VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and Premises; accuracy of rateable value; rent passing on subject property and comparable properties in locality; 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: Units 1-3 and 4 Venture Court, Metcalf Drive, Altham BB5 5WH

APPEAL NUMBER: CHG100144746

BETWEEN: Olympic Fixing Products Ltd — Appellant

(Represented by Roberts Vain Wilshaw)

and

Richie Roberts (Valuation Officer) — Respondent

PANEL: Ms L Sharkey (Senior Member)
Ms J Morton

REMOTE HEARING: 10 June 2021
CLERK: L Bertie
APPEARANCES: Mr P Roberts of Roberts Vain Wilshaw for the Appellant.
Mr D Turner for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £72,000 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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. This was a 2017 Rating List appeal. Units 1-3 and 4 Venture Court, Metcalf Drive Altham, BB5 5WH (the 'appeal property') had been entered in the 2017 Rating List as 'warehouse and premises' at a RV of £72,000 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

5. The challenge proposal was submitted by the appellant's representative and was received by the Valuation Officer (VO) on 22 November 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed a revised RV of £64,500 with effect from 1 April 2017.

6. The VO issued a challenge case decision notice on 20 November 2020 in respect of the appeal property. The VO's decision was to treat the Appellant's challenge as not well-founded and proposed no change to the rating list.

7. The warehouse and premises at Units 1-4 Venture Court are contiguous and situated in a shared courtyard containing 5 terraced units on either side. The warehouse units are of steel portal frame construction, with metal profile sheet cladding to the elevations and roof, each unit with roller shutter door access, dedicated tarmacadam surfaced parking to the outside of the courtyard and access and loading areas within the courtyard itself. There are also integral 2 storey offices for each unit accessed from the car park side. Venture Court fronts onto Metcalf Drive in a central position to the far west of a well-established trading estate in Altham, Accrington, close to the A56 to the south and M65 providing access to Blackburn to the west and Burnley the east.

8. Mr Roberts 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), he declared in open tribunal that he was instructed under a conditional fee arrangement.

9. Mr Roberts 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. 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

11. 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.

Issue

12. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply . Mr Roberts, for the Appellant, sought a reduction to £64,500 RV based on an unadjusted main space rate of £28 per m². Mr Turner, for the VO defended the current assessment of £72,000 RV, which was based on the existing unadjusted main space rate of £31 per m².

13. All relevant factual information regarding the subject property, including its area, was not disputed by the parties.

Decision and reasons

14. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of 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). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

15. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(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 1976 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 value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on 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.'

16. Mr Roberts argued that the rent passing on the subject property itself suggested that the current assessment at £31 per m^2 was not reasonable and supported a reduction to £27 per m^2 based on the rent passing . The subject property had been let on a new five-year lease from 1 January 2015 on a stepped rent basis which equated to £27 m^2 after adjustments. He argued the rent was agreed close to the AVD and therefore believed that this figure would result in a lower RV. Mr Turner had rejected the rent on the subject property as unreliable, due to the submission by the appellant's representative of a Deed of Variation and not the full lease. This contained the breakdown of rent payable during the course of the lease deal from 6-October-2014 to 31-December-2020, for Units 1-4 and Unit 7 Venture Court combined . which was £105,991 p.a on a bespoke stepped rent basis. The analysis of the rent deal for the subject equates to a net effective rent of approximately £80,341pa for Units 1-4 and Unit 7 Venture Court inclusive. Mr Turner highlighted that Units 1-4 and Unit 7 cannot be merged to form a single geographical unit of assessment because they are not capable of being occupied as a single unit of assessment, as the occupier would not have exclusive occupation of the courtyard. Therefore, the 2 assessments have to be considered separately.

17. Moreover, the arrangement for the rental deal , did not appear to be an open market letting being based on somewhat 'related' parties. The panel finds that the adjustment of stepped rents were often unreliable and open to varying interpretation. The panel therefore contended that little weight should be placed on the subject rent in determining the hypothetical rent for the subject property at the AVD as it did not fit the second test in *Lotus and Delta*.

18. With this in mind, the case law of *Lotus and Delta v Culverwell* 1976, suggests that the rent passing on the subject premises is the starting point when calculating the rateable value, which should be considered in conjunction with a basket of rents gleaned from similar properties in the locality. The panel noted that the subject lease was agreed to include Unit 7 Venture Court as part of an agreed transaction. However, in order to determine the correct £m2 for the appeal property, the 2 assessments have to be considered separately. Units 1-4 represent a total area of 2,845.70sqm or, in terms of main space (ITMS), 2,231.39sqm. There is a large proportion of the assessment that is valued at significantly less than the base rate of £31.00psqm, reflecting the relativities of the different areas of the property, thereby reducing the ITMS area significantly. The units were merged to form 1 assessment from 1 October 2014. The rent deal for both of the subject assessments is tainted by the fact that it is a bespoke stepped rent deal, covering the larger total area of both Units 1- 4 and Unit 7 (3,317.15sqm / ITMS 2,716.58sqm). It was also noted by the panel that while the lease was agreed and assigned from 1 January 2015, an amendment was made for it to run from 6 October 2014 - 31 December 2020. Moreover, further information regarding the arrangements for this had not been provided, nor had a copy of the lease. Whilst this presented difficulties in determining the effect of the transaction on the terms agreed, the panel was satisfied that such a transaction would indicate that the rent was not agreed between unconnected parties nor was it an open market rent. It therefore found that little reliance could be placed on the passing rent of the subject property.

19. In support of the current assessment of the subject property at £31per m^2, Mr Turner had provided details of assessments of three units on industrial estates in the locality which he considered to be comparable to the subject property.

20. SPA WEB LTD METCALF DRIVE ALTHAM ACCRINGTON LANCS BB5 5TU, FACTORY AND PREMISES 3055.40 m2 in size 2484.77(ITMS). The lease renewal which commenced on 01 October 16 on a 10 year term with a break on 31 October 2021 for a rent of £96,477 p.a. with an adjusted rent of £91,862. The rent was analysed at £33.50 based on a stepped rent and adopted at £31.00m^2 with an RV £81,500. , The rent was 3 months rent free, no capital sums, full repairing and insuring (FRI) by recharge of insurance, not connected parties.

21. 1 AND 2 LANESIDE METCALF DRIVE ALTHAM ACCRINGTON LANCS BB5 5TU, WAREHOUSE AND PREMISES 1188.30 m^2 in size 1086.18(ITMS). The lease commenced on 15 December 12 at a rent of £42,000 p.a. adjusted to £40,920 p.a. The rent analysed at £37.67m^2 with an adopted rate of £34.00 m^2 and a RV £38,750. This rent was over 2 years 3 months before AVD. New letting, OMRV, 15-Dec-2012, no term, no break, no rent reviews, no rent free, no capital sums, FRI by recharge of insurance, not connected parties .

22. Moreover, there was a new letting on this property for a 5 year term, break at year 2, no rent reviews, no rent free, no capital sums, FRI terms, not connected party from 01 February 18 at a rent of £52,200 p.a. adjusted to £51,120 .This rent analysed to £47.06m^2 with an adopted rate of £34.00. It had an RV of £38,750.The panel noted that this letting was included to show rental growth and consistency through the AVD.

23. The panel considered that the range of analysed rents for similar properties in the neighbouring locality was supportive of their current assessments of between £31.00 per m^2 and £34.00 per m^2.

24. Mr Roberts had provided limited information for his comparable evidence for Unit 1 Metcalf Drive from 1 June 2014. It was indicated that this letting was for part of the Soyang Europe Ltd warehouse site to Senator International Ltd. The Form of Return on file confirms that there was a written open ended agreement between the parties from 1 June 2014, rent of £42,000pa / £30.20psqm for 1,484.70sqm / ITMS 1,390.93sqm, no rent reviews, no rent free, no capital payments or receipts, FRI by way of service charge. The letting was for a period of short duration and the assessment was withdrawn from the Rating List effective from 1 November 2016.

25. However, the Panel found this comparable evidence to be of little value because there is no term or expected lease details, such as rent review and rent free and it was for a short duration until withdrawn from the List, therefore it is not good evidence in the hierarchy of evidence to compare with the value of Units 1-4.

26. Consequently, from the basket of rental evidence provided , the panel was satisfied that the current assessment of the subject property at £31.00per m^2 £72,000 RV was reasonable and Mr Roberts had not provided evidence of rents or assessments to persuade the Panel that it was excessive. The appeal is therefore dismissed.

Date: July 2021

Appeal number: CHG100144746