THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Warehouse and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed

RE: Units 6A and 6C, Kirkless Industrial Estate, Cale Lane, Wigan WN2 1JR

APPEAL NUMBERS: CHG100132835 and CHG100132840

BETWEEN:	J&A Walker Kirkless Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Ms C Caiquo (Senior Member)
Mr JM Imperato

CLERK: Miss K Hendry

REMOTE HEARING on Thursday 13 May 2021

APPEARANCES: Mr T Bellis of Parkinson Real Estate
Ms K Mackinnon for the Valuation Officer

Summary of decision

1. The appeals were dismissed and the appeal properties' assessments remained unaltered at £16,250 Rateable Value (RV), for Unit 6A and £15,250 for Unit 6C with effect from 1 April 2017.

Introduction

2. These were 2017 rating list appeals made following the Valuation Officer's Challenge Case Decision Notice which was issued on 15 October 2020 for both units following a challenge submitted on 14 August 2019.

3. Unit 6A, Kirkless Industrial Estate had been entered in the 2017 rating list with a rateable value of £16,250 with effect from 1 April 2017 are warehouse and premises. The appellant was seeking a revised rateable value of £10,400.

4. Unit 6C had been entered in the 2017 rating list with a rateable value of £15,250 with effect from 1 April 2017 are warehouse and premises. The appellant was seeking a revised rateable value of £9,950.

5. 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.

6. 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.

7. As Mr Bellis 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 her/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).

8. It was established that Mr Bellis's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision.

9. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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 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).

11. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

12. The appeal property is an industrial property in a block of three which consists of units 6A, 6B and 6C. It was built circa 1920's of brick. It is unheated. The total gross internal area for Unit 6 is 818.72m^2. The gross internal area for Unit 6C is 768.42m^2. Kirkless industrial estate is located off Cale Lane in Aspull, Wigan.

13. 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

14. The issue between the parties concerned the rateable value of the appeal property's and, specifically, the rate per m^2 that should apply.

Evidence and submissions

15. The appellant's representative, Mr Bellis had provided the Tribunal with both parties' submissions.

16. Mr Bellis provided the following evidence in support of a reduction in the rateable value;

a) The key rent on the adjacent property, Unit 6A Kirklees industrial estate (which was let on 1 May 2018 at a rent of £10,400pa on full repairing and insuring terms (FRI) which was analysed at £12.94m^2. Mr Bellis stated that this is the best evidence.

b) Rents provided on four properties located on Kirkless industrial estate ranging in size from 89.1m^2 to 3,647.1m^2 with effective dates between January 2017 to March 2019 have been analysed between £8.83m^2 and £29.50m^2.

c) Of the evidence provided by the VO, only three would be considered to the best evidence, these are Suite 22, Unit E and Unit F Kirkless Industrial estate. These units have effective rents between December 2014 and December 2016. However these units are significantly smaller than the two appeal properties with areas between 68m^2 to 85m^2, circa 8 to 11 times smaller. The derived price per square metre is not useful due to factors around quantum and therefore provide for weak evidence.

d) The VO has provided detail of a letting of Unit 6A, the appeal property which was let in February 2017 to what the VO has analysed at £11.65m^2. No further evidence was provided by the VO for this unit. However, it is known that unit 6A has let a number of times since 2009. It was let in August 2010 on the basis of 5 year FRI at a rent of £7,800. Then re-let in February 2017 on a lineal growth analysis this would suggest that the rent as at AVD would be circa £9,100. It is noted that unit 6A has never been let at a rent higher than £9,620 per annum over the last 10 years or so and there have been three lettings of the unit over that time.

e) Unit 6C, has never been let in excess of £8,320 per annum since July 2009 to present. In November 2012 it was let on a 4 year FRI lease at £7,800 and relet in September 2017 on a 12 month FRI lease at £7,800. This would suggest a rent as at AVD of £7,800.

f) Whilst the owner does not utilise the services provided by an estate agent to market the accommodation, he has had an involvement with the whole industrial estate going back decades and is proficient in marketing the units himself. He would not accept rents below what would considered to be "market rent" for any of the units.

17. To support the rateable value in the 2017 list, Ms Mackinnon relied upon the following evidence:

a) The VO disagrees that the primary evidence are the two rents on Unit 6A effective from February 2017 and May 2018 which analyse to £11.65m^2 and £13.26m^2. The analysis of the rents is 'out of kilter' with other rents on the estate.

b) The appellant had referred to rents on Units 10, 12, 51 and Units 8 and 11. The VO disagreed with how the appellant's representative had analysed the rents by deriving the rent by the size of the property. No adjustments had been made for the lack of heating. Furthermore, all the rents were three to four years post the antecedent valuation date (AVD) of 1 April 2015. These units range in size from 89.1m^2 to 3,647.1m^2.

c) Ms Mackinnon referred to rental evidence derived from Forms of Returns for properties at Kirkless Industrial estate ranging in size from 68.1m^2 to 1,509.10m^2 with effective dates from October 2012 through to April 2019. Ms Mackinnon had attached greater weight to rents on new lettings, rent reviews and lease renewals close to the AVD.

    i. Unit F Kirkless Industrial estate had a rent effective from December 2014 which analysed to £50.20m^2. Size 89.10m^2

    ii. Unit 3/3A Kirkless Industrial estate had a rent effective from January 2017 which analysed to £94.02m^2. Size 138m^2

    iii. Unit 14 Kirkless Industrial estate had a rent effective from April 2018 which analysed at £18.48m^2. Size 405.30m^2.

d) Some of the comparable properties were smaller or larger than the appeal property but when applying quantum, support an unadjusted rate of £21m^2.

e) Mr Bellis has argued that the rental evidence on Unit 6A has never let in excess of £9,620pa over a ten year period but the property is currently let at a rent of £10,400pa. Mr Bellis has said that there has been three lettings over a ten year period but the rental evidence has not been disclosed. The VO did not provide evidence on Unit 6A as this property along with Units 6B and Unit 6C were only created in the valuation list with effect from 13 February 2017. This is from a reconstitution of Camac Ltd Unit 6B Kirklees industrial Estate at RV £9,200 in the 2010 list and Unit 6 at £23,250 in the 2010 list.

f) With regard to Unit 6C, which the representative has said has never been let in excess of £8.320pa since 2009,it is currently owner occupied.

g) Planning permission was granted around 2017 to redevelop the Kirkless Industrial estate, to demolish the site and construct residential dwellings. The uncertainty of the long term future of the industrial estate may impact the rent the hypothetical tenant would pay. Rents from at least 2017 onward could reflect this uncertainty.

h) The units are not marketed professionally by an estate agent or a commercial property agent but by 'word of mouth' in some cases and does not act like a hypothetical landlord.

i) Comparison has been made against other industrial properties in Wigan in similar locations, age and size as a cross check. The unadjusted value applied to the appeal property is lower than had it been valued by reference to the general industrial scheme for Wigan for properties constructed A1-A3 (built pre 1900-1939). And also at Sovereign Industrial estate which would value the appeal property at £17,150 equating to £21.87m^2. Industrial properties of the same size as the appeal property at

Bradley Hall Trading estate are valued at £27m^2, Bridgewater Business Park are valued at £26m^2 and Brook Mill are valued at £39m^2.

j) Mr Bellis accepts that there is a higher assessed tone at several other industrial estates throughout Wigan but argues that Kirkless industrial estate has problems with accessibility to the estate via a narrow single track bridge with weighting restrictions impacting heavy goods vehicles (HGV) to the estate. Ms Mackinnon accepts that access to the estate is gained via a single vehicle bridge on Cale Lane over the Leeds and Liverpool canal. However, there are no warning signs regarding weight restrictions over the bridge apparent. Moreover, this was also not the only route of access onto the industrial estate.

Decision and reasons

18. 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".

19. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the AVD.

20. The parties had referred to the Lands Tribunal decision in *Lotus and Delta* which provided guidance on the weight to be attached to rental and assessment evidence. The rent was considered the starting point and more weight was attached to those rents closest to the statutory criteria of rateable value and which were agreed closest to the AVD. Other rents were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. Other comparable assessments were also relevant but to a lesser degree. In light of all the evidence an opinion could be formed on the rental value of the appeal property, the weight to be attributed to the different types of evidence depending on one hand on the nature of the actual rent and, on the other hand, the degree of comparability found in other properties. In those cases where there were no rents available for comparison, a review of other assessments may be helpful, but in such circumstances, it would clearly be more difficult to reject the evidence provided by the actual rent.

21. The rent in respect of the appeal property was from 1 May 2018. The panel considered this rent to be too far removed from the AVD, given that it was three years post AVD, and place little weight on this evidence alone and considered it with the basket of evidence. The panel were also aware that planning permission had been granted for demolition/ redevelopment of the estate which could impact the level of rent.

22. The panel noted that the few rents Mr Bellis had referred to were all post AVD and placed little weight on them.

23. The Valuation Officer had provided a basket of rents for all the units on Kirkless industrial estate. Having regard to the rents, the panel noted that units 8 and 11 were larger at 1509.10m^2 and had a rent of £32,240 p.a. which was effective in April 2018 which analysed to £18.94m^2. The next size unit, Unit 14, measured half the size of the appeal properties at 405.30m^2. This had a rent from October 2012 which analysed at £22.91. The rent for this property was £11,309 p.a. in comparison to the appeal properties rent of £10,400 for Unit 6A and. The panel concluded that the rent for the appeal property did appear to be lower than the market value.

24. With regard to Unit 6C, the panel noted that the unit did not exist in November 2012 as Units 6A and 6C came into the 2010 rating list and were merged together to form Unit 6 with effect from November 2012. Therefore the rent referred to in November 2012, there was no individual assessment in the rating list for Unit 6C. Mr Bellis stated that he was not aware that the units were merged at this time and was happy for this not to be included as evidence as he had not based his case on this evidence but rather the rent on Unit 6A. Therefore, the panel did not place any weight on this rent.

25. In light of all the evidence, the panel were not persuaded by the appellant's argument that the assessments were excessive and determined not to reduce the rateable value for either unit 6A or 6C. The panel was satisfied that the Valuation Officer's valuation of the appeal property's was reasonable.

26. Accordingly, the appeal fails and must be dismissed.

Date: 11 June 2021

Appeal numbers: CHG100132835 and CHG100132840