THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; workshop and premises; level of value; rental evidence; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; appeal dismissed.

Re: Unit 5 Omega Business Park, Estate Road No. 6, South Humberside Industrial Estate, Grimsby, DN31 2TG

APPEAL NUMBER: CHG100086546

BETWEEN: Thames Ambulance Service Ltd — Appellant

and

Mrs J Moore — Respondent

(Valuation Officer)

PANEL: Mr P Hickson (Senior member) and Mrs A Taylor

CLERK: Mrs S Morgan

REMOTE HEARING: Monday 8 March 2021

PARTIES PRESENT: Ms E Saunders – Appellant's representative

Ms D Wilson – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel made no change to the appeal property's existing assessment of £52,000 rateable value (RV), effective from 1 April 2017.

Introduction

2. The appeal was brought in respect of Unit 5 Omega Business Park, Grimsby, DN31 2TG (the appeal property). The appeal property is a self-contained mid terraced 'workshop and premises' with a range of office accommodation over two floors to the front elevation and workshop accommodation to the rear. The property was built between 1965 and 1980 and is part of the South Humberside Industrial Estate which benefits from good road access to the A180, M180 and the national motorway network. The property measures 2,182.60m^2.

3. This is a 2017 Rating List appeal and the RV of the appeal hereditament was £52,000 with effect from 1 April 2017. The appellant's representative sought a reduction to £44,250 RV.

4. The challenge submission was received on 3 April 2019. The grounds for the challenge were "The rateable value shown in the rating list on or after the 1 April 2017 is wrong".

5. 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.

6. 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.

7. Ms Saunders appeared on behalf of the appellants 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), her declaration of truth included a statement that she was instructed on a contingency fee basis. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's cases.

8. 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.

9. 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.

Issue

10. The appellant's representative contended that the rate adopted for the appeal property was excessive. She sought a reduction to £20.00/m² whilst the Valuation Officer (VO) contended that £23.50/m² was reasonable.

Evidence and submissions

11. The subject property is part of valuation scheme 363855, where the values range between £19.15/m^2 to £47.00/m^2. This is applicable to industrial type properties on the South Humberside Industrial Estate built between 1965 to 1980. The unadjusted rate applied to the appeal property was £23.50/m^2.

12. The appeal property was held on a licence which commenced in February 2017. The rent was £30,000 per annum (pa) under this licence agreement. There were shared external repairs. The appellant's representative had analysed this rent to £13.50/m^2, whereas the VO analysed it to £15.24/m^2. In addition, the Valuation Officer's records indicated a new 3-year lease from June 2017 at £34,731.37 pa. However, there was also reference to a 7-year rent review placing some concerns as to how much weight can be applied to this rental information.

13. Looking at properties in the same scheme and location, Ms Saunders referred to the following comparable properties providing her own comments on these properties.

    Unit 2, Link Building Estate Road Number 1. This property measured 369.98m^2. There was a February 2013 rent passing of £6,500 pa with a 3-year rent review. The rent including the mezzanine area, analysed to £22.73/m^2 according to the appellant's representative and £23.94/m^2 according to the VO. The base rate was £32.50/m^2.

    Offices & Unit 1, Link House Estate Road. This unit measured 578.84m^2. There was a lease for 10 years at a rent of £14,500 pa commencing in May 2016. This analysed to £25.36/m^2. The base rate was £28.75/m^2.

    Unit 1, Omega Business Park. This unit measured 1,433.12m^2. There was a rent in March 2016 of £35,000. There was break after year one. This rent analysed to £21.53/m^2. It had a base rate of £24.24/m^2.

14. As the appeal property was over five times larger than the smallest of these properties, the appellant's representative believed that an allowance for quantum was justified. Based on the basket of rents, Ms Saunders believed that £20.00/m^2 was more appropriate, taking a stand back and look approach, as the final part of this valuation. She sought a revised valuation of £44,250 RV with effect from 1 April 2017.

15. In response to the four rents put forward by the respondent, Ms Saunders provided a copy of the original lease for Unit 4 Omega Business Park. She noted that this was a stepped rent arrangement increasing to £35,000. The rent review was a nil increase which would suggest that the property was over-rented at £35,000. She concluded that out of all 8 rents that were discussed between the parties, 6 rents analysed to below the current value applied to the comparable properties.

16. In support of the present base rate of £23.50/m^2, Ms Wilson presented the following comparable properties:

    Unit 2 Link Building Estate Road Number 1. The Form of Return for this property showed an August 2016 rent of £8,500 pa over 5 years, which analysed to £29.74/m^2. This was a renewal lease. The base rate was £32.50/m^2.

    Unit 6 Omega Business Park. This property measured 2,046.75m^2. The rent passing on this property was £55,000 pa for a term of 5 years from 1 February 2017. This was a stepped rent increasing to £66,000 by the end of the lease in 2022. This analysed to £28.67/m^2 with a base rate of £23.75/m^2.

    Unit 2 Omega Business Park. This property measured 1,411.99m^2. The rent passing on this property was £30,000 pa for a term of 5 years from 25 January 2016. This analysed to £21.49/m^2 and it had a base rate of £24.25/m^2.

    Unit 4 Omega Business Park. This property measured 1,199.44m^2. The rent passing on this property was £35,000 pa for a term of 10 years from 1 July 2014. This analysed to £31.23/m^2 with a base rate of £24.25/m^2.

17. In summary, Ms Wilson was not convinced that there was strong enough evidence to support a reduction. She therefore sought a dismissal of the appeal.

Decision and reasons

18. The main issue in dispute concerned the level of value to be adopted for the appeal property.

19. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

    "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

    a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

20. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

21. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

22. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

23. As a starting point, the panel examined the rent passing on the subject property bearing in mind it was held on a licence. It noted that the analysed rent appeared to be out of sync with other properties on the same business park and therefore the panel had concerns as to how much weight could be given to the rental information that had been provided for the subject property.

24. Turning to the comparable properties. Those put forward by the appellant's representative were all smaller than the subject property ranging between 369.98m^2 to 1,433.12m^2. The respondent, on the other hand, had provided evidence of properties in the same location that were closer in size and age to the subject property. These comparable properties ranged between 1,199.14m^2 to 2,046.75m^2 in size.

25. Looking at the rental analysis for all of the comparable properties, although there were slight differences between the parties for some of the comparable properties, the panel found that the best evidence was those properties on Omega Business Park. Looking at the basket of rental evidence, these properties showed analysed rents of between £21.49/m^2 to £31.23/m^2 against the applied base rate of £23.75m^2 for the largest property at Unit 6, Omega Business Park to £24.25/m^2 for Units 2 and 4, Omega Business Park and £24.24/m^2 for Unit 1, Omega Business Park. Bearing in mind the subject property was slightly larger than Unit 6, £23.50/m^2 did not appear unreasonable for the appeal property.

26. Having considered all the evidence presented at the hearing, the panel determined that the assessment should not be reduced. The price per m^2 that had been applied to other

similar sized industrial properties in the same locality and on the same valuation scheme supported the level of value adopted of £23.50/m^2 for the appeal property. This was towards the lower end of the price per m^2 range that had been applied to properties of this nature. It also reflected the size of the property. With this in mind, the panel was not persuaded to reduce the level of value any further for the appeal property.

27. In appeals of this nature the burden of proof rested on the appellant's representative to prove her case for a reduction. However, in the case before it, the panel concluded that she had failed to produce sufficient evidence to justify her claim for a reduction in the level of value. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Wednesday 7 April 2021

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