THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Warehouse and premises; Rental evidence; Unadjusted base rate; Appeal dismissed.

RE: Unit 9 Vantage Close, Sheffield S9 1BG

APPEAL NUMBER: CHG100104504

BETWEEN: Airbag Disposal UK Limited (represented by Altus Group) — Appellant

And

Jo Moore (Valuation Officer) — Respondent

PANEL: Mrs M Cole (Senior Member)
Mr K Everett

CLERK: Ms S Hodgson

ON: 14 January 2021

APPEARANCES: Ms E Saunders of Altus Group for the appellant
Mr Moran of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £36,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £36,000 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017.

The challenge stage was completed on 16 October 2020. The challenge sought a reduction in RV to £33,500.

3. The appeal hereditament was a warehouse located on an industrial estate of ten units arranged in terraces, five miles outside of Sheffield. It measured 729.63m^2 and was built circa 2015.

4. 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.

5. 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.

6. 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

7. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

8. Ms Saunders 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), Ms Saunders’ declaration of truth included a statement that she was instructed on a contingency fee basis.

9. Ms Saunders 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 case.

10. Mr Moran appeared on behalf of the respondent as both advocate and expert witness. Mr Moran’s statement of truth declared that he was not instructed under any conditional fee arrangement. Mr Moran declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the case.

11. 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).

12. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

13. Ms Saunders contended that the scheme the subject hereditament had been valued according to, was a wide ranging, catch all scheme, that had over 100 properties in it from the S9 postcode that were built after 1981. She argued that *Lotus & Delta v Culverwell (VO)* [1976] set out how to weigh evidence for rating cases and the rent on the subject property should be the starting point. Ms Saunders referred to comparable rental evidence from outside the Vantage Close estate in her evidence submitted at the challenge stage. At the hearing she relied on rental evidence within Vantage Close and advised the panel that, in her opinion, there is sufficient evidence in the immediate vicinity to support a reduction in RV to £33,500 based on a price of £45 per square metre (psm).

14. Mr Moran referred to a previous Valuation Tribunal decision for 67 Worthing Road in Sheffield. That property was in the same scheme as the subject property, was of a similar size and the Senior Member at that hearing had found that £48.50 was not an excessive base rate. He contended that the appellant's representative was the same in that appeal and had argued that Vantage Close was good comparable rental evidence for 67 Worthing Road. Mr Moran explained to the panel that the rental evidence referred to by Ms Saunders at Vantage Close for this appeal was too far removed from the antecedent valuation date for it to be relied on, in his opinion. He submitted that Unit 4 Vantage Close was the best comparable rental evidence and supported the rate of £48.50 for the subject property and asked that the RV of £36,000 be confirmed with effect 1 April 2017.

Decision and reasons

15. 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 –*
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> > *(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.

16. In respect of an appeal against an entry in the 20017 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).

17. 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.

18. Both parties had referred to the leading judgment of *Lotus & Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 14. This judgment set out concepts to be followed when considering the weighting of evidence. The first of these is that the rent on the subject property should be taken as the starting point.

19. The subject hereditament had a new lease agreed with effect from April 2017 for £35,550. Ms Saunders had adjusted the rent to £33,748 which she analysed at £45.34psm. The adjustment took into consideration a one month rent free period, followed by four months at half rent. Mr Moran did not provide an analysis for the subject rent as he considered it too far removed from the AVD to carry weight for the valuation.

20. The second concept in *Lotus and Delta* included the idea that more weight should be attached to the subject rent, the closer it is to the AVD. The panel held that as the subject rent was agreed two years after the AVD of 1 April 2015, little weight would be attached to it.

21. The panel then considered the comparable rental evidence Ms Saunders submitted at the challenge stage of industrial units in the S9 postcode. Ms Saunders did not expand on the evidence at the hearing, however the panel had regard to the full bundle of evidence provided to the Tribunal when making its decision.

22. Unit 10 Vantage Close had a rent listed as £36,270 effective from July 2016. This was adjusted to £34,513 by Ms Saunders and analysed to £46.19psm. In the Valuation Office Agency's (VOA) response to this evidence, the rent was stated on a form of return (FOR) to be £43,524 with 1 month rent free and the Landlord was responsible for external repairs, with a shared responsibility for internal repairs and insurance. The VOA had adjusted this rent to £38,733 which analysed to £51.84psm. It was the panel's view that while this rent was located on the same estate, the rent was agreed 15 months after the AVD and therefore carried little weight.

23. Unit 2 Amberley Court had a passing rent of £22,000 effective 16 July 2015. Ms Saunders had adjusted the rent to £18,598 which analysed at £35.69psm. This property was valued in a different scheme to the subject property and was built in 1990. The panel noted that the rent was close to the AVD, however placed little weight on this property due to the age in comparison to the subject.

24. Unit 1 Brooklands Bus' Centre was built in 1977 with a passing rent of £17,500 effective 27 June 2014. As with Unit 2 Amberley Court, the panel place little weight on this property due to its age in comparison to the subject.

25. Unit 2 Tyler Way had a passing rent of £25,000 with effect 1 August 2015. Ms Saunders made no adjustment to the rent and analysed it to £44.07psm. The VOA had analysed this rent to £49.12psm. The panel placed little weight on this rental evidence as the lease was between connected parties.

26. Unit 3 Parkway Rise and Unit 3b Industrial Est Greasbro Road both had effective rents from 2013 (October and March respectively). The panel did not consider this strong evidence and placed little weight on it due to the distance from AVD.

27. 7 Brompton Road had a passing rent of £31,944 effective January 2016 that Ms Saunders analysed to £42.67psm. The property measured 748.58m^2 which was a similar size to the subject hereditament and valued in the same scheme. However, the panel preferred to consider rents of properties within the same estate in order to reach a decision.

28. The panel then considered the rental evidence provided by Ms Saunders of other industrial units at Vantage Close. Ms Saunders referred the panel to Unit 10 Vantage close which has already been discussed above. She also referred to Units 6 and 7 and provided an analysis of Unit 4 which was submitted as rental evidence by Mr Moran.

29. Unit 6 Vantage Close had a passing rent of £26,000 effective 1 October 2015 and was analysed by Ms Saunders to £44.89psm. It was in the 2017 rating list with an RV of £26,000 and a base rate of £48.50psm based on its size of 540.25m^2. It was the panels view that the current base rate was supported by the rent at this property. The panel considered that the lease for Unit 6 was agreed six months post AVD and appropriate weight was given to this evidence.

30. Unit 7 Vantage close had a passing rent of £30,000 effective 1 November 2016. This had been adjusted to £28,290 and analysed to £45.60psm by Ms Saunders. The panel found that this rent was agreed too far from the AVD and did not attach weight to it.

31. Unit 4 Vantage Close was provided as rental evidence by Mr Moran. The passing rent was £20,588 effective 1 August 2015. There was a dispute between the parties regarding a two-month period at the start of the rent. Ms Saunders argued this was a rent-free period and should be accounted for in the rental analysis. She adjusted the rent to £19,805 and analysed it to £47.82psm. Mr Moran contended the two months was a fit-out period and did not adjust the rent for this. He analysed the rent to £49.70psm.

32. The panel had regard to the additional rental evidence provided by Mr Moran in the evidence bundle, Henry Boot Training Ltd and Unit 3 Kanja Business Park. The panel did not attach weight to Henry Boot Training Ltd as the lease was signed 2 August 2013, 20 months before the AVD.

33. Unit 3 Kanja Business Park had a passing rent of £20,000 effective 1 July 2014 on full repair and insurance terms. The unit was built in 1999 and was analysed by Mr Moran at £50.98psm. The panel noted that this unit was slightly older than the subject, but the lease was agreed 9 months before the AVD, therefore appropriate weight was given to this evidence.

34. Mr Moran referred the panel to a previous Valuation Tribunal decision decided by Senior Member to the Tribunal, Mr Rogers. The appeal property was 67 Worthing Street, Sheffield. It was valued in the same scheme as the subject property with a base rate of £48.50psm, was built in 2014 and was a similar size to the subject property at 776.90m^2, the appeal was dismissed and the base rate of £48.50psm confirmed.

35. The panel had regard for the Tribunal decision and noted that while previous Tribunal decisions are not binding, they can be persuasive. It was the panel's view that while some evidence was the same between the appeals, the panel did not have sight of the evidence used to determine the Worthing Street appeal. While the panel arrived at many of the same conclusions as Mr Roger's, this was done with regard to the basket of evidence before them in this appeal and little weight was given to the previous Tribunal decision.

36. Having regard to the full basket of rents available, the panel considered that the rent on Unit 4 Vantage Close was the most reliable, requiring little or no adjustment, and was closest to the AVD. While there was a dispute between the parties over two-months of the rental period, it was the panels opinion that the analysed rents of £47.80psm (Ms Saunders) and £49.70psm (Mr Moran) supported the rate of £48.50psm for the subject property.

37. The panel then placed weight on Unit 6 Vantage Close which was the next closest rent to the AVD. The panel found that the adjustment to the rent by Ms Saunders was not explained and the passing rent of £26,000 supported the base rate of £48.50psm that arrived at the RV of £26,000, equal to the rent.

38. Less weight was given to Unit 3 Kanja Business Park because of the age of the property but the rental evidence still assisted the panel in arriving at its decision.

39. The panel considered that by placing the most weight on the three rents mentioned above, the base rate of £48.50psm did not appear unreasonable as this figure sat between the parties analysed rents of £44.89psm and £50.98psm for the comparable properties provided.

40. Consequently, based on the evidence before it, the panel dismissed the appeal and the RV of £36,000 was confirmed with effect 1 April 2017.

Date: 22 January 2021
Appeal number: CHG100104504