THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; workshop and premises; level of value; rental evidence; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; appeal dismissed.

Re: Unit 3 Queens Court, Fletchers Way, Mansfield, NG19 0FN

APPEAL NUMBER: CHG100122672

BETWEEN:	School Blazer Ltd	Appellant
	and	
	Mrs J Moore	Respondent
	(Valuation Officer)	

PANEL: Mr A Jobanputra (Senior Member) and Mr A Asante

CLERK: Mrs S Morgan

REMOTE HEARING: Thursday 15 April 2021

PARTIES PRESENT: Mr A Simons of Altus Group - Appellant's representative

Mr M Allis – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel made no change to the appeal property's existing assessment of £35,500 rateable value (RV), effective from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Unit 3 Queens Court, Fletchers Way, Mansfield (the 'appeal property'), which was entered in the 2017 rating list as 'workshop and premises' at £37,250 rateable value (RV) with effect from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, School Blazer Ltd made an appeal to the Valuation Tribunal for England (VTE). The challenge submission was received on 3 April 2019. The grounds for the challenge were that the appellant's representative considered the RV of the appeal property was too high based on the rent passing on the property. The assessment was reduced at challenge stage from £37,250 RV to £35,500 RV. However, the appellant's representative sought a reduction to £32,250 RV.

4. 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.

5. 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.

6. Mr Simons appeared on behalf of the appellants 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), his declaration of truth included a statement 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 the client's case.

7. 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.

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

Issue

9. The appellant's representative contended that the rate adopted for the appeal property was excessive. He sought a reduction to £34.50/m² whilst the Valuation Officer (VO) contended that £38.00/m² (reduced from the original £40.00/m²) was reasonable.

Evidence and submissions

10. The appeal property is a terraced purpose-built portal frame building situated 2 miles east of Mansfield. The property was built in 2006 and has a total significant area of 947.40m^2. It is part of valuation scheme 577135, where the values range between £31.00/m^2 to £47.50/m^2. The unadjusted rate applied to the appeal property was £38.00/m^2.

11. The subject lease is held on a 5-year open market letting at a rent of £32,500 from 14 December 2015. The letting was close to the valuation date and is therefore the best rent available in determining the rateable value for the appeal property.

12. Mr Simons introduced a recent agreement for Unit 2, Queens Court, Fletchers Way, Forest Town, which had been agreed at £38.00/m^2 for a property measuring 532m^2. He argued that due to the difference in size, an element of quantum was justified in the appeal case, which was in existence in the 2010 List.

13. With regard to the other rents put forward by the respondent, Mr Simons contended that those properties were either in different locations attracting different rental markets or they were lease renewals rather than new leases close to the antecedent valuation date (AVD). Mr Simons contended that the comparable property evidence held little weight when the appeal rent was so close to the valuation date.

14. In relation to the tonal evidence introduced by the respondent, Mr Simons argued that those properties were not useful comparable properties as they were different types of property in different valuation schemes.

15. Mr Simons believed that the rent on the subject property and the recent agreement on the same scheme and development confirmed that the tone on the subject property was still excessive and that it should be reduced to £34.50/m^2. He sought a revised valuation of £32,250 RV with effect from 1 April 2017.

16. The rents put forward by Mr Allis were as follows.

Address	Total significant Area m^2	Adjusted Rent	Analysed rent per m^2	Adopted rate per m^2
Unit 3 Queens Court, Fletchers Way, Forest Town, Mansfield	947.40	£32,500 1/12/2015	£34.69	£38.00
Takbro Ltd Concorde Way Mansfield	953.69	£46,500 1/3/2017	£45.81	£40.00
Takbro Ltd Concorde Way Mansfield	953.69	£41,000 25/3/2012	£41.86	£40.00
Sovereign House, Sovereign Way Mansfield	1202.40	£67,000 1/10/2015	£51.34	£40.00

Unit 4B Isabella Court, Concorde Way Mansfield	860.64	£43,842 28/5/2015	£49.99	£40.00
Units A1-A3 Ratcher Court Ratcher Way, Forest Town, Mansfield	1026.42	£46,708 1/9/2014	£42.37	£38.00
2B Isabella Court, Enterprise Close, Millenium Business Park, Mansfield	913.81	£46,500 1/6/2017	£54.94	£39.00
Unit 15 Fox Covert Way, Forest Town, Mansfield	959.24	£50,000 1/3/2018	£51.12	£40.00

17. Mr Allis contended that it would be wrong to take the appeal rent in isolation. He argued that a basket of rents, as shown in the table, suggested that £38.00/m^2 was not unreasonable for the subject property. He made a case for each comparable property for its inclusion in the basket of evidence. Those properties in Ratcher Court and Fox Covert Way were the closest to the appeal property in terms of age, location and valuation scheme. One had an adopted value of £38.00/m^2 and the other at £40.00/m^2 . Based on the wider basket of rents, Mr Allis did not consider the rent on the appeal property itself to be typical of the rent paid for this type of property.

18. The other comparable properties in Concorde Way and Isabella Court in Mansfield had been placed in valuation scheme 426088, which covered the same value range as those properties in the same scheme as the subject property. Mr Allis was of the opinion that there was no marked difference in quality between the properties in either scheme.

19. In addition, Mr Allis referred to Units 1B & 7A Long Stoop Way, Forest Town and Robin Hood House, Strawberry Way, Forest Town, Mansfield as tonal evidence. These properties were older and much larger than the appeal property with adopted basic prices of £33.00/m^2 and £35.00/m^2, respectively. Robin Hood House had a 2014 extension of 929m^2 which had a base rate of £38.00/m^2, minus 2.5% for no heating. Mr Allis contended that the 2014 extension was of a similar construction to the appeal property. He asked the panel to confirm an RV for the appeal property at £35,500.

Decision and reasons

20. The main issue in dispute concerned the level of value to be adopted for the appeal property.

21. The term 'rateable value' is defined in paragraph 2(1), 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;

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".

22. 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).

23. 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.

24. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment 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.

25. The appellant's representative had contended that the best evidence was the rent for the subject property and therefore he had adopted the analysed rental figure of £34.69/m^2 (rounded to £34.50/m^2) in his revised assessment for this property. This rent was the closest to the AVD and it was a new letting. The respondent, on the other hand, argued that based on the wider basket of rents, £38.00/m^2 was reasonable.

26. The panel was aware that the rent on the appeal property was as the *Lotus and Delta* case found, to be the starting point. This was a December 2015 rent of £32,500pa, which devalued to £34.69/m^2. However, it was also aware that after the rent on the appeal property it was important to consider the whole basket of evidence when assessing a rateable value.

27. The respondent had provided a rental summary for a number of comparable properties. The panel noted that the analysed rents on the comparable properties ranged between £41.86/m^2 to £54.94/m^2 against the adopted base rates of £38.00/m^2 and £40.00/m^2. Based on the comparable properties, closest in terms of age and location, the panel found that the adopted value of £38.00/m^2 on the appeal property was not unreasonable.

28. The panel also noted that although Unit 2, Queens Court, Fletchers Way was smaller than the subject property, it had been agreed at £38.00/m^2. The panel was aware that it was not unusual to find properties measuring between 500m^2 and 1,000m^2 to be placed within the same price range.

29. Furthermore, the panel was unable to attach significant weight to the element of quantum between two units for the 2010 rating list as it was aware that the 2017 list was a separate entity.

30. Having considered all the evidence presented at the hearing, the panel determined that the assessment should not be reduced. The price per m^2 that had been applied to other similar aged industrial properties in the same locality and on the same valuation scheme supported the level of value adopted of £38.00/m^2 for the appeal property. This was towards the lower end of the price per m^2 range that had been applied to properties of this nature. It also reflected the size of the property. With this in mind, the panel was not persuaded to reduce the level of value any further for the appeal property.

31. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Wednesday 12 May 2021

Appeal number: CHG100122672