VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and Premises; accuracy of rateable value; rental and comparable evidence considered; Allowances; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.

RE: Kays Medical, 1 Windward Drive, Estuary Commerce Park, Liverpool, L24 8QR

APPEAL NUMBER: CHG100140508

BETWEEN:	Kays Medical Ltd	Appellant
	and	
	Ritchie Roberts	
	(Valuation Officer)	Respondent

PANEL: Ms L Sharkey (Senior Member)

Mr A Wheeler

CLERK: Mr L Bertie

REMOTE HEARING ON: 10 March 2021

APPEARANCES: Ms S Attwood of Colliers for the Appellant.

Mr D Hetherington for the Valuation Officer.

Summary of decision

1. Appeal dismissed.

Introduction

2. The appeal before the panel was received against the Valuation Officer's (VO) final Decision Notice of 24 August 2020 in respect of the appeal property and the RV of £228,000, with a description of Warehouse and Premises. This was a compiled list appeal, so the material day was 11 December 2017. At the challenge stage the VO's decision was to treat the appellant's proposal as not well founded and the entry of £228,000 RV with effect from 11 December 2017 was deemed as correct. The appellant sought a lower rateable value.

3. 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.

4. 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.

5. Ms Attwood appeared on behalf of the appellant 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), Ms Attwood's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

6. Ms Attwood in her declaration declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her 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).

8. The Valuation Officer's representative, Mr Hetherington, advised the panel that he appeared as an advocate for the case but was an expert on general valuation matters.

9. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. 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 an indication that that statement or item of evidence has been overlooked by the panel.

10. The subject property comprises a three storey warehouse and premises built in 2017 of a steel portal frame. It is situated near the entrance to Estuary Commerce Park, on the junction of Speke Road and Estuary Boulevard on an industrial estate with mainly other industrial properties with office space. The area of the subject property is 4735.31 m^2 in total with a base rate of £45 per m^2 , which includes a self contained, three storey office block totalling 1507.53 m2. It is owner occupied.

Issue

11. The issue between the parties concerned the RV of the appeal property and specifically, the £m2 rate that should apply. The Appellant sought a reduction based on a £m2 of £40 to £176,000. Mr Moran for the VO sought to defend the existing RV of £228,000 which was based on £45 m2.

Evidence and Submissions

12. It was the Appellant's contention in her challenge, that the rateable value of the appeal property was incorrect as it was in the incorrect valuation scheme and should be in valuation scheme (448829) and no account had been taken of the high office content in the appeal property . She argued that the adopted rate of £45 per m^2 was excessive and should be reduced to a lower base rate of £40 adjusted to £39 m2 and RV 176,000 effective 17 December 2017.

13. The Valuation Officer considered that rental and assessment evidence of similar properties in the locality indicated that the appeal property should be in valuation scheme (432622). This scheme takes account of industrial properties located in Estuary Banks, Estuary Commerce Park L24.

14. He sought a confirmation of £228,000 Rateable Value effective from 17 December 2017 and a dismissal of the appeal.

Decision and reasons

15. The panel is satisfied that, for the purposes of the 2017 Rating List, it must seek to assess the value of the appeal property as the open market annual rent that could reasonably be achieved for it at the antecedent valuation date of 1 April 2015, as set out in the statutory definition of rateable value provided by paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 as amended by section 1(2) of The Rating (Valuation) Act 1999.

16. The statutory definition which is set down in Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988

17. Rateable Value is defined 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 the assumption that:

(a) the tenancy begins on the day by reference to which the determination is to be made;

(b) 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; and

(c) the tenant undertakes to pay all usual tenants rates and taxes and to bear the cost of repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command that rent mentioned above.

For the purpose of determining the rateable value of a hereditament for both compilation and maintenance of a rating list, the day by reference to which the determination is to be made (the valuation date) is by paragraph 2 sub-paragraphs (3) and (4) of Sch. 6 either:

(a) the day on which the list must be compiled, or

(b) such day preceding that day as may be specified by the Secretary of State by order in relation to the list.

18. For all Rating Lists compiled post 1990 a day preceding the compilation date has been set, in all cases the date precedes the compilation date by 2 years and has become known as the Antecedent Valuation Date (AVD).

19. The Antecedent Valuation Date of 1st April 2015 has been specified for England for the purpose of the 2017 Rating List in accordance with the Rating Lists (Valuation Date) (England) Order 2014. As the property did not enter the 2017 Rating List until 11 December 2017 , this was the material day

20. In line with the decision in *Lotus and Delta v Culverwell (VO) [1976] RA 141* , the panel would usually look to any rental evidence to support the correctness or otherwise of the appeal property. However, as there was no rental evidence submitted on the subject property as it was freehold, the panel looked at comparable rental and assessment evidence on other properties in the locality, submitted by both parties.

21. The appellant's representative submitted evidence on 4 Renaissance Way Liverpool which was objected to by the Valuation Office representative as he considered it was new evidence.

22. The Clerk advised the panel to apply the three stage test in *Denton v TH White Ltd* [2014] 11 WLR 3926 as no notice had been served under. Regulation 17(A) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended).Having applied the test, the panel determined that the appellant had unknowingly breached the tribunal's directions by not submitting the rental evidence to the respondent, during the challenge stage although she had mistakenly thought that it had been included in her earlier submission at check stage. The respondent had not had

sight of the evidence prior to the hearing and the appellant was unable to give the panel any good reasons why the respondent would not be prejudiced if it was admitted.

23. After a taking a short adjournment to consider this issue the panel determined that this was a significant breach of the standard directions and the respondent was prejudiced by this breach, the panel decided not to admit the new evidence from the appellant on the basis that the breach was significant and that prejudice would be caused to the respondent, if the material was admitted

24. The appeal property is in valuation scheme 432622 which had value ranges from £40.00, to £55.00 per square metre (or per unit, if appropriate).The value is applicable to all industrial properties in Liverpool Billing Authority situated at Estuary Banks, Estuary Commerce Park, Liverpool, L24.

25. In the opinion of the appellant's representative, Seqirus Boulevard Industry Park, Gaskill Road, Liverpool, L24 9GR which was 4,132 m2 in size and close to the appeal property was the best comparable as it was of better quality and had better access but had a £m2 rate of £43. This comparable property was in valuation scheme 448829 which had value range from £38.00, to £65.00 per square metre (or per unit, if appropriate).The value is applicable to general industrial properties in Liverpool Postal Codes L19 and L24 which are not subject to individual schemes of valuation. Built post 2000 or being of a similar standard and quality to a property of this age.

26. The panel noted the rental evidence of comparable properties from the Valuation Officer on GEFCO UK, Estuary Boulevard, Estuary Commerce Park,Liverpool L246RB which was a new warehouse, 12153.50 m2 in size in the same locality. The adjusted rent passing for the new 15 year lease was £565,312 from 1 July 2017 with 5 yearly rent reviews with a 1 year rent free period with building insurance shared between landlord. This rent was analysed at £44.52 m2 with an adopted rate of £40 m2 because of its larger size; Classic Couverture, Estuary Banks, Estuary Commerce Park, Liverpool, L24 4RB , a Factory and Premises, 6113.17 m2 in size. There was an adjusted rent passing of £333,846 p.a. from 1 June 2018 for a 13 year 3 month lease renewal with 5 year reviews on FRI terms. The rent analysed at £73.24 m2 and an adopted rate of £45.00 m2; 19 Stonebridge Business Park, Sugarbrook Drive, Liverpool L11 2BD, Warehouse and Premises, 6155.75m2 in size. The rent passing was for a new letting of an adjusted rent of £451,513p.a. from 1 December 2015. It was on a 25 year lease with 5 yearly reviews with the landlord responsible for insurance. The analysed rate was 68.52 m2 with an adopted rate of £45.00 m2; Plot 7 Renaissance Way, Speke, Liverpool L24 9HZ, a Warehouse and premises, 11593.10m2 in size. The rent passing was for a rent review of an adjusted rent of £632,215p.a from 21 August 2013. It was on a 25 year lease with 10 years unexpired term with 5 yearly reviews with the landlord responsible for insurance. The rent analysed at £52.97 m2 and an adopted rate of £37.50 m2 and 25 Estuary Boulevard , Estuary Commerce Park, Liverpool L24 6RF, a Workshop and Premises, 13763.40m2 in size. The rent passing was for a new letting of an adjusted rent of £812,000 p.a. from 1 April 2014. It was on a 15 year lease with FRI terms. The analysed rate was 57.75 m2 with an adopted rate of £40.00 m2.

27. Additional comparable rental evidence was submitted on 4 modern industrial properties in Liverpool and Warrington which were between 6299.40 m2 -7976.00 m2 in size which had a high office content. This rental evidence showed adopted rates 22.00 m2 -48.00 m2 between August 2012- July 2015 which importantly indicated that no allowance for a high office content had been applied.

28. Moreover, further comparable assessment evidence was submitted on 7 other modern industrial properties with high office content in Liverpool which showed one adopted rate of £22 m2 , whilst the majority were between £38.00 m2- £52.50m2. This, the panel concluded indicated that no reduction for a high office content had been applied to the prevailing £m2 rate .

29. The panel was referred by the appellant's representative to several of the VOs comparable properties which she considered should be given less weight because they were in a better position, had a better layout or was larger at 12153.5m2 (31 Estuary Boulevard, Estuary Commerce Park, Liverpool); the rental evidence was too remote from the AVD (Classic Couverture, Estuary Banks, Estuary Commerce Park, Liverpool, L24 4RB) or was in a different locality (19 Stonebridge Business Park, Sugarbrook Drive, Liverpool L11).

30. The panel noted that whilst not all of the rental evidence was of rents agreed near to the AVD, the comparable properties of the Valuation Officer came from the same locality and were a similar age. These rents were considered by the panel to be reliable in establishing the level of rent that might otherwise be achievable for the appeal properties at 1 April 2015 in this locality and the figure of £45.00 m2 did not appear unreasonable.

31. The panel noted the comparable properties referred to by the representative, which she considered supported her contention that the appeal property should be in a different valuation scheme. However, the panel found no support for this contention as the purpose of the scheme was to collect evidence based on properties of similar rental levels, age , construction within a particular locality. Consequently, less weight was given to these comparable properties.

32. The Panel in taking account of the evidence placed the greater weight on the Valuation Officer's evidence as it was of properties in close proximity to the appeal property and reflected prices based on the sizes of the units, which did not indicate that a price per m^2 of 45.00 was excessive for a unit of this size.

33. Moreover, the panel found that there was no substantive evidence submitted by the appellant's representative that indicated that any allowance for a high office content was warranted on the appeal property.

34. In this case, while the panel notes the parties' respective submissions regarding the underlying value of the appeal property in the 2017 Rating List, the panel was persuaded that the Valuation Officer's representative proposed lower rate of £45.00 m^2 for the appeal property being based on the analysed rental evidence and its size, was not excessive.

35. The Panel was mindful that the onus of proof is on the appellant to demonstrate that a reduction was warranted. In this instance, the appellant had failed to convince the Panel

that a lower Rateable Value than that contended for by the Valuation Officer's representative was appropriate.

36. The appeal was therefore dismissed.

Date: 6 April 2021

Appeal number: CHG100140508