THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating: 2017 Rating List; Offices and premises; Compiled List Entry; Price per square metre; Rental evidence on subject property; Evidence/assessment of comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; *Appeal dismissed.*

RE: Complete House 19-21, King Edward Street, Macclesfield SK10 1AQ

APPEAL NUMBER: CHG100088312

BETWEEN: McCann Health Medical Communications Ltd Appellant

and

Mr R Roberts
(Valuation Officer) Respondent

BEFORE: Mr A V Clark (Vice President)

CLERK: Ms R Muller

ON: Remote Hearing No. 3 on 8 March 2021

APPEARANCES: Mr J Le Brocq, Representative for the Appellant
Mr B Slater, Representative for the Respondent

Summary of decision

1. The appeal was dismissed. I found that the existing Rateable Value (RV) for the subject property at £176,000 with effect from 1 April 2017 was not unreasonable.

Introduction

2. 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. 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.

3. 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.

4. 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 me before coming to a decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

5. In accordance with the normal procedure, the Appellants presented their case first followed by the Respondent.

6. This was a 2017 compiled Rating List appeal. The original assessment of the appeal property was £181,000 RV, with effect from 1 April 2017 and it was described as office and premises. For this appeal, matters that affect the physical state or enjoyment of the property and the locality were to be taken as at the material day, which was 1 April 2017 with the Antecedent Valuation Date (AVD) being 1 April 2015.

7. A check had been submitted on 22 March 2019, with no change to the assessment of the appeal property. A challenge was submitted on 9 April 2019, where during discussions, it had been noted by the Valuation Officer that there had been a clerical error in the value adopted for the car parking spaces. A value of £400 had been adopted instead of £300 per car parking space. Once the error had been corrected, the assessment of the subject property was reduced to £176,000 RV. The challenge was completed on 30 June 2020. An appeal was received by the Tribunal on 27 October 2020, made on the grounds that the valuation for the property was not reasonable.

8. In accordance with the Tribunal’s Business Arrangements, I have been authorised to consider and determine this appeal alone.

9. Mr Le Brocq 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 Le Brocq stated that he was instructed under a contingency based fee.

10. Mr Le Brocq declared that he understood the above judgment and therefore, 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 his client’s case.

11. I 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).

12. I, therefore, considered the “expert” evidence and attached such weight to it as I saw fit.

13. The appeal property comprises of a basement, which was used for storage, with offices and other ancillary accommodation on the ground, first, second and third floors of a property that

is primarily of Victorian/Georgian construction to which was added a modern extension in 2001. The area of the appeal property is some 1,738.50m² net internal area (NIA) with 49 surface car parking spaces.

Issues

14. The issue before me concerned the RV of the appeal property and specifically, the base rate per m² that should apply.

Evidence and submissions

15. Mr Le Brocq sought a reduction to £142,000 RV based on an unadjusted base rate (UAR) of £64.87 per m². In support of this he had submitted his evidence pack, which included a photograph of the subject property; history of the assessment; inspection and measurement details; a statement of the issues in dispute; supporting legal arguments; comparable evidence; rental evidence in respect of the appeal property and a copy of his revised valuation. He had inspected the appeal property on 31 March 2019, following which the area of 1,738.50m² NIA had been agreed.

16. Mr Slater sought to defend the existing RV of £176,000 which was based on an UAR of £86 per m². In support of his assessment, he had provided me with a copy of the VO's Challenge Case Decision Notice, rental evidence of the appeal property, details of the rental analysis and a breakdown of the appeal property's valuation of £176,000 RV.

Decision and reasons

17. The appeal 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 for from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988).

18. The actual date of valuation as mentioned in paragraph 6 above is 1 April 2015, this being the AVD. As also noted above matters that affect the physical state or enjoyment of the property (termed hereditament) or the locality were to be taken as at 1 April 2017, the material day for this appeal. When assessing the RV of any hereditament, rating law also requires that it 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 its physical nature and mode or category of use.

19. Both Mr Le Brocq and Mr Slater submitted that the best evidence for determining the main base rate was the actual rent passing on the appeal property. They informed me that it was held on a leasehold basis for a period of 10 years effective from 29 January 2016 with a rent review after 5 years. There was an initial two year rent free period with the rent thereafter being £254,000 per annum. This was a lease renewal and the Appellant had been in occupation since 2001. However, Mr Le Brocq informed me that the building had been sold in 2015 and again in 2017, therefore, the rent passing as of 29 January 2016 should be classed as an open market rent, as there was no connection between the owner of the building and the Appellant.

20. I asked Mr Le Brocq if the lease renewal for the subject property had a break clause. Mr Le Brocq stated that he had not read through the full lease so he could not answer my question, however, he did have the lease in front of him. Therefore, I adjourned the hearing for 10 minutes in order for Mr Le Brocq to read through the lease so that he could inform me

whether or not the lease had a break clause. Once the hearing reconvened, Mr Le Brocq informed me that he could not see anywhere within the lease that a break clause had been added.

21. Mr Le Brocq submitted that the passing rent provided strong evidence that the current RV of £176,000 was excessive. He stated that he had adjusted the rent to £141,996.46 after taking into consideration the two year rent free period. This supported the fact that the current UAR of £86 per m² applied to the subject property was excessive and should be reduced to £64.87 per m², which would produce an assessment of £142,000 RV.

22. Mr Le Brocq provided what he considered to be a comparable within the same area of the appeal property. This property, First Floor Metro House, Union Street, Macclesfield, Cheshire SK11 6QG, is an office and premises with an area of 462m². This comparable was the subject of a new lease which commenced on 11 October 2016 with a passing rent of £25,000 pa, for a 10 year term with a review after 5 years. The lease was on a full repair and insurance basis (FRI) with no rent free period. The VO had adopted a base rate of £95 per m², which produced an assessment of £47,750 RV. Mr Le Brocq stated that when he analysed the rent, he came to a revised UAR of £49.74 per m². Further adjusting for the difference in size of the respective properties provided support to show that the appeal property's UAR should be reduced from £86 per m² to £64.87 per m², which again supported his contention that the current UAR of the appeal property was excessive. Therefore, Mr Le Brocq requested that I should adopt his proposed base rate of £65 per m² and allow the appeal and revise the assessment of the appeal property to £142,000 RV with effect from 1 April 2017.

23. Even though the rent was fixed 18 months post AVD, I noted that this property's lease was a new lease, although from Forms of Return information supplied by the Respondent there was conflicting information as to whether it was indeed a new lease or a rent review. However, I did not find this comparable to be of any assistance even though it was an open market transaction. First Floor Metro House, Union Street is a much smaller property than the subject property, it was built in 1987 and is located in a different part of Macclesfield. The size difference, nature and location were too significant to be of any assistance. Of much more significance is the actual rent passing on the appeal property. Therefore, I dismissed this comparable property as not being of any use to me in determining the appeal.

24. Mr Slater contended that the existing assessment with regards to the appeal property was correct. In support of his assessment, Mr Slater referred me to the passing rent of the appeal property. He stated that based on his analysis of the passing rent, it did not demonstrate that £176,000 RV was excessive. He informed me that he had taken the passing rent, reduced it by 5% due to the fact that the external repairs are shared between the landlord and the Appellant. He also stated that as this was a lease renewal, he did not believe that the passing rent was an open market rent, especially as the landlord had granted a two year rent free period in order for the Appellant to remain in occupation. I noted that this was supported by the fact that the Appellant had stated that the *'landlord put together a competitive package to maintain our occupation of the building'* within the Form of Return. However, I noted that the difference in base rates was clearly down to how each party had analysed the rent passing on the appeal property together with the 2 year rent free period, as well as the analysis of nearby properties.

25. Having heard both parties' submissions, I found that Mr Slater's submission on his analysis of the passing rent of the subject property was the correct analysis and reasonable. He had demonstrated that the current tone of £86 per m² was not excessive and was correct.

Therefore, I applied more weight to the way Mr Slater had analysed the passing rent which was over the full 10 year term as opposed to Mr Le Brocq's analysis over a lesser period.

26. I was aware that the burden of proof rests on the Appellant to show that the current assessment was incorrect. In the appeal before me, I find that I had not been provided with substantiated evidence to demonstrate that the current assessment of £176,000 RV was unreasonable.

27. Overall, I found that the existing RV of £176,000 based on a rate of £86 per m² was indeed reasonable and accordingly, the appeal is dismissed.

Date: 16 March 2021

Appeal number: CHG100088312