THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal – Rental Evidence – analyses of the rent evidence- weighting of rental evidence - price per m² to be adopted – previous Valuation Tribunal Decision on 13 Crayfields Industrial Park, Main Road, Orpington, Kent, BR5 3HP [CHG100073720] – appeal dismissed

Re: Units 2 and 3 Kingfisher House, Crayfields Business Park, New Mill Road, Orpington, Kent, BR5 3QG

APPEAL NUMBER: CHG100094480

BETWEEN:	Telecoms World Plc	Appellant
	and	
	The Valuation Officer	Respondent

PANEL;	Mr K Sutch (Senior Member)
	Mrs C Dodsley
CLERK:	Mr A Jolly
REMOTE HEARING	Thursday 15 April 2021
APPEARANCE:	Mr S Campbell of Altus Group representing the occupier Telecoms World Plc (appellant)
	Mrs M Pathmanathan representing the Valuation Officer (respondent)

Summary of decision

1. Appeal Dismissed. Rateable Value £64,500 confirmed with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: An appeal received on 20 January 2021 against the Valuation Officer's Challenge Notice Decision of the 29 October 2020 making no change to the assessment.

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. 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.

6. Mr Campbell 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 Campbell’s declaration of truth included a statement that he was instructed under any conditional fee arrangement.

7. Mr Campbell 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.

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).

9. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

10. Both parties, prior to the hearing, had provided new evidence, which both parties had agreed could be included as evidence for the hearing.

Issues

11. The issue before the panel concerned the price per m² to be adopted having regards to the rental evidence and the weighing of that evidence.

Evidence and submissions

12. Mr Campbell referred to the Lands Tribunal decision of *Lotus and Delta* v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141 and the six propositions to be followed when considering the weighting of evidence. Having regards to the weighting of evidence he considered the best evidence to be that of new lettings. He provided rental details of Unit 3 (a previous letting of part of the appeal property prior to it being merged with Unit 2) which analysed to £79.23 per m² and Unit 5 which analysed to £95.04 per m². He considered that these illustrated that £105 per m² was excessive. He stated that when he had analysed the rental evidence he had analysed to the five year break clause and had regard to the five month rent free period, landlord being responsible for the insuring and tenant being responsible for internal repair only.

13. He considered that the Valuation Officer had taken the same rent and had analysed over the whole ten year lease, only had regard to two months rent free with the other three months being considered as ‘fitting out’. He stated that the offices had always been offices and that as the buildings were constructed in 1999 there was no drastic alterations that were required

and therefore he considered three months was excessive. He considered that to include three months rent free period for refitting was double counting as the assessment had a 20% uplift for office space.

14. Mr Campbell referred to a decision relating to 13 Crayfields Industrial Park, Main Road, Orpington, Kent, BR5 3HP [CHG100073720], a neighbouring Industrial Park which weighted the rental evidence placing greater weight on new lettings and where £76 per m² with 20% uplift was confirmed. He considered that this also supported his contention that the price adopted for the appeal property was excessive and sought RV £54,500 based on a price of £87.50 per m² with 20% uplift for office space. He confirmed that whilst these premises were older being built in the 1980s, they had been refurbished approximately 10-15 years ago.

15. Mr Campbell confirmed the rent for Unit 3 was for the same occupier of Unit 2 and that the lease was for a shorter period so as when the lease of Unit 2 expired a new lease for both units together could be agreed upon.

16. Mrs Pathmanathan stated that the appeal property had been valued at £105 per m² with a 20% uplift for offices giving a value of £126 per m². She considered the price adopted illustrated the quality and age of the property.

17. She informed the panel that the lease for the appeal property was outside the Landlord and Tenants Act 1954 and the tenant had no right to renew the tenancy when it expired and therefore she considered the rent would be lower as a tenant could lose monies spent on tenant improvements if they had to vacate.

18. Mrs Pathmanathan considered the best evidence was for Unit 5 as this was a new letting with five months rent free and according to the Form of Return (FOR) three months of that period was for fitting out. She had analysed the rent to £109.97 m² which she considered supported the price of £105 per m². Whilst the lease on Unit 1 was a renewal she considered that it also provided support for her contention and that this rent analysed to £110 per m². She stated that the rental evidence for Unit 1, although a renewal, was close to the AVD and required no adjustment to accord with the Rating Hypotheses.

19. Mrs Pathmanathan did not consider the Units in Crayfield Industrial Park were similar to the appeal property in age and style and therefore were not comparable.

20. She considered that the appellant's representative had not proven that the price of £105 per m² with 20% uplift for office space was excessive and asked the panel to dismiss the appeal and confirm RV £64,500.

Decision and reasons

21. The panel noted 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.

22. Whilst the starting point would be the rent passing on the appeal hereditament, the rent was two years after the antecedent valuation date and was also outside the Landlord and Tenant Act 1954 and accordingly the panel placed minimal weight on its rental evidence.

23. The panel considered the rental evidence relating to Units 1, 3 and 5. Both parties considered the rental evidence on Unit 5 as a key rent but had analysed the rental evidence differently. The panel considered that as the FOR had stated that three of the five month rent free period was for fitting out only two months would be considered as an incentive. The panel therefore considered that the analysed rent adopted by the Valuation Officer to be more reliable as it reflected the situation stated in the FOR.

24. The panel was informed that the rent for Unit 3 was for a short period in order to line up with the ending of the lease on Unit 2 so both units could be merged into one lease. Also the tenant for Unit 3 was the same tenant for Unit 2. The panel therefore placed less weight upon this evidence.

25. The panel considered that whilst the lease for Unit 1 was a renewal it still provided useful evidence as it was close to the AVD and required no adjustments to accord with the rating hypotheses.

26. The panel noted the decision relating to a property in a neighbouring development but considered that there was sufficient evidence within Crayfields Business Park to assist in reaching its decision.

27. The panel having considered all the evidence presented considered the best evidence related to Units 1 and 5 which, having regards to the Valuation Officer's analysed rents, illustrated that £105 per m^2 with 20% uplift was not excessive. The panel had not been persuaded by the appellant's representative that RV £64,500 was incorrect and accordingly the appeal is dismissed.

Date: Tuesday 4 May 2021

Appeal number: CHG100094480