VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; Office and Premises; accuracy of rateable value; rent passing on subject property and comparable property; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: 1st Flr Front, Windsor House, Queensgate, Britannia Road, Waltham Cross, Hertfordshire EN8 7NX

APPEAL NUMBER: CHG100076404

BETWEEN:	GPS Foods UK Ltd	Appellant
	And	
	Andrew Corkish MRICS (Valuation Officer)	Respondent

PANEL: Mrs J Ellis (Senior Member)
Mrs A Taylor

CLERK: Miss F Willson

REMOTE HEARING ON: 10 November 2020

APPEARANCES: Mr A Sparsi of Altus Group (on behalf of the Appellant)
Mr D Walker (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The current entry in the Rating List is to remain at £46,250 with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant on 25 February 2019, in his capacity as the representative of the appellant in respect of 1st Flr Front, Windsor House, Queensgate, Britannia Road, Waltham Cross, Hertfordshire EN8 7NX (the appeal property). The challenge was in respect of the entry in the rating list at £46,250 rateable value (RV) effective from 1 April 2017. The appellant sought a revised assessment of £40,250 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that it was not well founded and a decision notice to this effect was issued on 11 May 2020. The appellant made an appeal to this tribunal which was received on 19 June 2020.

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 Sparsi 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 Sparsi’s declaration of truth included a statement that he was 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 subject property comprises offices and premises with an agreed area of 289.08m^2. The property is a self-contained purpose built office in a modern development of three blocks of offices close to the motorway. The property was let on a ten year lease commencing on 24 June 2014. The rent was payable at a discounted rate of 50% for the first two years being £23,445 rising to £46,890 from 24 June 2016.

7. 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 their decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

8. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply.

Decision and reasons

9. 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.

10. Where rental evidence is available, the weight to be attached should be considered in light of the propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

   - Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

   - 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 section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

   - 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.

   - 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 be properly be referred to as giving an indication of that opinion.

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

   - In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

11. Mr Sparsi sought to rely on the passing rent for the appeal property, adjusted to take into account the discounted rent period. The rent had been agreed in June 2014, commencing with a two year discounted rent of 50%:

- £23,445 for the period from 24 June 2014 to 24 June 2016,
- £46,890 for the period from 25 June 2016

12. Mr Sparsi had carried out an adjustment for the stepped rent over five years. Based on the ITMS area of 289.09m^2, this resulted in a base rate of £129 per m^2. After considering all the evidence, he revised this to £140 per m^2.

13. Mr Sparsi had not provided any other rental information from comparable properties in support of the reduced rate for the appeal property. He considered that the letting of a similar property, details of which were provided by the valuation officer, provided a good comparable as it was in the same block as the subject property. Gnd Flr South West, Windsor House, which had a new lease commencing on 27 September 2013 with a rent of £31,000, had an analysed rent of £156.50 per m^2. The lease being eighteen months prior to the AVD meant adjustments had to be made which he maintained supported his base rate of £140 per m^2.

14. The panel noted the similarity in the size and location of the property Gnd Flr South West and the fact that the rent being relied upon came from a new lease. The lease was however agreed eighteen months before the AVD so the panel could not attach great weight to this evidence.

15. Mr Walker submitted that the 50% discount for two years was excessive, as a rent free period of six months was the normal period. Mr Sparsi was unable to comment on why their client had received such a favourable incentive. Furthermore he was unable to confirm if there were other incentives which had been agreed that would also require that the rent be further adjusted.

16. Mr Walker explained that the lease on the appeal property needed some significant adjustment to comply with the statutory definition. The extended period of reduced rent and the fact that the lease was for a period of ten years which was longer than the norm would both necessitate adjustments to the rent being made. He argued that the discounted rent should be spread over the life of the lease being ten years which would increase the base rate by £12 per m^2.

17. The panel was aware that when rental evidence requires adjustment in order to comply with the statutory definition, it becomes less reliable. In the hierarchy of evidence laid out in *Lotus v Delta* the passing rent on the appeal property is only the starting point. After looking at the rent of the appeal property, then the rent of comparable properties must be added to the basket of evidence.

18. Mr Walker provided the panel with a list of comparable properties which were all offices in the immediate location of the appeal property and in some cases were in the same block:

- Gnd Flr, Hanover House, Queensgate, RV £119,000, area 881.9m^2 new letting from 1 August 2015 with 6 months' rent free, rent £158,388, analysed rent £145.32 per m^2 (this would fall within the base rate of £135 per m^2 due to the quantum allowance).

- 1st Flr Rear, Windsor House, Queensgate, RV £57,000, area 357.9m^2, rent review (not an upward only review clause), rent £61,700 analysed rent £172.39 per m^2.

- Gnd Flr South West, Windsor House, Queensgate, RV £29,250, area 183.17m^2

    i. 27 September 2013 new letting, rent £31,000, analysed rent £156.50 per m^2.
    ii. 1 September 2018 (over three years post AVD), lease renewal, rent £37,350 analysed rent £180.31 per m^2.

Mr Walker submitted that the comparable properties supported that a tone had been established: for offices under 500m^2 the base rate was £160 per m^2 and for over 500m^2 then a quantum reduction gave a base rate of £135 per m^2.

19. The panel was satisfied that the evidence of similar comparable properties in the locality demonstrated that a tone had been set at £160 per m^2. The panel noted that the appellant's representative had relied solely on the rent passing on the appeal property.

20. Having considered both parties' rental evidence and analysis for the comparable properties, the panel concluded that the rate of £160.00 per m^2 was in line with the rates applied to similar properties in the locality. The panel held that the rate was fair and reasonable and therefore confirmed the RV at £46,250 from 1 April 2017.

21. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, but it found that in this case he had not done so.

22. The appeal is therefore dismissed.

Date: 4 December 2020

Appeal number: CHG100076404