THE VALUATION TRIBUNAL FOR ENGLAND

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

Re: 4, 6, 7 and 12 Sheldon Way, Larkfield, Aylesford, Kent ME20 6SE

APPEAL NUMBERS: CHG100105008, CHG100090180, CHG100090188 and CHG100090195

BETWEEN:	Various parties	Appellants
	and	
	Mr A Corkish	Respondent
	(Valuation Officer)	

PANEL: Mr C Stott (Senior Member) and Mr A Asante

CLERK: Mrs S Morgan IRRV(Hons)

REMOTE HEARING: Tuesday 8 December 2020

PARTIES PRESENT: Mr J Cheeseman – Appellant's representative

Mr S Madiyiko – Valuation Officer's representative

Summary of decision(s)

1. The appeals are allowed. The Rateable Value (RV) for the appeal properties are altered as follows:

   Unit 4, Sheldon Way, Aylesford from £115,000 to £107,000 with effect from 1 April 2017.
   Unit 6, Sheldon Way, Aylesford from £137,000 to £128,000 with effect from 1 April 2017.
   Unit 7, Sheldon Way, Aylesford from £186,000 to £174,000 with effect from 1 April 2017.
   Unit 12, Sheldon Way, Aylesford from £118,000 to £110,000 with effect from 1 April 2017.

Introduction

2. These are 2017 rating list appeals. Units 4, 6, 7 and 12, Sheldon Way, Larkfield, Aylesford, Kent (the 'appeal properties') have been entered in the 2017 rating list as 'Warehouse and premises' as follows:

   Unit 4, Sheldon Way, Aylesford, £115,000 RV with effect from 1 April 2017,
   Unit 6, Sheldon Way, Aylesford, £137,000 RV with effect from 1 April 2017,
   Unit 7, Sheldon Way, Aylesford, £186,000 RV with effect from 1 April 2017, and Unit 12, Sheldon Way, Aylesford, £118,000 RV with effect from 1 April 2017.

3. The challenge proposals were submitted by Altus Group on behalf of B and W Engineering Services Ltd (Unit 4), BOMAG Great Britain Ltd (Unit 6), LC Designs Co Ltd (Unit 7) and Shakespeare Transport Ltd (Unit 12) and were received by the Valuation Officer on 18 June 2019. They had all been made on the grounds that the RV shown in the Rating List on 1 April 2017 were incorrect.

4. The Valuation Officer issued a challenge case decision notice on 27 August 2020 for Unit 4, Sheldon Way and on 29 July 2020 for Units 6, 7 and 12 Sheldon Way. In each case, the Valuation Officer stated that the proposals were not well founded and that he disagreed with the proposed alterations.

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. Mr Cheeseman 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), his declaration of truth included a statement that he was instructed on a contingency fee basis. 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 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 issue in dispute was the price per m^2 to be adopted in the valuation of the appeal properties.

Evidence and submissions

11. It was agreed by the parties that these four appeals could be consolidated and heard as one. Unit 4 Sheldon Way was used as the main case, as there was a rent passing on this property. The decision on this unit would be applied to the other three properties.

12. Mr Cheeseman confirmed that he had inspected and measured all four properties. Units 6, 7 and 12 Sheldon Way were held freehold whilst Unit 4 was leasehold. All four properties were built in the mid-1970s and were part of valuation scheme number 367920, which included industrial units in Sheldon Way. The value ranges from £45/m^2 to £63/m^2 within this scheme.

13. The current size matrix for valuation scheme 367920 was as follows:

0 – 1,000m^2	= £63.00/m^2
1,000 – 2,000m^2	= £60.00/m^2
2,000 – 3,000m^2	= £55.50/m^2
3,000m^2 +	= £45.75/m^2

14. The current RV for Unit 4 was based on £60.00/m^2. This property is a two-storey industrial unit which has a total floor area of 1,917.44m^2. There is office space to the front on the ground and first floors with the warehouse area to the rear. The property was refurbished in the early 2000s. Mr Cheeseman had relied on the rent of this property which was set on 1 June 2016 at £130,292 per annum (pa) with nine months' rent free. This analysed to £56.00/m^2. Mr Cheeseman believed that this was the strongest rental evidence, as it was the closest to the antecedent valuation date (AVD) and furthermore, it was a new letting. He therefore sought a reduction in the main space price from £60.00/m^2 down to £56.00/m^2 for Unit 4, Sheldon Way giving a revised RV of £107,000 with effect from 1 April 2017.

15. The total areas for the other three appeal properties were as follows: Unit 6, Sheldon Way measured 2,422.04m^2, Unit 7, measured 3,935.3m^2 and Unit 12, measured 2,156.1m^2.

16. Mr Cheeseman contended that the same principle of quantum should apply to the other units within each size matrix i.e. £55.50/m^2 would reduce to £51.80/m^2 for Units 6 and 12, Sheldon Way, and £45.75/m^2 would reduce to £42.70/m^2 for 7, Sheldon Way. Applying these reduced rates, the following revised RV's were proposed.

Unit 4, Sheldon Way, Aylesford, £107,000 RV with effect from 1 April 2017,
Unit 6, Sheldon Way, Aylesford, £128,000 RV with effect from 1 April 2017,
Unit 7, Sheldon Way, Aylesford, £174,000 RV with effect from 1 April 2017, and Unit 12, Sheldon Way, Aylesford, £110,000 RV with effect from 1 April 2017.

17. Mr Madiyiko submitted that Mr Cheeseman's' evidence derived from the rental evidence for Unit 4, Sheldon Way was 15 months after AVD and only slightly lower than the current rate per m^2 applied.

18. As there was little rental evidence for Sheldon Way, Mr Madiyiko had looked at other comparable evidence built from the mid-1970s to 1980 for industrial units in nearby Larkfield Trading Estate and Larkfield Mill. He believed that the rental evidence from these locations generally supported the current price per m^2 applied to the Sheldon Way units.

19. In support of the present unadjusted price of £60.00/m^2, Mr Madiyiko presented the following:

Units 3 and 4 (N), Larkfield Mill, Bellingham Way, Aylesford. This is a portal framed industrial unit, built in 1977. The property measured 3,487m^2. There was a new letting in February 2015, where the adjusted rent analysed to £59.95/m^2.

Unit 5, Block E Larkfield Trading Estate, New Hythe Lane, Aylesford. This is a portal framed unit, built in 1980. The property measured 497.23m^2. There was a new letting in July 2015 for a 5-year term including a 3-month rent free period. The adjusted analysed rent was £103.36/m^2.

Unit 6/7, Block E Larkfield Trading Estate, New Hythe Lane, Aylesford. This is a portal framed unit, built in 1980. This property measured 985.10m^2. There was a lease renewal in June 2016, which analysed to £60.11/m^2.

Unit 6, Larkfield Trading Estate, New Hythe Lane, Aylesford. This is an industrial unit built in 1978. There was a new letting from June 2016, which analysed to £99.66/m^2.

Unit 1 at 3 Sheldon Way is within the same size band as Unit 4, Sheldon Way. This property measured 1,681.1m^2. The May 2012 rent for Unit 1 analysed at £60.84/m^2, which suggested that the size band was correct according to Mr Madiyiko.

20. In summary, Mr Madiyiko was not convinced that there was strong enough evidence to support a reduction. He therefore sought a dismissal in all four appeals.

21. Mr Cheeseman made the following comments regarding the Valuation Officer's comparable evidence. With regard to the comparable properties in Larkfield Mill and Larkfield Trading Estate, these properties were up to 3 miles away and in different valuation schemes, therefore the rental evidence for these properties should be weighted accordingly. The rent on Units 3 and 4 (N) Larkfield Mill, Bellingham Way, Aylesford was analysed to £59.95/m^2 and yet £48.17/m^2 had been applied to this assessment. Mr Cheeseman contended that no regard had been given to this rent. Furthermore, he did not agree with the analysis of the rent. The lease submitted in evidence showed that there was a two-year break clause

without premium, plus the tenants had free unlimited use of the utilities as part of the lease agreement.

Decision and reasons

22. In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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;
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> (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.

23. 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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

24. 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.

25. Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
    2. 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 s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
    3. 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.

4. 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 properly be referred to as giving an indication of that opinion.
5. In light of all the evidence an opinion can then be formed of 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.
6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

26. The appellant's representative had contended that the best evidence was the rent for the subject property, Unit 4, Sheldon Way, and he had therefore adopted the analysed rental figure of £56.00/m^2 in his revised assessment for this property. This rent was the closest to the AVD and it was a new letting. He had relied solely on this rent to support his case for a reduction in all four assessments that he had challenged in Sheldon Way. The respondent, on the other hand, had also looked at rental evidence from other locations to support his opinion that the existing assessments were fair and reasonable.

27. The panel noted that the rental evidence provided by the respondent was taken mainly from properties in different valuation schemes. These properties also differed in age and size and therefore it was difficult for the panel to place too much weight on this evidence. The panel noted the comments made by the appellant's representative with regard to Units 3 and 4(N) Larkfield Mill, Bellingham Way, Aylesford, a property which was over 1,500m^2 larger than Unit 4, Sheldon Way. The panel also believed that the May 2012 rent on Unit 1, at 3, Sheldon Way was too far away from the AVD to be useful. The only other rent which analysed to around £60.00/m^2 was for Unit 6/7, Block E Larkfield Trading Estate, New Hythe Lane. This property, however, was over 1,000m^2 smaller than Unit 4, Sheldon Way and had an adopted value of £57.50/m^2. The panel was therefore not persuaded that the Valuation Officer's rental evidence supported his unadjusted price of £60.00/m^2 for Unit 4, Sheldon Way.

28. The panel noted that with regard to Unit 5, Block E Larkfield Trading Estate, New Hythe Lane, Aylesford and Unit 6, Larkfield Trading Estate, New Hythe Lane, Aylesford, although these had analysed rents of £103.36/m^2 and £99.66/m^2 respectively, both assessments had an adopted figure of £57.50/m^2.

29. Taking into account all of the rental evidence, the panel decided that the best evidence was that of Unit 4, Sheldon Way and that the analysed rent of £56.00/m^2, as proposed by the appellant's representative for this unit, was fair and reasonable. Applying a similar adjustment to the various size bands for the other three appeal properties in Sheldon Way gave a main space price of £51.80/m^2 for Units 6 and 12 and £42.70/m^2 for Unit 7. This gave the following revised RV's:

Unit 4, Sheldon Way, Aylesford, £107,000 RV with effect from 1 April 2017,
Unit 6, Sheldon Way, Aylesford, £128,000 RV with effect from 1 April 2017,
Unit 7, Sheldon Way, Aylesford, £174,000 RV with effect from 1 April 2017, and Unit 12, Sheldon Way, Aylesford, £110,000 RV with effect from 1 April 2017.

30. The appeals are allowed, and the appellants are also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

31. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show the revised RV's as follows:

Unit 4, Sheldon Way, Aylesford, £107,000 RV with effect from 1 April 2017,
Unit 6, Sheldon Way, Aylesford, £128,000 RV with effect from 1 April 2017,
Unit 7, Sheldon Way, Aylesford, £174,000 RV with effect from 1 April 2017, and Unit 12, Sheldon Way, Aylesford, £110,000 RV with effect from 1 April 2017.

Date: Thursday 7 January 2021

Appeal numbers: CHG100105008, CHG100090180, CHG100090188 and CHG100090195