THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Warehouse and premises; Rental evidence; Unadjusted base rate; Appeal dismissed.

RE: Unit 7, Langley Business Centre, Slough SL3 8DS

APPEAL NUMBER: CHG100143340

BETWEEN: Pinewood MBS Lighting (represented by Altus Group) — Appellant

and

Dawn Bunyan (Valuation Officer) — Respondent

PANEL: Mrs M J Cole (Senior Member)
Ms J L Hadley

CLERK: Ms S Hodgson

ON: 28 January 2022

REMOTE HEARING

APPEARANCES: Mr Hair of Altus Group for the appellant
Mr Turner of the Valuation Office Agency for the respondent

Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £226,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £226,000 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017.

The challenge stage was completed on 30 April 2021. The challenge sought a reduction in the RV to £151,000.

3. The appeal hereditament was a semi-detached warehouse unit located on an industrial estate in Langley. It had a steel frame construction and concrete floors with two entrances by roller door. The west and north side of the building had two storeys and included office accommodation with central heating. The appeal hereditament had a total measurement of 3,182.02m^2.

4. 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.

5. 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.

6. 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

7. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

8. Mr Hair 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), Mr Hair declared that he was instructed under a conditional fee arrangement.

9. Mr Hair 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 the client's case.

10. Mr Turner appeared on behalf of the respondent as both advocate and expert witness. Mr Turner's statement of truth declared that he was not instructed under any conditional fee arrangement. Mr Turner 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 case.

11. 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).

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

13. Prior to the hearing both parties agreed additional evidence that was submitted to the tribunal. As this was agreed between the parties, it was admissible evidence, and the panel were provided with copies.

14. Mr Hair argued that the subject property was dated between 1955 and 1964 and therefore should be in valuation scheme 424815 for 1950's and 1960's industrial units. He provided photographs of the unit and plans that showed the unit in place throughout the years. Mr Hair states there was work carried out on the unit, but this was only refurbishment work in line with the work carried out on the whole estate. Mr Hair referred to planning documents which he contended proved there was no demolition and rebuild of the subject property. Mr Hair stated that Unit 3 on the same estate was the best comparable evidence as he considered the units to be identical. Mr Hair asked for the RV to be reduced to £151,000.

15. Mr Turner argued that the subject property was built in 1985 and had therefore been valued in line with valuation scheme 423950 for 1980's industrial units. Mr Turner referred to planning documentation dated 1982 that granted permission for the demolition of the existing building and the erection of a new building. He contended that the current valuation scheme was for Slough industrial units and also included 1980's equivalent properties. Mr Turner confirmed that the main space rate for the scheme had been reduced from £87.50 per square metre (psm) to £82.50psm. He asked for the current valuation of £226,000 to be confirmed.

Decision and reasons

16. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> *2(1) 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;*

(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.*

17. 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).

18. 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.

19. Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
    2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
    3. Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
    4. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
    5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
    6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

20. The subject hereditament had a passing rent of £217,744 that was agreed in April 2017. The lease was for three years, with an annual break clause and the landlord responsible for internal and external repairs. The parties were in agreement with the rental analysis that was adjusted to £195,500 and devalued to £75psm. The difference between the parties was that Mr Turner placed less weight on the subject rent.

21. The panel placed less weight on the subject rent as it was of the opinion that too many adjustments were required to meet the rating hypothesis. The panel considered that the length of the lease with annual break clauses was out of the ordinary, and the rent required adjusting due to the landlord's responsibility for all repairs.

22. The main contention between the parties was the age of the subject hereditament as this would determine the valuation scheme it was placed in. The panel considered the age evidence put forward by the parties.

23. Mr Hair had highlighted a passage of the planning documentation that he stated showed the unit was never demolished in the 1980's. The panel reviewed this document, however it noted it was not planning approval. It appeared to be notes made at a committee meeting and when read outside of the highlighted box it went on to say that the existing structure was not appropriate for the then occupier's long-term requirements. These comments were in relation to an application number 437/41.

24. Mr Turner provided planning documents that included a planning application date stamped 27 October 1982, the same date as the committee report but with a different planning reference, 437/45, that sought the '*erection of industrial building to replace existing Building 7'.* Later in the same document it stated *'Existing industrial building not suitable for present day usage. Old building to be demolished.'* The planning application was approved on 30 November 1982.

25. The panel observed the photographs provided by the parties. Mr Hair contended that Unit7 was identical to Unit 3 and that Unit 3 had been valued in the 1950's and 1960's valuation scheme. The panel did note similarities between the photographs of the units; however, it was of the opinion that Unit 7 visibly looked like a 1980's unit.

26. Mr Turner contended that the photograph provided of Unit 3 was of part of the unit that was refurbished in 1985. The panel accepted this explanation as there was no dispute that there had been refurbishment on other parts of the development in the 1980's, and this accounted for the external visual similarities between Unit 3 and Unit 7.

27. The panel placed little weight on the age modelling of the subject hereditament provided by Mr Hair. This was from an online building dating tool that referred to the modal build period for residential dwellings. While Mr Hair said it could be used for non-domestic hereditaments as well, there was nothing to evidence to the panel how this was determined.

28. The panel made a finding of fact, based on the physical attributes of Unit 7 and the approved planning permission and plans of the site, that Unit 7 was a 1980's industrial building. No solid evidence had been produced to support the subject hereditament being a 1950's-built unit following the permission to demolish the original building. Due to this, the panel found that it was reasonable for it to be valued in scheme 423950. A copy of the scheme description had been provided and the panel paid particular attention to the following passage:

‘These values are applicable to Industrial Units in Slough but not on the Slough Estate, and on secondary estates in Colnbrook & Poyle, built in the 1980’s, or of a similar standard to property of this age.’

29. The panel then reviewed the comparable evidence put forward by the parties. Mr Hair considered Unit 3-3A to be the best comparable. This is a merged unit that measured 5,200.7m^2 and was valued at £55psm. No rental evidence was provided for this property.

30. The panel noted that this unit was significantly larger than the appeal property and was valued in the 1950’s and 1960’s scheme. As the panel had found that the appeal hereditament was a 1980’s build, it found Unit 3 to be less comparable.

31. Mr Turner provided rental evidence of four other properties. Unit 6A Langley Business Centre which was on the same estate, and three properties from the Lakeside Estate in Colnbrook. The rents had been devalued to a range between £88.16psm and £111.67psm for rents agreed between June 2012 and February 2016.

32. It was the panel’s opinion that there was not enough comparable rental evidence provided to support a reduction in the RV of the subject property. As the panel placed limited weight on the rent of the subject property due to the adjustments required to meet the rating hypothesis, more weight was placed on the basket of rents to support the value of £82.50psm within the 1980’s valuation scheme.

33. Consequently, based on the evidence before it, the panel dismissed the appeal and the RV of £226,000 was confirmed with effect 1 April 2017.

Date: 24 February 2022

Appeal number: CHG100143340