THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; offices and premises; price per m^2 in dispute; rental evidence; appeal allowed.

RE: Ground & 1st Floor, 1 Burr Elm Court, Main Street, Caldecote, Cambridge CB23 7NU

APPEAL NUMBER: CHG100118655

BETWEEN: Origin UK Operations — Appellant

and

Mrs J Moore, Valuation Officer — Respondent

PANEL: Ms C Caiquo (Senior Member), Mrs L M Stuart

CLERK: Mrs L Horne

REMOTE HEARING ON: Friday 16 April 2021

APPEARANCES: Mr T Kinsey from Gerald Eve, representing the appellant

Mr C Cole representing the Valuation Officer

Summary of decision

1 Appeal allowed. The Rateable Value (RV) of the appeal property is altered from £27,500 to £18,250 with effect from 1 April 2017.

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.

4 This is a 2017 rating list appeal. Ground & 1st Floor, 1 Burr Elm Court, Main Street, Caldecote, Cambridge CB23 7NU, (the 'appeal property') had been entered in the 2017 rating list as 'office and premises' at a RV of £27,500 with effect from 1 April 2017.

5 The challenge proposal was submitted by Gerald Eve on behalf of Origin UK Operations and was received by the Valuation Officer on 15 August 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £18,250 was proposed with effect from 1 April 2017.

6 The Valuation Officer issued a challenge case decision notice on 7 December 2020, which stated that based upon the evidence and information available, the rating list entry of £27,500 RV was considered to be reasonable and there would be no amendment.

7 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 29 January 2021.

8 As Mr Kinsey appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Kinsey declared that he was not instructed under a conditional fee arrangement. 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 the client's case.

9 The appeal property is a unit in a development of three modern, purpose-built office suites in the village of Caldecote, approximately 7.5 miles outside of Cambridge. It was built in 2004, of brick and timber with a pitched roof. The offices are open plan, with the benefit of air conditioning and on-site allocated parking. The property has a total area of 173.07 m^2, or 184.95 m^2 in terms of main space (ITMS) and is presently valued at an adopted price of £150 per m^2.

10 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.

Issue

11 The issue in dispute is the price per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge; Valuation Officer's challenge case decision notice; and appellant's challenge submission.

13 On behalf of the appellant, Mr Kinsey contended that the best guide to the rental value of the appeal property was the subject rent, which he analysed at £98.40 per m^2. He supported his adopted price of £100 per m^2 with reference to rental evidence of comparable properties in the locality, and requested that the panel confirm a revised RV of £18,250 with effect from 1 April 2017.

14 On behalf of the Valuation Officer, Mr Cole contended that the adopted price of £150 per m^2 was supported by the basket of rental evidence. He attached less weight to the subject rent, as he considered that the stepped rent was an incentive which required adjustment. He requested that the panel dismiss the appeal and confirm the RV of £27,500 with effect from 1 April 2017.

Decision and reasons

15 In arriving at the decision, the panel is governed by rating legislation laid down by Parliament where 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—
>
> (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 2017 rating list, the rental levels are to be taken as those passing at the 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 The appeal property was subject to a new five year lease which had commenced on 31 July 2015. The initial rent agreed was £18,000 per annum, increasing to £19,000 per annum in year two, and £20,000 per annum for years three to five. A four month initial rent free period was agreed as an incentive. This was on a full repairing and insuring (FRI) basis, with a tenant's break at 30 July 2018.

19 Mr Kinsey's analysis at £98.40 per m^2 reflected an average annual rent of £18,200 per annum and took into account the rent free period. The panel noted that while Mr Cole attached less weight to the subject rent, he did not dispute Mr Kinsey's analysis.

20 In consideration of the subject rent, the panel was guided by the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which was referred to by Mr Kinsey in support of the appeal. This case had 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.

21 The rent passing on the subject property was the starting point for the analysis of rental evidence, as stated in the first proposition. While the Valuation Officer had contended that the stepped rent was a form of incentive, the panel was not persuaded that little weight should be attached to it. A stepped rent allows a tenant to pay a lower rent at the start of the lease, which is likely to be below the open market value, but to compensate for this, the final rent is likely to be above open market value. As such, the panel held that significant weight should be attached to the subject rent, given that it was a new lease agreed close to the antecedent valuation date (AVD) of 1 April 2015.

22 The panel turned to the rental evidence provided by the parties in order to confirm or otherwise the level of value indicated by the subject rent, as outlined in the third proposition in *Lotus and Delta*.

23 In support of his adopted £100 per m^2 for the appeal property, Mr Kinsey presented the following:

- Unit 3 Burr Elm Court, part of the subject development, a smaller unit of 71 m^2. A new lease was agreed with effect from 1 December 2015 for a term of three years. The rent was agreed at £9,000 per annum (pa), which equates to £126.47 per m^2. The tenant benefitted from a rolling break option after two years.
- Unit 2 Burr Elm Court. A rent agreed in November 2018 analysed at £123 per m^2. Mr Kinsey acknowledged that this was sometime after the AVD, and had therefore attached less weight to this evidence.

24 Mr Kinsey had referred to the rents of other comparable properties in his challenge statement (Units at The Mount, High Street, Kingston Barns and Bennell Court) but he did not cite them at the hearing. Mr Cole made reference to them in passing, and it became apparent to the panel that they were not suitable for comparison with the appeal property.

25 The rental evidence presented by the Valuation Officer in support of the adopted price of £150 per m^2 for the appeal property consisted of:

- Jubilee House, Mill Lane, Sawston, CB22 3HZ. A modern purpose-built office built in the early 2000s of brick and tile. It is in a village setting and benefits from off road parking but no air conditioning. A rent of £25,000 pa was agreed in November 2015 for a term of five years, which equates to £141 per m^2.
- Unit 9/11 The Mill, Copley Hill Business Park, Cambridge Road, Babraham CB22 3GN. A modern development in a rural setting three miles from Cambridge. The offices benefit from parking and air conditioning. A rent of £35,000 pa was agreed in September 2015 for a term of seven years, which equates to £227 per m^2.

- Unit 5/6 The Mill, Copley Hill Business Park. A rent of £45,110 pa was agreed in December 2016 for a term of seven years, which equated to £189 per m^2.

26 The relevance of the Valuation Officer's rental evidence was disputed by Mr Kinsey. Although the properties were in the same valuation scheme, Mr Kinsey stated that they were around 13 miles away from the appeal property, and situated within a different type of location: Jubilee House in a town centre, and the units at The Mill within a business park with on-site security and a cafe. Consequently, the panel was not persuaded that the Valuation Officer's evidence related to comparable modern rural offices as had been put forward.

27 In consideration of the parties' submissions, the panel decided to attach most weight to the evidence available from the subject development. There were two rental transactions which had taken place close to the AVD: the appeal property, which analysed at £98.40 per m^2, and Unit 3 Burr Elm Court which analysed at £126.47 per m^2. Mr Kinsey referred to the fact that the lease agreed for Unit 3 was more flexible, and therefore may require some adjustment. In addition there may be further adjustment required to reflect quantum.

28 The appeal had been made on the grounds that the valuation for the hereditament is not reasonable. The panel decided that the appellant's representative had demonstrated that at £27,500 RV, the assessment of the appeal property is not reasonable. A revised valuation of £18,250 RV was determined by the panel, based upon Mr Kinsey's proposed adopted price of £100 per m^2.

29 The appeal is therefore allowed, and the appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

30 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised RV of £18,250 with effect from 1 April 2017.

Date: 29 April 2021

Appeal Number: CHG100118655