £19.50/m^2. For these reasons Mr Green did not agree that any reduction in the current assessment was warranted.

23. Mr Green said the subject property already has a 2.5% end allowance for layout. He said that the appellant's representative agreed to this allowance in settlement of a previous appeal on an earlier rating list. In the current appeal the appellant seeks to increase this allowance to 5%. However, Mr Green said that no evidence has been provided as to how the subject property's layout has changed since it was agreed at 2.5%, and why therefore any increase in allowance is now warranted. He said of the comparable properties cited by the appellant only three have allowances of 5%. He explained to the panel that such allowances are sometimes applied for a number of specific circumstances that relate to the layout of a particular property. He said for the three properties that do include allowances, the appellant has failed to provide any specific information as to why the circumstances that have caused these allowances are relevant to the subject property. Without this detail he would not agree to any change in the allowance for layout.

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). 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.

25. The panel is aware of the guidance given by the Lands Tribunal in the case of Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141, which dealt with the issue of the weighting of evidence. The RV represents the rent that the premises would have likely achieved on the open market at the AVD of 1 April 2015. *Lotus and Delta* also established that assessments of comparable properties were relevant and that an opinion of the value of the appeal property should be reached in the light of all of the evidence, weighed appropriately. In this case the subject property was held on a freehold basis. Consequently, there is no passing rent from which to consider an appropriate RV in accordance with the rating hypothesis.

26. The panel was informed that the subject property had been constructed 'piecemeal' over a number of years. The original office, measuring 187m^2, dates back to 1955 to 1964. A workshop, measuring 184m^2, was added in 1972. Another workshop and loading bay was added in 1979, measuring 325m^2, and a further workshop, measuring 490m^2, was added in 1986. Apart from the original office, built between 1955 to 1964, which has been valued at an unadjusted base rate of £19.50/m^2, the remainder of the building, constructed between 1972 and 1986, has been valued at a rate of £40/m^2.

27. Mr Abbott had provided the panel with a number of comparable industrial properties that were built in, and around the 1960s, but were not of mixed age in support of his case. However, other than providing an external photograph of each property he had failed to provide any specific evidence as to why he considered them relevant to the subject property, other than to assert that each was built in the 1960s and is therefore comparable to the subject.

28. This evidence included 36 Catley Road, Sheffield, which is approximately three miles from the subject property on the opposite side of the city. It is a late 1960s warehouse where a lease was agreed for this property in January 2015, which devalued to £14/m^2, but has been valued for rating purposes at £20/m^2. Following this rental evidence, the appellant has adopted a rate of £20/m^2 for each of the different age survey units at the subject property. In his submission Mr Abbott also referred to Kendal Works, S3 7BS. This property comprises of one survey unit aged between 1955 – 1964. The price adopted by the VO for this property is £25.82/m^2. He also

referred to Spring Research Association, S3 7EQ. This property comprises of one survey unit aged between 1965 – 1970, and the price adopted here is £23.33/m^2. RD Shop Fitting, S3 7WB, again comprised of one survey unit aged 1965 – 1970 with an adopted rate of £21.34/m^2. CTW Hardfacing Quality Works, S3 8EZ, comprised one survey unit built between 1955 – 1964 with an adopted price of £20/m^2. KAM, S3 8HH, comprises one survey unit built 1955 – 1964 with an adopted price of £21.30/m^2. The adopted values for these properties therefore range from between £20/m^2 to £25.82/m^2.

29. The appellant's representative had used these comparable properties to support his revised price of £20/m^2. The panel noted that CTW Hardfacing Quality Works, S3 8EZ, is 1,356.19m^2 in size, whereas the subject property's age comparable survey unit (Survey Unit 2 - 1955/1964 is 186.96m^2) has been valued at the slightly lower rate of £19.50/m^2. In the panel's opinion, given the rate for Survey Unit 2 is lower than any of the appellant's comparable properties, the adopted rate of £19.50/m^2 appears to be fair and reasonable. In this case the panel accepted the VO's contention that the appellant's comparable evidence actually supports the valuation of Survey Unit 2 at a rate of £19.50/m^2. The panel would not wish to disturb this level of assessment for Survey Unit 2.

30. Turning to the price adopted for the other survey units at the subject property, i.e., Survey Units 1, 3 & 4, where the VO has adopted a rate of £40/m^2. In consideration of this rate the panel looked at the VOA's approach to Unit 2, 58 Upper Allen Street, Sheffield. This property is situated in close proximity to the subject and comprises of one survey unit of 778.82m^2 in size, and built in 1974, with an adopted price of £45/m^2. This assessment has not been subject of any challenge. In the panel's view, this assessment supports the VO's approach to the remaining survey units at the subject property at the lower rate of £40/m^2. Furthermore, the VO's comparable evidence again supports his approach to similar industrial units in Sheffield which appears to be consistent with other survey units constructed at, or around, the same time as the subject property's later additions in 1972, 1979 and 1986.

31. In their appeal submission the appellant's representative has referred to an agreement reached between themselves and the VOA in respect of Johnson & Allen Ltd, Sheffield, S3 7AU. The panel noted that here the appellant's representative has accepted the approach of valuing different age survey units at different prices. In settlement of Johnson & Allen Ltd the VO has agreed to reduce the base value of the 1980s part of this property from £40/m^2 to £35/m^2. This was for an area of 771m^2 in size. Given that this is somewhat larger than Survey Unit 1, built in 1986 at 490.01m^2, this agreement, in the panel's opinion, supports the VOA's approach, and the VO's adopted rate of £40/m^2 for the smaller Survey Unit 1 after consideration of quantum.

32. The panel has heard what both parties have had to say regarding whether or not an increased end allowance is appropriate for any perceived disadvantages of the subject property. In support of his contention for an increased allowance of 5%, Mr Abbott had provided three comparable properties; CLE Electrical Wholesale, S4 7QN; 75-129 Carlisle Street, S4 7LJ and FJ Brindley & Sons (Sheffield) Ltd, S9 4LR. The panel noted the VO's contention that such allowances are often applied for a number of specific circumstances that relate to the layout of a particular property. Furthermore, the panel had regard to the fact that the disputed 2.5% allowance had previously been agreed on an earlier appeal by the same occupier in August 2007. In this case the panel found that there was no evidence presented by the appellant to show how the subject property's layout has changed since the 2.5% allowance was previously agreed in 2007. The panel determined that it was not appropriate therefore to give any further allowance, beyond the 2.5% allowance already applied in the assessment. It determined that the existing allowance of 2.5% had not been shown to be unreasonable.

33. In appeals of this nature, the burden of proof rested on the appellant to satisfy the panel that the appeal should be allowed. In relation to this appeal, Mr Abbott has failed to demonstrate to the panel's satisfaction why he considered that an overall rate of £20/m^2 for the subject was warranted. The panel found that the VO's approach to value the subject property by reference to different age survey units to be entirely logical and reasonable in this instance.

34. In conclusion, having regard to the physical state of the appeal property and its locality at the material date of 1 April 2017, and the evidence referred to, the panel is of the opinion that the rates per m^2 adopted for the different age survey units of £19.50/m^2 and £40/m^2 respectively was fair and reasonable. In this appeal the panel has given greater weight to VO's evidence. Mr Green had identified similar light industrial properties in Sheffield which supported his valuation approach for the subject property. For the reasons outlined above, the panel found that no reduction in the subject property's assessment was warranted and confirmed the RV of £35,250 in the compiled rating list as not being unreasonable.

35. In view of the foregoing, the appeal was unsuccessful and dismissed accordingly.

Date: 27 November 2020

Appeal number: CHG100071221