THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; retail warehouse and premises; price per m^2 in dispute; rental evidence; comparable assessments; the existing assessment was not shown to be unreasonable; appeal dismissed.

RE: Unit 5 Meteor Centre, Mansfield Road, Derby, DE21 4SY

APPEAL NUMBER: CHG100126809

BETWEEN	Topps Tiles plc	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mrs M Cole (Senior Member) and Prof I Solanke

CLERK: Mrs A Keohane

REMOTE HEARING 2: Thursday 15 April 2021

APPEARANCES: Mr A Simons of Altus Group on behalf of the appellant, as advocate and expert witness
Mr M Allis on behalf of the Valuation Officer as advocate and expert witness

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Summary of decision

1 Appeal dismissed. No change was made to the appeal property's existing assessment of £79,000 rateable value (RV), 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. Unit 5 Meteor Centre, Mansfield Road, Derby, DE21 4SY (the 'appeal property') had been entered in the 2017 rating list as 'Retail Warehouse and Premises' at £79,000 RV with effect from 1 April 2017.

5 The challenge proposal, submitted by Altus Group on behalf of Topps Tiles plc, was received by the Valuation Officer on 18 September 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £51,750 RV was proposed with effect from 1 April 2017, based on a rate of £95/m^2.

6 The Valuation Officer issued a challenge case decision notice on 11 September 2020, which stated that based upon the evidence and information available, the existing rating list entry of £79,000 RV based on £145/m^2, was considered to be reasonable and no amendment would be made.

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 15 January 2021.

8 As Mr Simons appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

9 Mr Simons declared that he was instructed under a contingency based fee. He confirmed 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.

10 The expert witness evidence was accepted 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 Procedure regulations 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). The "expert" evidence was considered, and the panel attached weight to it as it saw fit.

11 Mr Simons submitted an Expert Witness Report (EWR) that had not been available or exchanged during the challenge process. Mr Allis objected to its inclusion as he considered it was not a requirement of, nor in the spirit of, the rating regulations. He also pointed out anomalies with the appeal property's

rental evidence contained therein and noted that the revised valuation proposed by Mr Simons did not appear to be calculated correctly as the figures did not add up.

12 The inclusion of the EWR was discussed, Mr Simons affirmed that it contained information previously exchanged that had been 'tidied up' to assist the panel. Through discussions the rental discrepancy was clarified, and Mr Simons recalculated and corrected his proposed valuation for the appeal property. In the interests of progressing the appeal, Mr Allis accepted the EWR and the panel continued to hear and determine this appeal.

13 The appeal property is a retail warehouse of 546.50m^2 in terms of main space (ITMS), situated on Meteor Retail Park. At the date of the challenge proposal it was held by the appellant on a leasehold basis by way of a long 35-year lease, effective from 1988 with a rent of £112,700 per annum (pa). This was set in March 2008 with nil increases at both the March 2013 and March 2018 rent reviews.

14 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 it being overlooked by the panel.

Issue

15 The issue in dispute was the price/m^2 to be adopted in the appeal property's rating assessment. The Valuation Officer contended for the existing rate of £145/m^2. Mr Simons argued that his revised rate of £113.50/m^2 was more reasonable.

Evidence and submissions

16 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: the appellant's challenge submission and full supporting information; the Valuation Officer's initial response; the exchanges of evidence between the parties; the Valuation Officer's challenge case decision notice, rental and assessment evidence; location plans; photographs and details of properties cited by the parties as comparable.

17 To support his revised valuation of £62,000 RV based on £113.50/m^2, Mr Simons outlined in his challenge documentation and oral presentation the reasons he believed the appeal property's current valuation was not reasonable. Very briefly these included:

i. Unit 3b (Arm Furniture) Meteor Centre, Mansfield Road, Derby, DE21 4SY, (849.85m^2 ITMS). The property was subject to a 2015 rent that had been analysed to around £103/m^2 (the Valuation Officer's analysis had produced £113.44/m^2). This property's assessment had been based on £140/m^2 and this had been reduced to £110/m^2 following a challenge proposal.

ii. Part Unit 3, Meteor Centre, Mansfield Road, Derby, DE21 4SY, (935m^2 ITMS). This 2015 rent had analysed to around £117/m^2. The assessment had been based on £140/m^2 but again this had been reduced to £110/m^2 following a challenge proposal.

iii. Unit 4 (Dreams) Meteor Centre, Mansfield Road, DE21 4SY, (1080.40m^2 ITMS). This property has subsequently been split. However, it had been subject to a 2014 rent that had been analysed to around £82/m^2. Its rating assessment had been based on £110/m^2.

iv. In the initial challenge proposal, the details of Unit 1 Meteor Centre had also been referred to; its assessment was based on £95/m^2. Mr Simons now accepted that this was not the best comparable property, being over seven times larger than the appeal property.

18 Mr Simons acknowledged that the properties he had quoted were larger than the appeal property. However, he considered that the higher price of £113.50/m^2 on which his proposed assessment was based reflected this. He argued that the units would attract similar operators and there was no evidence to suggest the comparable properties should be valued at a level of over 20% lower than that applied to the appeal property. Having regard to his evidence, Mr Simons requested the panel to allow his revised valuation of £62,000 RV with effect from 1 April 2017.

19 On behalf of the Valuation Officer, Mr Walker referred to the rental and assessment schedules he had provided. In the challenge decision and in his oral presentation, he outlined the following:

i. The details of Unit 1 were not considered relevant to this appeal as it had an area ITMS of approximately 3980m^2. It was therefore around seven times larger than the appeal property and would achieve a lower price/m^2.

ii. The rental evidence referred to by Mr Simons related to larger properties. The schedule of comparable properties he had provided set out the rates applied to properties in this locality. The rates applied to the larger properties were lower than those applied to properties of the appeal property's size.

iii. The appellant had been in occupation of the appeal property since 1988. A rent review had taken effect in March 2013, resulting in a nil increase. The rent of £112,700 had analysed to £206/m^2.

iv. Unit 4a was of a similar size to the appeal property and had been subject to a new letting with effect from November 2018. The rent analysed to £173/m^2. Whilst this rent had been set some 3 years post the antecedent valuation date (AVD), it did not suggest that the £145/m^2 applied in the appeal property's current assessment was unreasonable.

20 Mr Walker contended that all of the rental evidence had been considered. However, the majority related to the larger units and it was usual for smaller

units to attract a higher price/m^2. The most weight had therefore been attached to the rents of unit 4a and the subject, which showed that an assessment based on £145/m^2 was not unreasonable.

Decision and reasons

21 In arriving at its decision, the panel was 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, provided that:

> "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 –
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> 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;
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> 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 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.

25 In this appeal, the rent of the subject property had been reviewed in March 2013, this had resulted in a nil increase. The rent had remained at £112,700 pa, which the Valuation Officer had analysed to £206/m^2. As outlined in *Lotus and Delta*, the starting point was the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the

statutory requirements need to be taken into account when deciding the weight to attach to it. Given the rent review had taken place some two years prior to the AVD, the panel found this rental evidence less persuasive.

26 Consideration was therefore given to the rental evidence provided for other properties in the appeal property's locality. From this it was established that the rents that had been set in 2014 and 2015 were in respect of properties of 849.85m^2 and above ITMS.

27 Within the rental schedule, there was only one property of a similar size to the appeal property, namely, 4A Meteor Centre, a property of 526m^2 ITMS. Its rent had analysed to £173/m^2. However, the panel acknowledged that the rent had been set some three years after the AVD and therefore it was not the best evidence in this appeal.

28 Having found little assistance from the rental evidence, the panel had regard to the assessment details of the other properties at the Meteor Centre. From this it noted the following:

- Properties of around 378m^2 and 447m^2 ITMS had assessments based on a rate of £150/m^2

- Properties of around 526m^2 and 546m^2 ITMS had been valued using a rate of £145/m^2. One of these was the appeal property.

- Most of the properties of between 849m^2 and 1871m^2 ITMS had been valued using a rate of £110/m^2. The comparable properties relied on by Mr Simons fell within this larger size category.

- A property of around 3980m^2 ITMS had been valued using a rate of £95/m^2.

29 In consideration of all of the evidence presented, the panel found that the rates applied in the assessments of properties in this locality as shown in the summary schedule, had established a pattern of values. This pattern supported the Valuation Officer's contention that the rates applied to larger properties, were lower than those applied to properties smaller in size. In considering this pattern, the panel was persuaded that the value applied to the appeal property was not unreasonable. It fell in line with the pattern of values and was supported by the price applied in the assessment of the property closest in size in the locality.

30 On balance, the panel considered it had not been demonstrated that the appeal property's current assessment of £79,000 RV, based on a rate of £145/m^2 was not reasonable. The subject appeal was therefore dismissed.

Date: 11 May 2021

Appeal Number: CHG100126809