VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; workshop and premises; rental evidence; comparable assessments; appeal dismissed.

RE: 1 Maxted Corner, Maxted Road, Hemel Hempstead HP2 7RA

APPEAL NUMBER: CHG100119373

BETWEEN:	Swarco UK Limited	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Mr M Smith (Senior Member)
Mrs F Duggan

CLERK: Mrs H Beresford

REMOTE HEARING ON: 8 December 2020

APPEARANCES: Mr M Evans of Altus Group (Appellant's representative)
Mr E Wright (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £159,000 with effect from 18 July 2017.

Introduction

2. This appeal has been brought in respect of the following: 1 Maxted Corner, Maxted Road, Hemel Hempstead HP2 7RA (the 'appeal property'), which was entered in the 2017 rating list as 'workshop and premises' at rateable value (RV) £159,000, effective from 18 July 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Swarco UK Limited made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £143,000 with effect from 18 July 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal hereditament comprises a workshop and premises with an overall area of 2062.70m^2. It is located on Maxted Road, Hemel Hempstead and is valued as a 1995 build.

6. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

8. It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. 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.

10. 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.

11. 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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked

Issue

12. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £75.00/m^2 in respect of the appeal property, but the appellant sought a reduction to £64.70/m^2.

Evidence and submissions

13. Mr Evans, the appellant's representative, had submitted evidence which included: a written submission; details of various valuation office schemes; photographic evidence; a location plan; a map of the comparable properties; the current 2017 assessment; and a revised valuation in respect of the appeal property.

14. Mr Evans contended that the rating assessment of £75.00/m^2 on the subject property is not in line with its passing rent of £164,679 per annum which was agreed in June 2016. Mr Evans had revised his initial analysis from £64.70/m^2 to £71.53/m^2 in terms of main space (ITMS) after removing the 3-month rent free period for fit out. As the rent had been agreed over one year after the antecedent valuation date (AVD), in what Mr Evans believed to be a period of economic growth, he had further reduced the base rate from £71.53/m^2 to £67.50/m^2 as at 1 April 2015.

15. He also argued that the subject property was one of the oldest units in a modern scheme and that it had been valued alongside properties which had been built between 2004 and 2018. He believed that these properties were better than the subject because they were newer purpose-built properties with better access, higher eves, air-conditioned offices and larger yards. Mr Evans explained that for the 2010 rating list the subject property had been in a scheme with properties built between 1980 and 1996, however, for the 2017 list it had been placed with all properties built after 1993. Mr Evans asked the panel to confirm an RV of £143,000 for the appeal property.

16. The Valuation Officer's representative Mr Wright had provided: details of four comparable properties; a valuation of the properties; a comparable rental summary; and a response to the challenge.

17. In his decision notice Mr Wright had argued that in his rental analysis, Mr Evans, had failed to remove the 3-month rent free period resulting in a base rate of £64.70/m^2. However, he now accepted that this had been amended to £71.53/m^2 and that Mr Evans had used an area ITMS of 2124.29m^2.

18. Mr Wright contended that the three comparable properties referred to by the appellant's representative were considerably smaller than the subject property and therefore not appropriate for comparison. He also argued that the comparable properties referred to by the Valuation Officer and the passing rent on the subject property supported a base rate of £75.00/m^2 for the subject property. Mr Wright asked the panel to confirm a RV for the appeal property at £159,000.

Decision and reasons

19. The panel had 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),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

20. 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 –
>
> 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;
>
> 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"

21. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

22. The panel noted that there was rental evidence for the subject property, and they were aware that the agreement of £164,679 per annum had been reached over a year after AVD in June 2016. However, they did not accept Mr Evans' argument that the analysed rent should be reduced to £67.50/m^2 to reflect a period of economic growth between 1 April 2015 and June 2016 when the rent was agreed. Furthermore, the panel noted that the pictures provided showed the subject property to be well built and in good condition, it had also been refurbished in 2007 which the panel held made it comparable to the newer properties in the scheme.

23. Mr Evans had argued that other properties in the same scheme had been reduced in value, however, the panel were unable to attach significant weight to this evidence as Mr Evans had not compared like with like. The subject property was significantly larger than those properties cited being 2062.70m^2 as compared to units A and B, ATA House, Boundary Way, which were 529.24m^2 and 562.17m^2 respectively and 7 Heron Business Park which was 836.93m^2. Whilst the panel accepted that these properties had been reduced in value to £80.00/m^2 it found that that rate supported £75.00/m^2 for the subject property which was larger.

24. Furthermore, the panel was unable to attach significant weight to the fact that the subject property had been in a different scheme for the 2010 rating list as it was aware that the 2017 list was a separate entity.

25. The panel found the evidence of comparable properties presented by Mr Wright to be the most persuasive. Mr Wright had provided a rental summary for three properties with rents close to the AVD. In particular, Unit 1 Horizon Point, which was a new letting agreed on 1st May 2015, very close to the AVD. The panel noted that this property was larger than the

subject at $3,897.51m^2$ with a rent of £312,600 per annum which reflected £80.20/m^2. Six months' rent free had been granted which when analysed to the first rent review produced a net rate of £75.61/m^2. As this property is $3897.51m^2$ the panel found that it supported £75.00/m^2 for the subject property as it would have expected to see a higher main space price for a smaller property.

26. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £67.50/m^2 was warranted. Therefore, the appeal was dismissed.

Date: 4 January 2021

Appeal numbers: CHG100119373