THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rating appeal; Accuracy of Compiled list RV in 2017 Rating List; Warehouse & Premises; price per m² to be adopted; Lotus and Delta v Culverwell (VO) [1976] RA 141; rental evidence; Decision: Appeal Dismissed

Re: 13 Crayfields Industrial Park, Main Road, Orpington, Kent, BR5 3HP

APPEAL NO: CHG100073720

BETWEEN:	Drive Devilbiss Sidhil Ltd	Appellant
	and	
	Valuation Officer	Respondent

PANEL: Mr M Aspinall (Senior Member)
Mrs C Parkes

CLERK: Mr G Wayman

REMOTE HEARING: 10 November 2020

APPEARANCES:

Mr S Campbell of Altus Group representing the appellant

The Respondent Valuation Officer was represented by Mr M Marston

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Summary of decision

1. The appeal is dismissed.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £116,000 from 1 April 2017, with a description of Warehouse 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 £93,500 with effect from 1 April 2017. The appeal was made on 11 May 2020 against the Valuation Officer's (VO) Decision Notice of 23 March 2020 in respect of the appeal property (hereditament) and the RV of £93,500. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £93,500 RV was deemed as correct.

3. 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.

4. 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.

5. Mr Campbell 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 Campbell's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

6. Mr Campbell in his declaration 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).

8. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

9. 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.

Preliminary issues

10. Mr Campbell sought to introduce two additional pieces of rental evidence within the scheme which were from the estate the appeal property is situated. This evidence was submitted late as a consequence of another challenge that had been submitted by Mr Campbell following this appeal being listed. As a consequence rents were reviewed on the smaller units on the estate and it became apparent, in Mr Campbell's opinion, that the additional rental evidence should be included.

11. Mr Marston objected to the inclusion of this evidence as going by the dates of these rents they would have been available when the original challenge was submitted.

12. After a short adjournment the panel decided that this additional rental evidence should not be included as it would have been available and could have reasonably been acquired at the challenge stage. Therefore in the panel's opinion it does not comply with reg 17A of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017.

Issue

13. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Campbell, for the appellant, sought a reduction to £89,500 RV based on £72.50 per m². Mr Marston, for the VO, defended the existing RV of £93,500, which was based on £76.00 per m² and sought dismissal of the appeal.

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

Decision and reasons

15. 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).

16. 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.

17. The panel was informed that the appeal property is a light industrial unit which consisted of a steel portal frame with brick and corrugated façade built in the late 1980s. It had good transport links to the A20 and M25 and was set back from Sevenoaks Way. It is situated in the London Borough of Bromley.

18. The panel was informed that the rent on the appeal property was effective from 27 July 2015, it had a six month rent free period therefore making the effective rent £89,246 pa. This rent analysed to £74.44 per m² which was agreed between the parties.

19. The panel was presented with the following analysed rental evidence of similar sized properties from within Crayfields Industrial Park.

- 10 Crayfields rent effective from 2012 which analysed to £53.21 per m²
- 1 Crayfields rent effective from 2013 which analysed to £65.98 per m²
- 1.02 Crayfields rent effective from 2014 which analysed to £70.16 per m²
- 13 Crayfields rent effective from 2015 which analysed to £74.44 per m²
- 11 Crayfields rent effective from 2015 which analysed to £76.30 per m²

20. Mr Campbell pointed out that the rental evidence showed that rents on the estate have steadily been increasing since 2012.

21. Mr Campbell contended that the value should not be based upon one rent the whole basket of evidence should be considered. He agreed that the passing rent of the appeal property should be the starting point however, there is other rental evidence close to the AVD that should also be taken into account.

22. Mr Campbell claimed that even if the 2012 and 2013 rents were disregarded, taking into account the other rents that took place close to the AVD which analysed from £70.16 per m² to £76.30 per m², an average value of £72.50 per m² seems fair and reasonable to adopt for the appeal property.

23. Mr Marston agreed that little weight should be placed upon the 2012 and 2013 rental evidence of numbers 1 and 10 Crayfields, as it was too far removed from the AVD. However, he stated that this evidence gives an indication on the trend of values within this Industrial park.

24. Turning to the remaining rental evidence Mr Marston pointed out that 1.02 Crayfields which analysed to £70.16 per m², was a rent review and in his opinion would attract a lower value.

25. Mr Marston contended that weight should be placed upon the two remaining rents on the appeal property and 11 Crayfields as they were new leases that were effective close to the AVD. In his opinion both these properties were comparable as they were similar in size and located very close to each other.

26. The average analyses of these properties was approximately £75.37 per m². He accepted more weight should be placed upon the subject property's rent which analysed to £74.44 per m². It was Mr Marston's opinion that the difference between the subject property's value and £76 per m² was minimal. He further contended that this figure (£76 per m²) was achievable when you consider the analysis of the rent on 11 Crayfields.

27. In Mr Marston's opinion taking the rating hypothesis into account £76 per m² is fair and reasonable and therefore, he requested the appeal to be dismissed.

28. The panel accepted that the rent passing on the appeal property was the appropriate starting point, in accordance with the propositions for weighing evidence established in the Lands Tribunal decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141. 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.

29. The parties agreed that the appeal property's 2015 rent analysed to £74.44 per m². The panel placed weight on this rent however, to help establish a value the panel had regard to the other rental evidence presented.

30. The panel placed little weight on the rental evidence of 1 and 10 Crayfields as these rents were effective from 2012 and 2013 and in the panel's opinion too far removed from the AVD.

31. The panel noted that the 2014 rent on 1.02 Crayfields was a rent review. However, even though this evidence was helpful the panel placed more weight on the rent at 11 Crayfields as this was a new lease on the open market which was effective from July 2015. This rent analysed to £76.30 per m².

32. Even though the panel placed weight upon the passing rent on the appeal property as it took place close the AVD, it was of the opinion that the rent on the similar property at 11 Crayfields which was also effective close to the AVD (July 2015), should also be considered.

33. The panel found that this evidence did not support Mr Campbell's argument that a rate of £72.50 per m² was appropriate. Even though the rent on the appeal property analysed to a value below the £76 per m². It was the panel's view that weight should be placed upon the passing rents on the appeal property and 11 Crayfields as they were both effective close to the AVD. The panel was satisfied that the rate of £76 per m² proposed by Mr Marston was supported by this rental evidence and was a fair and reasonable value to place upon the appeal property.

34. Consequently, in appeals of this nature, the burden of proof, rested on the appellant's representative to illustrate that the appeal property's assessment was overvalued. In relation to this appeal, Mr Campbell had failed to persuade the panel that the existing basic rate was excessive. Therefore, the appeal is dismissed.

Appeal No: CHG100073720

Dated: 24 November 2020