THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Office and Premises; accuracy of rateable value in list; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal dismissed.

RE: 4th F 20, Eastern Road, Romford, RM1 3PJ

APPEAL NUMBER: CHG100117479

BETWEEN:	Moore Kingston Smith LLP	Appellant
and	Ms D Bunyan (Valuation Officer)	Respondent

BEFORE: Mr W Read (Senior Member sitting alone)

CLERK: Mr D Jefferies

REMOTE HEARING ON: 27 October 2021

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors for the Appellant
Mrs A Earl for the Valuation Officer

Summary of decision

1. Appeal dismissed. The existing valuation is not unreasonable and the entry in the rating list is confirmed at £28,750 rateable value (RV) with effect from 1 April 2017.

Introduction

2. In accordance with the Tribunal's business arrangements, I have been authorised to consider and determine this appeal alone.

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. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. There were no technical problems arising on the day regarding the internet connection for any of the participants.

5. The appeal before me was a 2017 Rating List appeal. The RV of the appeal hereditament was £30,750 from 1 April 2017, with a description of Office and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £28,750 and altered the rating list with effect from 1 April 2017. The appeal was made on 28 May 2021 against the Valuation Officer's (VO) Decision Notice of 3 February 2021 in respect of the appeal property and the RV of £28,750. The proposed RV sought by the appellant was £22,750.

6. Mr Bacon appeared on behalf of the appellant as 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 Bacon stated 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 his client's case.

7. I accepted the 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). I therefore considered the expert evidence and attached such weight to it as I saw fit.

8. 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 me by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Issue

9. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Bacon, for the appellant, sought a reduction to £22,750 RV based on £110/m². Mrs Earl, for the VO, defended the existing RV of £28,750, which was based on £140/m² and sought dismissal of the appeal.

10. All relevant factual information was not disputed by the parties.

Evidence and submissions

11. The appellant's representative had submitted documentation from both parties in respect of this appeal. Amongst other things, it included correspondence exchanged between the parties, the appellant's proposed valuation, VO's valuation, VO's decision notice, location map and photographs, schedule of comparable rental evidence, a copy of the lease for Ground Floor 22-26 Eastern Road, rateable value definition and related correspondence.

12. The subject property is a 1980s office building located on Eastern Road, near Elm Park Underground Station and Junction 28 of the M5.

Decision and reasons

13. 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.

14. Both parties have highlighted the Lands Tribunal decision of *Lotus and Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA141, which provides guidance on the weight to be attached to rental and assessment evidence. The RV represents the rent that the premises would have likely achieved on the open market at the AVD of 1 April 2015. *Lotus and Delta* also established that assessments of comparable properties were relevant and that an opinion of the value of the appeal property should be reached in the light of all of the evidence, weighed appropriately.

15. Mr Bacon's contention was that the market rent at the AVD is best represented by the rent passing on Ground Floor 22-26 Eastern Road. The appellant had gained a copy of the full lease which, Mr Bacon said, confirms his analysis of £110/m^2, which he had adopted for the subject property. He argued that the VO's analysis of this rent did not reflect the facts, and, in his view, the VO's rental evidence of other transactions was so scant as to be meaningless. Mrs Earl, for the VO, said that she had personally analysed the evidence on Ground Floor 22-26 Eastern Road. This was a new letting effective from June 2015. Her analysis on this comparable devalued to £114.31/m^2. However, she was unsure if there were any fit-out cost elements to be taken into account when analysing this rent. Mrs Earl said that the VO's original analysis on this comparable devalued to £135/m^2 and was based on information that was held on record by the VOA.

16. Mrs Earl said that she had to look at other rental evidence of similar age and size property that would support the adopted value. She referred to 3rd Floor W-22-26 Eastern Road; this was a lease renewal effective from May 2016. This rent devalues to approximately £143/m^2. 1st Floor W-22-26 Eastern Road was a new letting effective from June 2015 and devalues to approximately £142/m^2. Mrs Earl had placed most weight on this new letting very close to the AVD which, she said, supports the revised value adopted of £140/m^2 for the subject property.

17. In reaching my decision, I noted that the subject property was originally valued at an unadjusted rate of £150/m^2. On a review of the available rental evidence the VO reduced this to £140/m^2, which Mrs Earl believed was reasonable for a property of this age and size in this locality and was supported by evidence. Mr Bacon, on the other hand, has referred me to one piece of

rental evidence on Ground Floor 22-26 Eastern Road which he had analysed to £110/m^2. The basket of evidence provided by the VO included the one rent provided by Mr Bacon and two further rents on comparable properties which I noted were more comparable to the subject property in terms of floor area.

18. In this case I heard what both parties had to say regarding the three leases submitted as evidence but concluded that neither party's rental evidence was compelling in this case. I had regard to the fact that Mr Bacon had only provided one rent agreed on Ground Floor 22-26 Eastern Road. Apart from this rent he has provided no other rental or assessment evidence to support his valuation. I noted that there was some dispute between the parties as to whether there was any fit-out cost elements to be considered on this rent which, in my view, lessened its reliability as evidence. I also placed little weight on the rent for 3rd Floor W-22-26 Eastern Road, as this lease renewal from May 2016 is approximately one year post AVD. The other rent referred to by the VO was that of 1st Floor W-22-26 Eastern Road. This was also a new letting effective from June 2015 and devalues to approximately £142/m^2.

19. In answer to questioning, Mrs Earl had informed me that all three comparable properties have been valued at the higher rate of £150/m^2. The case for the appellant was solely based on a single rent in isolation. In my opinion, it would be unreasonable to alter the rating list based solely on this rent particularly when other comparable evidence is available which is in support of the revised adopted value for the subject property. I also had regard to the fact that the value for the subject property has already been reduced from £150/m^2 to £140/m^2 in the compiled 2017 rating list.

20. In conclusion, based upon the totality of the evidence, such as it was, and having regard to the physical state of the appeal property and its locality at the material date of 1 April 2017, and the evidence referred to, I was of the opinion that the rate per m^2 adopted for the subject property of £140/m^2 was not excessive. For the reasons outlined above, I found that no reduction in the subject property's assessment was warranted, and I confirm the RV of £28,750 in the compiled rating list as not being unreasonable.

21. In view of the foregoing, the appeal was unsuccessful and dismissed accordingly.

Date: 23 November 2021

Appeal number: CHG100117479