VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; retail or industrial hereditament; mezzanine floor; shared access; accuracy of rateable value in compiled list; comparable evidence considered; Decision: Appeal dismissed.

RE: Matthews of Keynsham, Keynsham Road, Willsbridge, Bristol, BS30 6EJ

APPEAL NUMBER: CHG100071565

BETWEEN: Mr F J Matthews - Matthews of Keynsham (represented by Altus Group) — Appellant

and

Dal S Virk (Valuation Officer) — Respondent

PANEL: Mrs M Cole (Senior Member)
Mrs C Dodsley

REMOTE HEARING: 16 February 2021

CLERK: Mrs A Sloan

ATTENDEES: Mr R Storr (Advocate for the Appellant)
Mrs K Cooper (Expert Witness for the Appellant)
Mr R Albert (Advocate for the Respondent)
Mr P Hunter (Expert Witness for the Respondent)

Summary of decision

1. Appeal dismissed. The existing valuation is not unreasonable and the entry in the rating list is confirmed at £18,750 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. 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. 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.

4. Mrs Cooper had, in her expert witness report, declared that her firm will receive a conditional fee or some other success related arrangement if the rateable value is reduced as a result of the panel's decision. However, she had also declared that she understood and accepted that her duty is to the Tribunal in giving her evidence and she would comply with this, regardless of whether or not the evidence supports her client's case.

5. The panel accepted this 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 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 hearing the evidence therefore considered the "expert" evidence and assessed what weight it should give to it in the context of the matters in issue before it.
6. 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.

Preliminary issue

7. Prior to the hearing the Appellant's representative sought to introduce new evidence not exchanged during the Challenge stage. The documents included photographs of the appeal property plus comparable properties in the locality, a revised valuation of the subject property and valuations of the comparable properties. The Respondent agreed to inclusion of the photographs and new valuation of the subject property but objected to inclusion of the valuations on the comparable properties.

8. At the hearing, Mr Storr confirmed they would not be challenging the Respondent's objection, so the panel excluded the comparable property valuations from the evidence to be considered.

Background

9. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £18,750 from 1 April 2017, with a description of Retail Warehouse and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. The appeal was made on 9 November 2020 against the Valuation Officer's (VO) Decision Notice of 13 July 2020. The VO's decision was to treat the Appellant's proposal as not well founded and the entry of £18,750 RV was deemed correct.

10. The proposed RV sought by the Appellant was originally £9,900. However, following an inspection in September 2020, the proposed RV was altered to £10,250. The Respondent did not object to the revised valuation proposed by the Appellant.

Issues

11. The issues between the parties concerned the RV of the appeal property and, specifically, the correct valuation scheme as the parties could not agree on whether the property was retail or industrial in nature. The existing valuation used £60 per m^2, resulting in £18,750 RV. The Appellant proposed the unadjusted rate be reduced to £38 per m^2 using a scheme for industrial properties.

12. Factual issues such as whether the second storey of the property constituted a mezzanine floor or an upper floor had not been agreed. The Appellant's representatives also sought a 7.5% allowance for the property having shared access with the adjoining domestic property and no curtilage or dedicated parking. The VO defended the existing RV of £18,750 and sought dismissal of the appeal.

Decision and reasons

13. The property is a two-storey building, in a village location, connected to a domestic property which is occupied by the Appellant. It was recorded in the rating list as a retail warehouse but the Respondent confirmed that the property had been valued on a miscellaneous retail basis and the description of retail warehouse was to be changed as had been agreed in an earlier appeal relating to the 2010 rating list.

14. The Respondent stated that the property was constructed in the early 1900s and consists of office, showroom and storage accommodation. It was accepted by the Respondent that the showroom is not typical as it has no glazing to the front of the property for displaying goods and the stores are constructed of basic industrial quality. Mrs Cooper highlighted the lack of natural light and construction of the building. She argued that the property had not been used for trade in many years and was currently used as personal storage for the Appellant's household. The Appellant's representatives proposed that the property be valued as a store using a valuation scheme for pre-war industrial units located throughout South Gloucestershire.

15. The parties had agreed areas both on the basis of Net Internal Area (NIA) if valued on a retail basis or Gross Internal Area (GIA) if valued as an industrial warehouse as proposed by the Appellant. The subject property is owned on a freehold basis by the Appellant so there is no passing rent to consider.

16. The Appellant's representatives stated that the property should be considered on the material day of 1 April 2017 as it stood, in line with the established rating principle of '*rebus sic stantibus*'. It was argued that the property had not been used for office or showroom space for many years and should be considered on its mode or category of use in April 2017, which was storage space since 1 October 2000. They also highlighted that, when considered in line with the rating hypothesis of 'vacant and to let', the property could not be marketed for retail use as it did not have A1 planning consent. A copy of the planning application from May 2015 was provided showing B8 use (Storage or Distribution buildings) along with photographs showing the current use to store household and garden items.

17. Having considered the evidence presented by the parties, the panel noted that the facts of the subject property had been agreed with CVS rating agents in 2015, when no mention was made of the subject property having had a change of use. According to the Respondent, the property

was inspected in 2010 and 2014 and it had been agreed in respect of an earlier appeal against the entry in the 2010 list that the area designated a showroom was on the first floor. It was highlighted that the issue of this upper floor being classed as a mezzanine had not been raised previously when facts were agreed. Mrs Cooper provided the panel with photographs of both the ground and first floor, showing the open plan nature of the ground floor with steel supports for the upper level.

18. Mr Hunter, for the VOA, had inspected the subject property in September 2020 regarding this appeal and he did not agree with Mrs Cooper that the upper floor was a mezzanine. The panel found it disappointing that factual issues such as this could not be resolved prior to the hearing but concluded there was no evidence that the layout or structure of the building had been altered since earlier inspections and therefore the nature of the upper floor had not changed. Mrs Cooper stated that the mezzanine had been installed by the Appellant many years ago but was unable to provide the panel with the date. The panel made a finding of fact that the upper storey of the building was not a mezzanine floor.

19. Regarding the shared access to the property, lack of curtilage and dedicated parking space, the panel noted the examples provided by the Appellant's representatives of comparable properties and external photographs of the subject property. Whilst the panel acknowledged from the Appellant's evidence that end allowances had been given for access at other properties in the Bristol area, it must consider the situation at the subject property to determine whether an allowance should be given before comparing with the position elsewhere. After considering the evidence presented, the panel concluded that, whilst access is shared and parking at the subject property may be limited, this would have been the case when the Appellant was trading from the property and no allowance was sought then. The Respondent had confirmed that the subject property had been in the rating list since 1990 and been the subject of three prior appeals, two of which were agreed and one withdrawn. Factual matters had not been disputed and no allowance for access given. It therefore appeared to the panel that the access and parking was sufficient for the needs of the business at the time and no allowance had been given in previous lists. When considered at the material day of 1 April 2017, there was no evidence of an increased demand for parking or that access had become an issue since previous appeals, so the panel concluded that no allowance was justified.

20. After considering the photographs provided by the Appellant, the panel acknowledged that the subject property was now used predominantly for storage of personal belongings by the Appellant. However, it was clear that little had changed in the layout or structure of the building. The goods stored could be easily removed and the space used for retail trade again. It was evident from the photographs supplied that the office space and racks for displaying stock remained and could be brought back into use with relatively little work. The panel noted that the planning use class had changed but did not find that this was enough to evidence a change in mode or category of use. The property was constructed and fitted out for use as retail and showroom space and, despite the shortcomings and various disadvantages compared to other retail space in the locality, it appears the Appellant traded from the property for many years. His choice now to use the building for household storage is a personal one.

21. Considering the subject property without the household goods in situ, vacant and to let, the panel was of the opinion that the building could still be used for its original purpose. The property must be viewed through the eyes of a hypothetical tenant, fresh to the scene, not through the eyes of the Appellant who resides nearby and uses the property he owns for additional storage space. The Appellant's representatives stated that the Appellant had let other buildings on the site to tenants but had felt there was limited use for the subject property. However, no evidence was presented of attempts to let the property either as retail or industrial space so the panel could not conclude that there was no demand for such a property.

22. 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 was of the opinion that the current assessment was fair and reasonable. In this appeal, the evidential burden lies with the Appellant to prove his case and the panel was not satisfied that there had been any change to the subject property. The panel found that no reduction in the subject property's assessment was warranted and it confirmed the RV of £18,750 in the compiled rating list as not being unreasonable.

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

Date: 2 March 2021

Appeal number: CHG100071565