THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; land used for storage and premises; rental and comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Plot 7, Eirscot Civil Engineering Ltd, London, Moden Wharf, Tunnel Avenue, SE10 0PA

APPEAL NUMBER: CHG100082177

BETWEEN:	Eirscot Civil Engineering	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Mr M Heslop-Mullens (Senior member)
Mrs F Duggan

CLERK: Ms R Muller

REMOTE HEARING ON: 11 November 2020

APPEARANCES: Mr D Tucker, Appellant
Mr A Ford of the Valuation Office Agency for the respondent

Summary of decision

1. Appeal dismissed. The existing valuation is not unreasonable and the entry in the 2017 Rating List is confirmed at £13,750 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The RV of the subject property was originally £24,000 with effect from 1 April 2017. However, at check stage, which was submitted on 26 October 2018, the Valuation Office Agency (VOA) found that they had used an historic area of 1,075.42m² for the subject property. This was found to be incorrect and a revised area of 975m² was agreed by both parties to be the correct area to use within the assessment. The VOA also agreed to delete a railway carriage from the assessment, which produced a revised RV for the subject property to £19,750.

3. Following the appellant's submission of a Challenge on 19 March 2019, it came to the attention of the VOA that the subject property was unsurfaced and unfenced. Consequently the value of the land was reduced from £22/m^2 to £14/m² to reflect this. The VOA had also corrected the value of a storage container to £20/m², whereas, before it had been incorrectly denoted as a portacabin at £50/m². This produced a revised valuation of £13,750 with effect from 1 April 2017.

4. The Valuation Officer (VO) issued the Final Challenge Decision on 24 December 2019 based on the revised facts. The appellant submitted an appeal to the Valuation Tribunal on 17 July 2020 on the grounds that he considered the RV was not reasonable. The RV proposed by the appellant when submitting the challenge and appeal was £8,000.

5. At the request of the appellant and with the agreement of the VO, the panel varied the Model Hearing Procedure and invited the VO's representative to present his evidence first.

6. 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.

7. 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.

8. 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 it being overlooked by the panel.

Preliminary issue

9. The VO provided to the appellant, a copy of the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141 one week before the hearing, as he had not provided a copy within his evidence during the discussions. In response, the appellant named three Valuation Tribunal (VT) decisions that he had researched and thought relevant for his appeal. The panel noted that these VT decisions related to a Dental surgery, where the appellant was (Peter Kertesz v Mr Dunleavy); (SVS Securities Limited v Dorsey Whitney); and (ESI Controls v Alexander). However, no further details or copies had been provided.

10. In view of the lack of further details, together with the fact that other VT decisions were not binding, the panel decided that the appellant would not be disadvantaged by the VT decisions not being included as part of his submission.

Issue

11. The matter before the panel was to determine the correct level of the RV for the subject property, having regard to the weight of evidence to be attached to the rental evidence in respect of the property and the levels of value placed on the comparable assessments in the wider locality.

Evidence and submissions

12. The VO's representative stated that the revised assessment of £13,750 RV was fair and reasonable. He provided details of one comparable property in support of his contention. He requested that the panel determine that figure with an effective date of 1 April 2017 and sought a dismissal of the appeal.

13. The appellant had requested that the assessment be further reduced to £8,000 RV based on the fact that comparable property assessments in the local area had a lower price /m² due to quantum. He argued that that this was unfair and penalised small businesses. Therefore, he requested that the panel determine the same price /m² to the subject property as one of the larger comparable property assessments: Plot 3, Qube Storage with an adopted value of £8.38/m² for the land.

14. The appellant had submitted a copy within his evidence of a VT decision: U & I Group Plc v Mr A Corkish (VO) for the panel's consideration. This was a decision in respect of the 2010 Rating List, in which the owner of Modern Wharf had appealed 13 separate hereditaments, of which the subject property was one of them.

Decision and Reasons

15. The subject property 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.

16. The panel was aware of the guidance given by the Lands Tribunal in the case of *Lotus and Delta v Culverwell*, which dealt with the issue of the weighting of evidence. The RV represents the rent that the property would have likely achieved on the open market at the AVD of 1 April 2015. It is understood that the rent passing for the subject property was £29,730, which analysed to £30.25/m² after the deduction of the storage container. However, the rent was dated 15 November 2016, 15 months after the AVD of 1 April 2015. Therefore, the VO's representative provided one comparable rent of a property, which had been set within a few months of the AVD to show that the valuation of the subject property was reasonable.

17. The VO also provided evidence to show that the comparable property he had used was similar in size to the subject property and the price /m² for this comparable. He had taken into account the difference in the location, age, layout, whether they were unsurfaced or unfenced and the character of the comparable property concerned. The VO stated that the comparable property of 73 Westmoor Street, London, SE7 8NQ, was entered into the 2017 Rating List as Land used for Storage and premises at an RV of £25,500. The VO stated that it was similar in size at 929.2m² and circa one mile from the subject property. It had a tarmac and concrete hard standing and was in good condition. There were also parking spaces for customers and employees.

18. The rent of 73 Westmoor Street, London was £35,000 from 1 March 2015, which was only one month from the AVD of 1 April 2015, and analysed to £32.05/m² for the land after the value of the buildings had been deducted. However, the value of £22/m² had been adopted, which produced a Rateable Value of £25,500. Therefore, he argued that £14/m² for the subject property was fair and reasonable.

19. The panel considered 73 Westmoor Street, London to be relevant in making their decision, as it was similar in size and in the local area. The panel noted that the land was surfaced and fenced, so therefore, the VO had adopted a higher value of £22/m² than the subject property. The panel found that great weight should also be attached to the rental evidence of this property. The comparable property's rent was circa £5,000 more than the subject property, which reflected the higher quality construction of the building and the surfaced and fenced land within this property and was close to the AVD of 1 April 2015.

20. The panel turned their attention to the evidence that the appellant had presented.

21. The appellant referred the panel to three neighbouring comparable properties:

    a. Plot 1, Greenwich Ltd, £9.59/m² - no size provided
    b. Plot 3, Qube Storage, £8.38/m² - was over 8,000m² in size
    c. Greenwich Ltd. Plot adjacent to Go Ahead £3.75/m² - no size provided

22. The appellant stated that the comparable properties had different plot sizes and RVs. The appellant accepted that the plot sizes of the three comparable properties were much larger than the subject land. However, he asked the panel to consider the thesis that larger properties have an allowance of quantum, which lowered their price /m² considerably. The appellant referred to the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004 and 2016.

23. He stated that the idea of granting a quantum allowance to larger companies conflicted with the principle that the government helped small business by applying its small business rates relief scheme. He felt that instead of small businesses being assisted, the government are actually subsidising the rates of larger businesses. The appellant, therefore, requested that the panel reduce the price /m² of the subject land to £6.86/m², which would produce a revised valuation of £8,000 with effect from 1 April 2017.

24. However, the panel was aware that large businesses are sometimes granted a quantum allowance, depending on the circumstances of their property and that small business rate relief and the grant of a quantum allowance were two separate matters. The panel also noted that there had not been any rental evidence with regards to the comparable properties provided by the appellant to take into consideration.

25. The appellant stated that there are 13 plots located on Modern Wharf, of which the subject property is one of them. He informed the panel that the landlord of Modern Wharf was seeking planning permission to change the use of the land to residential development land. Therefore, the appellant stated that it was unlikely that the leases for industrial use would be renewed, and . this should be reflected in the price /m² adopted by the VO. The panel held that until the planning permission had been granted, it had to consider the use of the land as it was in its present state. Not what it may or could be used for at a later date.

26. The appellant referred to the VT decision of U & I Group Plc v Mr A Corkish (VO), dated 12 September 2019, where the owner of Modern Wharf had submitted 13 appeals with regards to the 2010 Rating List. The panel noted the contents of this decision, however, it did not assist the panel, as it concerned the previous 2010 Rating List.

27. The panel noted that the appellant had requested that the VO backdate the reduction of the assessment of the subject property to the beginning of the lease in 2016. However, the panel was aware that the VO could only apply a reduction of an assessment to the beginning of a new List, which was 1 April 2017. The 2010 rating list had now closed.

28. It was for the appellant to satisfy the panel that the approach or the value adopted by the VO was wrong and he had failed to do so. The panel found consistency of approach by the VO in his valuation of the subject property which was in line with the other similar sized assessments, and it saw no reason to depart from the adopted tone in this case.

29. Having regard to the physical state of the subject 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 price adopted of £14/m² was fair and reasonable. In this appeal the panel had given consideration to the rental evidence on the subject property itself, but had placed great weight on the rental evidence of 73 Westmoor Street, London and the assessment evidence presented by the VO. This confirmed to the panel that the RV currently in the list for the subject property was not unreasonable.

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

Date: 25 November 2020

Appeal number: CHG100082177