THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; accuracy of rateable value in list; removal of land for access sought; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

RE: Unit 3, The Depot at Bannisters Yard, Mayes Lane, Essex CM2 7RP

APPEAL NUMBER: CHG100141931

BETWEEN:	S R B E Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mrs M J Cole (Senior Member)
Mr K Sutch

CLERK: Mrs A Keohane

REMOTE HEARING ON: Thursday 28 October 2021

APPEARANCES: Mr M Clayton of Altus Group on behalf of the appellant as advocate and expert witness
Mr L Stevens on behalf of the respondent as advocate only

Summary of decision

1 Appeal allowed in part. The appeal property's assessment was reduced to £43,500 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 The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The panel was satisfied that all parties were able to fully participate in the hearing.

5 This is a 2017 rating list appeal that has been brought in respect of Unit 3, The Depot at Bannisters Yard, Mayes Lane, Essex CM2 7RP (the ‘appeal property’), entered into the rating list as a ‘Factory and Premises’ at £48,500 RV with effect from 1 April 2017. This assessment was based on an unadjusted rate of £34/m^2.

6 The challenge proposal was submitted by Altus Group on behalf of the appellant and was received by the Valuation Officer on 14 November 2019. The proposal sought a reduction in the appeal property’s assessment to £15,250 RV, based on an unadjusted rate of £20/m^2, with an allowance of 27.50% to reflect locality, and omitting a large section of the associated land.

7 The Valuation Officer issued a challenge case decision notice on 4 February 2021 which stated that based upon the evidence and information available, the current rating list entry was reasonable, and the rating list would not be altered.

8 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was made to this Tribunal on 2 June 2021.

9 The appeal premises is described as a ‘factory and premises’ and is an industrial unit with associated land. It is situated on a small industrial estate in an urban area on the outskirts of Chelmsford with the A12 less than half a mile away. The assessment comprises a unit with ground and first floor space, with a total area of 793.40m^2 and the associated fenced land, both surfaced and unsurfaced is over 2600m^2 in total.

10 Mr Clayton’s declaration confirmed that he appeared as expert witness and surveyor-advocate on a contingency based fee. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Clayton confirmed that he understood 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.

11 The panel considered the “expert” evidence and assessed what weight, if any, to give it in the context of the matters at issue.

12 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 item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issues

13 The appellant’s representative contended that a large amount of the existing hard surfaced, fenced land should be removed from the appeal property’s assessment as it was required for access. There was no dispute between the parties over the level of value to be applied to this land, both parties had adopted £10/m^2. A reduction in the price/m^2 adopted for the unit was also sought. The Valuation Officer maintained that the appeal property’s current assessment was correct.

Evidence and submissions

14 The bundle provided by the appellant’s representative comprised all of the documents exchanged between the parties as part of the challenge process, together with an Expert Witness Report. This bundle included: a copy of the challenge submission and supporting evidence; the Valuation Officer’s initial response; rental evidence; comparable property evidence; lease details; relevant case law and legislation; photographs of the appeal property; respective valuations; summary valuations for properties cited as comparable; location plans; copies of correspondence between the parties and the Valuation Officer’s challenge case decision notice.

15 During correspondence between the parties, a number of issues had been addressed and as a result Mr Clayton had revised his proposed valuation several times. He was no longer contending for the assessment proposed in his challenge documentation of £15,250 RV (based on £20/m^2), or £25,750 RV (based on £26/m^2) but an assessment of £30,250 RV based on £27.50/m^2. A separate allowance of 27.50% was no longer being pursued.

16 Mr Clayton explained that the appeal property’s current rent was £15,528 per annum (pa), following a lease renewal on 25 December 2018. The lease was for a nine-year term with a break and review in year 5. The previous rent had been £15,164 pa from 25 December 2012.

17 The appeal property had been valued in accordance with the Valuation Office scheme 357235, which covered properties on Mayes Lane, and its assessment was based on an unadjusted price of £34/m^2. Mr Clayton argued that properties comparable to the appeal property had been placed in scheme 357385, which related to basic industrial properties in the Chelmsford area. He believed the appeal property fell within this scheme due to its basic nature and the level of rent it commanded. The values applied to properties in this scheme ranged between £21/m^2 to £27.50/m^2.

18 The appeal property comprised 1657m^2 in total, of hard surfaced fenced land valued at £10/m^2. In his revised assessment Mr Clayton had removed 1217.89m^2 of this, as land required for access. He considered the removal of this land was supported by the low rent agreed for the property. As some of the hard surfaced fenced land was capable of storage use, 439.11m^2 remained within his revised valuation, along with 1033.60m^2 of unsurfaced fenced land.

19 To support the removal of access land, Mr Clayton confirmed that he had recently agreed the assessment of a property in Stevenage based on the land in front of

the building being removed entirely from the valuation, as it was used to access the loading doors.

20 Having regard to the above, a revised assessment of £30,250 RV with effect from 1 April 2017 was sought, which Mr Clayton considered was fair having regard to the passing rent and when taking a stand back and look approach in the final part of the valuation process.

21 Mr Stevens confirmed that he was in attendance as advocate, and that he had not inspected the appeal property.

22 With reference to the appeal property's rental evidence, Mr Stevens considered that it was unreliable due to its distance from the antecedent valuation date (AVD) of 1 April 2015. The Valuation Office held two forms of return (FOR) that confirmed the rental details provided by Mr Clayton, however, it was indicated in relation to the 2012 rent that it had been set on an 'other basis' and had been agreed with the landlord on what the occupant could afford to pay. Therefore, Mr Stevens contended that the rent required closer scrutiny in terms of comparable properties and their passing rents.

23 Mr Stevens confirmed that an appeal had been submitted by a local surveyor, against the appeal property's 2010 rating list assessment of £44,500 RV. Following an exchange of evidence, the appeal was withdrawn in November 2015. He considered it unlikely that the appeal property's value was substantially less now, than it had been at the time of the withdrawal of the 2010 rating list appeal.

24 In the challenge decision, the appeal property's rent had been analysed by removing the disputed land, this had resulted in a rate of around £12.72/m^2 for the Unit. Mr Stevens confirmed that this level of value was not supported by any of the values applied to industrial units in the vicinity. The appeal property had been assessed on the basis of £34/m^2 and rental and assessment evidence had been provided for comparable properties to support this level of value. The comparable properties had been assessed at a similar level to the appeal property or above, and none of the assessments had been challenged under the CCA process. No allowances had been given in the assessments of Units 1 & 2 The Depot and Unit 4 Bannisters Yard, to reflect access or location.

25 Having regard to the Valuation Officer's evidence, Mr Stevens considered the present assessment was correct and sought dismissal of the appeal.

Decision and reasons

26 The appeal hereditament must be valued for the purposes of non-domestic rating on the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988).

27 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).

28 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 was 1 April 2017.

29 Within the submissions was reference to the decision of *Lotus and Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA141. This decision provided guidance on the weight to be attached to rental and assessment evidence; the starting point being the rent passing on the subject property.

30 The panel considered the rents submitted for the appeal property, which had been set some time prior to and post the AVD. These rents, although negotiated six years apart, showed very little rental growth between the two dates. The panel considered that this could be reflective of the information on the FOR, that the 2012 rent had been agreed on an 'other basis', namely that it was set at a level the tenant could afford. On balance, the panel found the 2018 rent too far removed from the AVD to be useful in this appeal and it had doubt over whether the 2012 rent represented the appeal property's true open market value. Consequently, the rental evidence was not found to be determinative in this appeal.

31 The following rental evidence had been provided by the Valuation Officer; all of the properties were within the CM2 7** postcode area.

- R/o 36 Church Street. The rent, effective from 1 April 2014, adjusted to £80,577, which analysed to £63.83/m^2. The assessment was based on £35.21/m^2.

- The appeal property had a rent of £15,164, effective from 25 December 2012. The assessment was based on £34/m^2.

- Units 2, 5, 20 and 21 and 21D Baddow Park. The rent, effective from 1 October 2016, adjusted to £79,534, which analysed to £46.22/m^2. The assessment was based on £35/m^2.

- The Stone Co at Manor Farm on Sandford Road. The rent, set on 1 January 2016, adjusted to £118,948. The assessment was based on £45/m^2.

32 The panel found that the rent for R/o 36 Church Street had been agreed between connected parties. The rent for Units 2, 5, 20, 21 and 21D Baddow Park related to a number of different buildings, with higher eaves height. This cast doubt over this property's comparability to the appeal property and ultimately the usefulness of this rent. The rent of Stone Co at the Manor Farm was also identified as complex but had been included as it had been agreed close to the AVD and was in excess of the RV ascribed to the property.

33 Upon consideration of this rental information, the panel concluded that it did not provide good evidence. It confirmed that the appeal property's rent was significantly out of line with others in the locality. The rents of R/o 36 Church Street and 2, 5, 20, 21 and 21D Baddow Park were shown to be unreliable and the rent of The Stone Co was identified as complex, but this was not explained further. For these reasons, little weight was placed on this evidence.

34 Given the paucity of good rental evidence, the panel observed the details of the comparable properties submitted by the parties. Upon consideration of the evidence, the panel decided to place the most weight to those referred to by Mr Clayton in scheme 357385. During the exchange of evidence, the Valuation

Officer had acknowledged that it was ‘arguable’ that the appeal property could fall within this scheme and if so, the basis of its valuation would be £27.50/m^2. Mr Clayton had indicated in his response that he would agree the assessment on this basis, but not with the full amount of land included. The panel considered that an assessment for the appeal Unit based on £27.50/m^2 was not shown to be incorrect and adopting this higher rate within the scheme, reflected that the property was a basic Industrial building with good access to the main A12.

35 Finally, the panel considered Mr Clayton’s contention that a large amount of land should be removed from the appeal property’s assessment as it was required for access. He had queried the assessment of Unit 4 Bannisters Yard, as the Valuation Officer had indicated that the assessment of this property contained no reduction for access land or location. He was aware that the assessment had recently been split and the amount of land included in the new valuations did not appear to equate to the amount in the original assessment. Mr Clayton believed that this was because some land had been omitted from the valuations for access purposes. Mr Stevens was asked to clarify this, but he was unaware of this change and unable to confirm the basis of the new assessments. In the absence of any definite details, the panel placed little weight to this information.

36 After consideration of the evidence in this appeal, the panel was not persuaded that the disputed land area should be removed from the appeal property’s assessment. The photographs submitted clearly demonstrated that some of the land was being used for the storage of equipment and for parking vehicles. In the panel’s view, this land was valuable to an occupier, could be used as they wished, and it would therefore be reflected in any hypothetical bid for the property.

37 Mr Clayton had argued that there was actually a rent on the subject property that supported a large portion of access land being removed. However, the panel had decided that the rent was not the best evidence in this appeal. It also noted that the revised assessment proposed by Mr Clayton was almost double the appeal property’s rent, which further suggested that it may not reflect the property’s true open market rental potential.

38 Ultimately, on the evidence presented the panel determined that the appeal property’s assessment should be based on an unadjusted price of £27.50/m^2 and that all of the land currently included in the assessment, should remain. Applying the adjustments made by the parties in their respective valuations, the panel determined the following:

Floor	Description	Area (m^2)/unit	£/m^2	Value (£)
Ground	Workshop	443.30	26.81	11,885
Ground	Store	137.60	26.81	3,689
Ground	Canteen	11.50	29.49	339
Ground	Offices	53.60	32.17	1,724
First	Offices	74.60	32.17	2,400
Mezzanine	store	72.80	13.40	975
	Hard surfaced, fenced land	1657.00	10.00	16,570
	Unsurfaced, fenced land	1033.60	5.00	5,168
	Storage containers	3.00	300.00	900
	Total			43,650
	Say RV			43,500

39 Having regard to the above, the appeal was part allowed and the assessment of the appeal property reduced to £43,500 RV with effect from 1 April 2017.

Order

40 Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the respondent to reduce the entry in the rating list to £43,500 RV with effect from 1 April 2017.

41 Under regulation 38(9), the respondent must comply with this order within two weeks of the date of its making.

Refund of appeal fee

42 As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Appeal Number: CHG100141931

Date: 24 November 2021