VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and Premises; accuracy of rateable value; rent passing on comparable properties on same estate; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal Dismissed.

RE: Unit 314, Avenue C, Thorp Arch Estate, Wetherby, LS23 7DD

APPEAL NUMBER: CHG100114112

BETWEEN: Patrizia Hanover Property Unit Trust — Appellant

and

Jo Moore

(Valuation Officer) — Respondent

PANEL: Ms L Sharkey (Senior Member)

Ms J Morton

REMOTE HEARING: 10 June 2021

CLERK: L Bertie

APPEARANCES: Mr T Munns of Wharfdale Property Management Ltd for the Appellant.

Mr M Mattock for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property to £25,000 with effect from 1 August 2018.

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 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.

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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. This was a 2017 Rating List appeal. Unit 314, Avenue C, Thorp Arch Estate, Wetherby, LS23 7DD (the 'appeal property') had an entry in the 2017 Rating List as 'Warehouse and premises' at a RV of £34,000 with effect from 1 August 2018.

5. The challenge proposal was submitted by the appellant's representative and was received by the Valuation Officer (VO) on 23 July 2019. It had been made on the grounds that the RV shown in the rating list on 1 August 2018 was wrong and proposed a revised RV of £19,750 with effect from 1 August 2018.

6. The VO issued a challenge case decision notice on 15 January 2021 in respect of the appeal property. The VO's decision was to treat the Appellant's challenge as not well-founded but proposed a change to the rating list to £25,000 RV.

7. Mr Munns 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), he declared in open tribunal that he was not instructed under a conditional fee arrangement.

8. Mr Munns 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.

9. 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.

10. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

11. The subject hereditament is a steel portal frame industrial unit with ppm cladding abutting a brick built industrial unit. The subject is situated within Thorp Arch Estate off Avenue C. It was constructed in 1977 with an eaves height of 4.27m. The areas have been agreed between the parties at 741.76 m2.

Issue

12. The issue between the parties at Challenge stage, concerned the RV of the appeal property, specifically, the rate per m² and the level of allowance to be applied. Prior to the hearing, the parties had agreed a 25% disability allowance to reflect the disadvantages at the appeal property. Mr Munns, for the Appellant, sought a reduction to £19,750 RV based on an unadjusted main space rate of £36 per m². Mr Mattock, for the VO, sought confirmation of an amended assessment of £25,000 RV, which was based on the unadjusted main space rate of £45 per m².

13. All relevant factual information regarding the subject property, including its area, was not disputed by the parties.

Decision and reasons

14. The appeal hereditament 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 from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property 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 the physical nature of the property and its mode or category of use.

15. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(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 1976 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 value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on 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.'

16. Mr Munns argued that based on the comparable properties submitted by him in support of a £m^2 of £36, the rental evidence of properties at 101,119, 202, 206, 352 and 407 Thorpe Arch Estate showed rents agreed between January 2015 – April 2018. These rents equated to £/m^2 rates between £10.63 - £37.95. These properties were between 529.90 m^2 and 2896.50 m^2 in size. He contended that these properties which were on the same estate had £/m^2 which in his view supported a lower rate of £36 for the appeal property. With regard to the revised comparable properties submitted by the Valuation Officer he considered that capital expenditure by the landlord to improve/ make them more attractive to tenants would affect the bid of the hypothetical tenant.

17. Mr Mattock contended that the comparable evidence submitted to support the revised RV was from a valuation scale for Thorp Arch un-refurbished industrial buildings, constructed pre 1954 to reflect the quality of the appeal property. In this regard the panel's attention was drawn to Unit 120, Street, 7 Thorp Arch Estate, LS23 which is larger than the appeal property at 1100m2. The unit is un-refurbished with a rent agreed in Sept 2014 analysing to £40.89. It has an adopted rate of £38.76 /m2; Unit 702, Avenue, East West, Thorp Arch Estate LS23 7GA is smaller than the appeal property at 571m2. The letting was agreed in September 2015 analysing to £45.75/m2 with an adopted rate of £45.00. Unit 156 & 157, Avenue B, Thorp Arch Estate LS23 7BJ is smaller than the subject at 572m2. The letting was agreed May 2014 and analyses to £45.46/m2 with an adopted rate of £45.00/m2.and Unit 613 Avenue D, Thorp Arch Estate LS23 7GA is a similar size to the subject at 781m2. The letting was agreed in October 2013 and analyses to £48.06/m2 with an adopted rate m2 of £45.

18. The panel are aware that following the propositions set out above, the rent on the subject property should be a starting point. It noted that no rental information was submitted on the appeal property. Therefore, in accordance with the principles laid down in Lotus v Delta, the panel looked at comparable evidence to ascertain the rental value of the appeal property.

19. The panel considered that the range of analysed rents for similar properties on the Thorp Arch Estate was supportive of their current assessments of £38.76 m2 - £45 m2, with the lower rate reflecting a substantially larger property with quantum being applied, with the other comparable properties having an adopted rate of £m2 of £45.

20. However, the panel was not persuaded that the contention of Mr Munns in applying a cost-based approach in looking at the cost of implementing improvements as well as existing capital expenditure on the Valuation Officer's comparable properties supported his view that the appeal property warranted a lower £m2 than that contended for by Mr Mattock. The panel agreed with Mr Mattock's view that cost does not equal value and that, capital expenditure by the landlord is an investment in his asset and as such, would not be realised in a single hypothetical letting.

21. The panel, was satisfied that the location, age and quality of the of the Respondent's comparable properties was sufficiently similar to that of the subject property for them to be comparable to it

22. The panel noted Mr Mattock's acceptance that his records may need updating as regards facilities at some of his comparable properties. However, the panel gave less weight to the comparable evidence submitted by Mr Munns of industrial hereditaments which included Thorp Arch Estate built between 1941-1942 as a munitions factory as part of the war effort. The units are all brick built with an eaves height of 4m or under. However, the panel considered that all but one piece of rental evidence submitted was post the AVD of 1 April 2015 and therefore less weight should be attached to post AVD evidence.

23. From the basket of rental evidence provided by the Respondent the panel was satisfied that the current assessment of the subject property at £45 per m^2 was reasonable and Mr Munns had not provided any evidence of rents or assessments to persuade the panel that the figure of £25,000 RV with effect from 1 August 2018 was excessive. The appeal is therefore dismissed.

Date: 7 July 2021

Appeal number: CHG100114112