VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and Premises; accuracy of rateable value; rent passing on subject property and comparable properties on same estate; found that weight of evidence did support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed in part.

RE: Units 2-3, The Faraday Centre, Crawley, RH10 9PL

APPEAL NUMBER: CHG100071568

BETWEEN:	Allport Cargo Services Ltd (Represented by Altus Group)	Appellant
	and	
	Andrew Corkish MRICS (Valuation Officer)	Respondent

PANEL: Miss S Ballentine (Senior Member)
Dr P A R Thomson

REMOTE HEARING: 2 December 2020
CLERK: James Massey
APPEARANCES: Mr Dominic Snell of Altus Group for the Appellant.
Mr William Best-Shaw for the Valuation Officer.

Summary of decision

1. Appeal allowed in part.

Introduction

2. This was a 2017 Rating List appeal. The RV of the appeal property was £180,000 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The appeal was received on 7 September 2020 against the Valuation Officer's (VO) Decision Notice of 11 June 2020 in respect of the appeal property and sought a reduction in its RV to £155,000. The VO's decision was to treat the Appellant's challenge as not well-founded but agreed with the Appellant that a 5% allowance for split premises and offices

was appropriate and in his challenge decision on 11 June 2020 proposed a reduction in the RV of the appeal property to £171,000.

4. The appeal hereditament is located on a well-established industrial estate within 4 miles of Gatwick Airport and 2 miles of the M23 motorway. It is a 1990s built end of terrace warehouse of steel construction with total area of 2710.36m^2 and has two loading doors with eaves height of 6m.

5. Mr Snell 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), he declared in open tribunal that he was instructed under a conditional fee arrangement.

6. Mr Snell 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.

7. 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 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.

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. 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.

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 it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

11. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Snell, for the Appellant, sought a reduction to £155,000 RV based on an unadjusted main space rate of £72.50 per m² less a 5% end allowance for split units. Mr Best-Shaw, for the VO defended the amended assessment of £171,000 RV, which was based on the existing unadjusted main space rate of £80.00 per m² less an end allowance of 5% to reflect the divided unit.

12. All relevant factual information regarding the subject property, including its net internal area (NIA) of 2252.74 m^2 was not disputed by the parties.

Decision and reasons

13. 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. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

14. The panel had regard to the Lands Tribunal judgment of Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    (1) 'Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

    (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

    (3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

    (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

    (5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

    (6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

15. Mr Snell argued that the rent passing on the subject property itself suggested that the current assessment at £80 per m^2 was not reasonable and supported a reduction to £72.50 per m^2. The subject property comprised two units, which had been let separately. Unit 2 had a rent of £76,045 per annum (pa) agreed on renewal with effect from 23 October 2013, which based on its area of 964.14m^2 he analysed at £69.13 per m^2. Unit 3 had a rent of £102,760 pa agreed upon renewal with effect from 24 December 2015 which, based on its area of 1198.5m^2 he analysed at £73.80 per m^2.

16. Mr Best-Shaw had rejected the rents on the subject property as unreliable, as they represented rents agreed for each of the separate units which had been merged to create the appeal hereditament. The rents were for hereditaments of just over, and just under half the size of the total area of the subject hereditament and were for renewals, which he considered held less weight than new lettings. He also stated that the Forms of Return containing the rental information for Units 2 & 3 were incomplete and did not specify if any incentives or additional terms had been incorporated into the renewal leases. He added that the rents of the two units had been agreed 16 months before the AVD and nearly nine months after the AVD respectively and were too far removed from the AVD to be of use in determining the correct value of the merged units at that date.

17. The panel are aware that following the propositions set out above, the rent on the subject property should be a starting point, but found that little reliance could be placed on the passing rents of the two separate units in determining the level of the rent for the merged units that would have been agreed on a new letting at the AVD in accordance with the rental hypothesis.

18. To further support his assertion that the current assessment of £80 per m^2 for the subject property was excessive, Mr Snell also provided details of the assessment of Caterham Cars, Quiagen House, Fleming Way, Crawley, RH10 9NQ, which had been let to a new tenant for £187,500 pa with effect from 21 November 2013 with a rent free period of 18 months. Analysis of the rent for this property and those of Unit 2 and Unit 3 produced an average of £69.25 per m^2, which after adding back the 5% allowance gave an approximation of the base rate of £72 per m^2 which he was seeking.

19. To support the current rate of £80 per m2 for the subject property, Mr Best-Shaw had provided rental details of two units on nearby Fleming Way;

Unit 200 Focal point, Fleming Way, Crawley – new letting for £247,542 pa with effect from 16 February 2015, which based on its area of 2798.8 m^2 analysed at £86.35 per m^2

Building C Dialog, Fleming Way, Crawley – new letting for £185,531 pa (adjusted for 9 months' rent free) with effect from 31 July 2014, which based on its area of 2411.15m^2 analysed at £77.61 per m^2.

20. Whilst these buildings are situated approximately half a mile away, the parties agreed that they were a similar distance to Gatwick Airport and the M23 motorway so location would not be value significant. Mr Best-Shaw considered that due to their similarity in size and location to the subject property, these two properties were comparable to the subject property and provided strong evidence that its current assessment at £80 per m^2 was not excessive.

21. Mr Snell argued that Unit 200 Focal Point and Building C Dialog were both superior to the subject property, as they were newer, had higher eaves (8 metres) and larger yards. In his opinion these properties would command a higher rent than the subject property, which should therefore be valued at less than £80 per m^2.

22. The panel considered that the new lettings on the two warehouse units at Unit 200 Focal Point and Building C Dialog supported their current assessment at £80 per m^2. Neither party had provided photographs or plans of the subject property or their proposed comparable properties, so the panel found it difficult to make comparisons between the properties. However from the information provided it did consider that Unit 200 Focal Point and Building C Dialog were superior to the subject property as a result of them having higher eaves and larger yards, and would therefore command a higher rent. On this basis it concluded that the current assessment of the subject property at 80 per m^2 was excessive.

23. Mr Best-Shaw had also provided rental details of two units next-door to the subject property, which he considered to be most similar in construction and location to subject property, Unit 4 Faraday Centre and Unit 5 Faraday Centre which are both assessed at £85 per m^2. These units were considerably smaller than the subject property at approximately 800 m^2 and had eaves heights of 6 metres. Their rents were agreed on a new letting 2 months after the AVD and a lease renewal 6 months after the AVD and were analysed at £82.27 and £106.73 per m^2 respectively. The Respondent had initially analysed the rent for Unit 4 at £75.27 per m^2, but following a change of caseworker, this had been revised and Mr Best-Shaw stated that he had taken account of the shared responsibility for repairs in calculating the higher figure of £82.27.

24. The panel considered best indication of value for the subject property was the lettings of 4 & 5 – but these were smaller and more in line with the individual units 2 & 3. The fact that these rents had analysed somewhat higher than 2 & 3 indicated that the smaller units were commanding higher rents around the AVD. The panel noted that these had been assessed at £85 per m^2. In the panel's view the difference in overall size of the merged unit, which was nearly three times the size of units 4 & 5, would indicate that a larger unit in the same location of the same construction should be assessed at around £80 per m^2. This was also evidenced by the similar sized properties on Fleming Way.

25. The Appellant had argued that the subject hereditament suffered from restricted access to the loading areas due to a smaller, less secure yard than the comparable properties put forward. Unfortunately neither party had provided a photograph or plan of the subject property or the comparable properties, apart from a brochure for Unit A Camino Park & Unit 200 Focal Point. This made it difficult for the panel to envisage what, if any, disadvantages the subject property suffered in comparison with the other two units on the same site, or the other properties put forward as comparable.

26. Having considered both parties' rental evidence and analysis for properties off Faraday Road and Fleming Way, the panel concluded that the unadjusted rate of £80.00 per m^2 of the subject property was reasonable. However whilst an allowance of 5% had already been allowed in respect of the split units and separate offices at the subject property, the panel was of the opinion that a further 2.5% allowance was applicable in respect of the disadvantages suffered by the subject property for the limited and more difficult access to its loading bays, and its smaller eaves height than the units on Fleming Way. Using the agreed

areas and relativities for the subject property, this provided a reduced rateable value of £166,702, rounded to RV £166,500.

27. The appeal is therefore allowed in part.

Order

28. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Units 2-3, The Faraday Centre, Crawley, RH10 9PL to £166,500 with effect from 1 April 2017, within 2 weeks of the date of this Order.

29. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009.

Date: 14 December 2020
Appeal number: CHG100071568