THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; compiled list appeal; warehouse and premises; level of value; rental evidence; comparable properties; appeal allowed in part.

Re: Unit 2, Binary Park, Choats Road, Essex RM9 9RJ

APPEAL NUMBER: CHG100142255

BETWEEN: Paragon Customer Communications Appellant

and

Ms D Bunyan Respondent

(Valuation Officer)

PANEL: Mrs S Nix (Senior Member) and Mr P Phelps

CLERK: Mrs S Morgan

REMOTE HEARING: Tuesday 11 January 2022

PARTIES PRESENT: Mr T Slimming – Appellant's representative

Mr M Williams – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £1,130,000 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. In accordance with that Practice Statement, the VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.

5. This is a 2017 Rating List appeal, and the RV of the appeal hereditament was £1,200,000 with effect from 1 April 2017. The appellant's representative sought a reduction to £1,100,000 RV.

6. The challenge submission was received on 14 November 2019. The grounds for the challenge disputed the accuracy of the of the RV in the Rating List on 1 April 2017.

7. Mr Slimming appeared on behalf of the appellant as an expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO*)* [2018] UKUT 0253 (LC), Mr Slimming's declaration of truth included a statement that he was instructed under a contingency based fee.

8. Mr Slimming also 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 his client's case.

9. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

10. 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, should not be construed as it having been overlooked.

Issues

11. The appellant's representative contended that the unadjusted main space rate adopted in the assessment was excessive. He originally sought a reduction to £52.50/m², however in later evidence it was £60.00/m^2, whilst the Valuation Officer contended that £70.00/m² was reasonable.

12. The issue regarding a 5% end allowance for the pylon was dealt with prior to this tribunal hearing and is included in the revised assessment below.

Evidence and submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges during the challenge process; comparable properties; rental evidence; location plans; photographs of the appeal property; and the definition of rateable value and case law.

14. In support of his case, the appellant's representative had looked at indices and statistics from a wide range of markets and the tonal evidence for two properties in the locality of the appeal property. He was originally seeking an unadjusted main space price of £52.50/m^2 with a resultant RV of £905,000, however at the hearing he was seeking an unadjusted main space price of £60/m^2 with a resultant RV of £1,100,000.

15. The respondent provided rental details for two properties in Barking which he believed supported the unadjusted rate of £70/m^2 for the appeal property. Based on the rental evidence he had submitted, £70.00/m^2 did not appear excessive. The respondent therefore sought a dismissal of the appeal.

Decision and reasons

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

17. 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;
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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".

18. 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 antecedent valuation date (AVD) of 1 April 2015, in

accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

19. 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.

20. 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.

21. The appeal property is a large industrial warehouse of 17,805.82m^2 built in 2008 and comprises of warehouse, office and mezzanine space. It has an eaves height of 13.39m and its own parking.

22. The appeal property is held on a leasehold basis. There was a rent in 2012 at £1,290,500 pa and a rent review in June 2016 when the rent passing was £1,435,000 pa, 14 months post AVD. The rent analysed to £66.74/m^2 against an unadjusted value of £70.00/m^2. Although these rents were a useful starting point, the panel did not feel that they were conclusive.

23. Mr Slimming had based much of his evidence on what indices and statistics from a wide range of markets were doing and applied these to the rent paid in 2016 to justify a lower tone of £60.00/m^2. However, the panel could not attach any significant weight to these indices, statistics or the graph, as they were compiled from different types of industrial properties over a wide geographic area.

24. As there was a lack of AVD rental evidence, Mr Slimming made reference to assessment evidence for large industrial units in Dagenham to support his contention that £70.00/m^2 for the appeal property was excessive. In particular, he referred to 16 Choats Road, a property situated in the same road as the appeal property, built at the same time and with a similar eaves height. This unit was assessed at an unadjusted value of £60.00/m^2. This property had a total area of 5,709.78m^2.

25. The other property referred to by Mr Slimming was Kuehue & Nagel Ltd in Messina Way, Dagenham. This unit was built in 2013 and was more modern than the appeal property. It had an eaves height of 14.5m and a total area of 5,940.12m^2. This was valued at an unadjusted figure of £70/m^2, like the appeal property. Allowing for the size difference, Mr Slimming believed that the £60.00/m^2, he was seeking for the appeal property, was justified.

26. In response to the respondent's comparable properties, Mr Slimming contended that they were better locations, approximately two miles away from the appeal property. These properties had an unadjusted price of £65/m^2 which, bearing in mind their location, also supported his argument for a lower level of value for the appeal property.

27. The respondent confirmed the details of the appeal property. He contended that the key drivers in determining the value were the size and eaves height of the property and then age to some degree. In this case the appeal property had a good eaves height, although he accepted it was not modernised. In support of his case that £70.00/m^2 was reasonable, he referred to two properties in Barking that were within the same valuation scheme as the appeal property. These were as follows:

- Prologis, 91 River Road, Barking was built in 2003 and had a total area of 26,389.8m^2. The 2013 rent passing was £2,196,000 pa, which analysed to £83.08/m^2. The unadjusted value for this unit was £65/m^2.

- 33 Thames Road, Barking was built in 1990 and it had a total area of 12,053.85m^2. The 2016 rent passing on this building was £841,056 pa, which analysed to £71.50/m^2. The unadjusted value for this unit was £65/m^2.

28. The panel found that the rents of the two properties in Barking were too far away from the AVD to be useful. The panel did however note that although these properties were some two miles in distance away from the appeal property, they were closer in size than the comparable properties put forward by the appellant's representative. They were also within the same valuation scheme as the appeal property (reference 433506), where the values ranged between £60.00/m^2 and £135.00/m^2.

29. In turning to the comparable properties submitted by the appellant's representative, these were much smaller than the appeal property and in a different valuation scheme. The panel was aware that it should not deviate from the Valuation Officer's scheme unless the evidence was convincing. The panel did however note that the level of value now being sought by the appellant's representative did fall within the existing valuation scheme applied to the appeal property.

30. The panel was also aware that a larger property would benefit from a quantum allowance, although there was no evidence presented to the panel to show that this would be reflected in the size difference between the comparable properties and the appeal property, it found that 65.00/m^2 appeared in line with the two larger properties in Barking. The panel was therefore satisfied that an unadjusted rate of £65.00/m^2 should be applied to the appeal property.

31. The panel noted in both parties respective valuations that there was a discrepancy in the relativity that had been used for the ground floor press room/office (1113.17m^2). As this was not addressed at the hearing, the panel applied the relativity used in the appellant's representative's valuation in which he had treated this area as office quality based on his internal inspection of the property.

32. In view of the foregoing, the panel decided that the unadjusted rate should be reduced to £65.00/m^2, as set out below.

Floor	Description	Area m^2	Price per m^2	Value
Ground	Warehouse	1,2908.81	£66.95	£864245
Ground	Area under supported floor	3.47	£46.87	£163
Ground	Plant room	138.42	£66.95	£9267
Ground	Access/Storage	36.57	£66.95	£2448
Ground	Workshop	170.81	£66.95	£11436
Ground	Office	481.98	£81.01	£39045
Ground	Storage Quality	198.50	£66.95	£13290
Ground	Press Room/Office	1113.17	£88.37	£98371
Mezzanine	Internal Storage	1100.42	£13.39	£14735
Ground	Office	457.59	£88.37	£40437
First	Office	451.64	£88.37	£39911
Second	Office	451.64	£88.37	£39911
Ground	Canteen	68.10	£73.65	£5016
Mezzanine	Internal Storage	146.40	£33.48	£4901
Ground	Area under supported floor	78.30	£46.87	£3670
	Plant and machinery			£7854
				£1194700
	End Allowance of 5% for the pylon			-£59735
				£1134965
			Say	£1130000

33. Consequently, the appeal was allowed in part, the RV was reduced to £1,130,000 with effect from 1 April 2017.

34. The Rateable Value in this decision has been amended to take into account the 5% end allowance for the pylon.

Order:

35. 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 Valuation Officer to amend the entry in the rating list to show a revised assessment of £1,130,000 RV for the appeal property, with effect from 1 April 2017.

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

37. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended)) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: Thursday 3 February 2022

Amended decision date: Thursday 10 February 2022

Appeal number: CHG100142255