THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Warehouse and premises; main space price; appeal dismissed.*

RE: 52 Somers Road, Rugby, CV22 7DH

APPEAL NUMBER: CHG100106509

BETWEEN:	Manufacturing Service Solutions Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

BEFORE: Mr A Ramsay (Senior Member)
Dr P Thomson

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 16 August 2021

APPEARANCES: Mr N Brewitt from Altus Group (Appellant's representative)
Mr D Byrne (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed. The panel made no change to the rateable value.

Introduction

2. The appeal property was entered in the 2017 rating list as 'Warehouse and premises' at rateable value (RV) £34,000 effective from 1 April 2017, based on an unadjusted main space rate of £47.50/m^2. It had an area of 704.58m^2. The appellant was seeking a rateable value of £28,750 based on an unadjusted main space price of £40/m^2.

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 position.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Brewitt made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

6. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 1 April 2021 following the Valuation Officer’s Decision Notice of 11 December 2010 in respect of the appeal property (hereditament).

7. Mr Brewitt had declared that his firm is on a contingency basis. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Brewitt’s declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

8. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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 absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

10. The issue for determination is the rateable value of the appeal property.

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Evidence and submissions

11. The appellant had provided the Tribunal with both parties' submissions. The evidence included the following: the appellant's statement of case, a map of the locality, details and photographs of the appeal property and his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice and extracts of a number of judgments including *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA

12. The appeal property was held on a five year full rent and repair lease which commenced on 1 January 2018 for £24,000 per year. The lease analysed to a main space price of £33.23/m^2. Although the lease commenced in 2018, the VOA held a form of return for the appeal property with a rent of £24,000 per year effective from 1 September 2015.

13. Given this analysis of the rent for the appeal property, Mr Brewitt suggested that the rateable value should be £28,750 based on an unadjusted main space price of £33.23/m^2.

14. To further support his argument that the rateable value was incorrect, Mr Brewitt had provided the following comparable properties:

Property	Area	Rent	Analysed rent	Rateable value
90-92 Somers Road	3464.12m^2	£130,000	37.14/m^2	£140,000
51 Somers Road	680.44m^2	£25,684	38.68/m^2	£31,500

15. Both of these properties were similar in age and construction and they were located opposite the appeal property. The VOA had agreed the RV for 90-92 Somers Road based on an unadjusted rate of £40.72/m^2 and, being larger, it was benefitting from a quantum allowance and supported his proposed unadjusted rate.

16. He disagreed with the VOA's analysis of the rent for 51 Somers Road as leases usually contain provision for stepped rents and referring to the tenant's improvements, which was the installation of a mezzanine floor, as Mr Brewitt had not included the mezzanine floor in his rental analysis.

17. Mr Brewitt also disagreed with the VOA's rental evidence supporting its tone, for the following reasons:

    a) 5 Somers Road appeared to have been refurbished. It was also held on a 20 year lease which commence in 2001. There was a rent review in 2016 but it was not a new tenant coming fresh to the scene. Therefore, the rent was not reliable and the property was not a 'like for like' comparable;
    b) 32 Somers Road was large and fell within the next size band. It was a lease renewal in 2014 and the property had a showroom and therefore it was not a 'like for like' comparable;

c) 48 Somers Road was 72m^2 smaller than the appeal property. However, he contended that the rent was not reliable as the lease contained an option to purchase it after three years; and
d) Mick Tuckey Windows at 28 Somers Road was a lease renewal in 2015, however, it was not comparable as it had a smaller eaves height. He had analysed the rent to £44.22/m^2. However, this did not support the tone as the unadjusted main space price of the appeal property was £40/m^2.

18. He also argued that in some of the VOA's tonal evidence, the appellants had not submitted appeals as some of the ratepayers were unable to provide rental evidence and the appellants did not want to go through the appeal process.

19. Given that the rent as at the AVD was £24,000 per year, and his analysis of the above comparable properties, Mr Brewitt contended that the rateable value was too high and asked the panel to allow the appeal.

20. Mr Byrne was representing the VO as advocate and expert witness. He contended that the rent declared on the Form of Return in 2015 was £2,400 although the VOA assumed this was an error and should have been £24,000 per year, effective from 31 August 2015. This analysed to £34/m^2, which was similar to Mr Brewitt's analysis. However, the VOA had compared the rent for the appeal property with a basket of rents in the locality and concluded that the rent was too low and therefore not reliable.

21. To support this contention, the VOA had provided the following comparable properties, with leases that commenced within a year of the AVD to support the existing rateable value:

Property	Area	Rent	Analysed rent	Rateable value
5 Somers Road	838.40m^2	£41,000	£48.30/m^2	£40,250
32 Somers Road	1041.60m^2	£50,000	£44.71/m^2	£49,000
48 Somers Road	942.40m^2	£30,000	£47.03/m^2	£40,500
Mick Tuckey Windows Ltd, 28 Somers Road	735.41m^2	£30,000	£44.22/m^2	£33,500

22. They had also considered other assessments in the locality which suggested that a tone had been established which supported the above analysis:

a) 35 Somers Road. Challenge was agreed due to a factual change. No change was made to the rate of £47.50/m^2;
b) 72 Somers Road. Challenge was agreed due to a factual change. No change was made to the rate of £45.17/m^2;
c) 54-56 Somers Road. Main space price of £42/m^2 remained, but an allowance for access was allowed;
d) Unit 7, 1 Upton Road. Challenge was made seeking a main space price of £40/m^2. No change was made to the main space price of £50m^2; and
e) Void, 50 Somers Road. Challenge was made seeking a main space price of £36/m^2. The VOA disagreed and kept the main space price at £47.50/m^2.

23. No appeals had been submitted in respect of these assessments.

24. He also contended that Mr Brewitt's comparable properties 90-92 Somers Road was not comparable as it was substantially larger than the appeal property and it was between connected parties and the Form of Return for 51 Somers Road stated that the rent was £25,839 per year with a three year rent free period and a five yearly rent review. It was smaller than the appeal property and the VOA suggested that the rent was lower as the tenant had paid to instal a mezzanine floor, which suggested that the rent was not reliable.

25. Given all of the above tonal evidence, Mr Byrne contended that this supported the current rateable value which was based on an unadjusted rate of £47.50/m^2 and he asked the panel to dismiss the appeal.

Decision and reasons

26. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

27. There is another important date for rating appeals and that is known as the 'material day.' This is the date on which the physical factors had to be taken into account. In this appeal, the material day was 1 April 2017.

28. The term 'rateable value' is defined in 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 –
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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;
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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; and
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> 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".

29. The panel firstly considered the rent of the appeal property, this being the starting point in the weighting of evidence as stated in the judgment of *Lotus and Delta v Culverwell (VO)* [1976] RA 141.

30. It noted that Mick Tuckey Windows Ltd 28 Somers Road, 5 Somers Road and 51 Somers Road were similar in size to the appeal property. Given the rents for these properties were £30,000, £41,000 and £25,684 respectively, the rent for the appeal property of £24,000 did appear out of kilter to these and the panel applied less weight to it.

31. Turning to the appellant's comparable properties, the panel applied little weight to the assessment of 90-92 Somers Road as it was substantially larger than the appeal property. This only left 51 Somers Road which was similar in size to the appeal property and had a RV of £31,500, which supported the current RV of £34,000, although the panel noted that the valuation of 51 Somers Road included 17 parking spaces and had surfaced land. Mr Brewitt had analysed the rent to £38.68/m^2 however, this required a number of adjustments to reflect this analysis due to the stepped rent, the car parking and land, which made the rent less reliable.

32. Under the VOA's scheme 409865, units in Somers Road with an area of between 500m^2 to 750m^2 were valued at £47.50/m^2 falling to £42/m^2 for units larger than 1,100m^2. This was supported by Mr Byrne's tonal evidence and to some extent the rental evidence, although Mr Brewitt had cast doubt on the reliability of some of the VOA's rental evidence.

33. As a lot of the rental evidence was not reliable and did not fit the rating hypothesis as a new tenant coming 'fresh to the scene', the panel then considered the tonal evidence. This suggested that units around the size of the appeal property such as 50 Somers Road supported the tone of value for the appeal property. Although Mr Brewitt had cited lack of rental evidence or that properties were held freehold as the reasons these assessments were not appealed, this did suggest, through a lack of appeals, that a tone of value at £47.50/m^2 for properties around the size of the appeal property had been established in the locality. This tone was also supported by the assessments of 5 and 48 Somers Road where the rent analysed to a similar amount.

34. The panel noted that 51 and 28 Somers Road analysed at lower rates, however, the overwhelming evidence supported the unadjusted rate of £47.50/m^2 for the appeal property. The panel therefore concluded that the rateable value was correct and dismissed the appeal.

Date: 8 September 2021

Appeal number: CHG100106509