THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Office and Premises; accuracy of rateable value in list; rental and comparable evidence considered; whether allowances warranted for mezzanine floor and location; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal dismissed.

RE: 1st Flr Unit A1, Webbers Way, Dartington, Totnes, Devon, TQ9 6JY

APPEAL NUMBER: CHG100160585

BETWEEN:	Fishtek Consulting Ltd	Appellant
and	Dal S Virk (Valuation Officer)	Respondent

BEFORE: Mr W Read (Senior Member sitting alone)

CLERK: Mr D Jefferies

REMOTE HEARING ON: 27 October 2021

APPEARANCES: Mr C Lambert of Whitestone Commercial for the Appellant
Mr R Albert for the Valuation Officer

Summary of decision

1. Appeal dismissed. The existing valuation is not unreasonable and the entry in the rating list is confirmed at £15,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. In accordance with the Tribunal's business arrangements, I have been authorised to consider and determine this appeal alone.

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. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. There were no technical problems arising on the day regarding the internet connection for any of the participants.

5. The appeal before me was a 2017 Rating List appeal. The RV of the appeal hereditament was £16,000 from 1 April 2017, with a description of Office and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £15,000 and altered the rating list with effect from 1 April 2017. The appeal was made on 27 May 2021 against the Valuation Officer's (VO) Decision Notice of 2 February 2021 in respect of the appeal property and the RV of £15,000. The proposed RV sought by the appellant was £11,400. However, in answer to questioning by the clerk at the hearing, Mr Lambert acknowledged that he had made an arithmetical error and the correct RV now sought was £10,750.

6. Mr Lambert appeared on behalf of the appellant as 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 Lambert stated that he was instructed on a contingency fee basis. He 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.

7. I accepted the 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). I therefore considered the expert evidence and attached such weight to it as I saw fit.

8. 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 me by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Issues

9. The primary issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Lambert, for the appellant, sought a reduction to £10,750 RV based on £80/m². Mr Albert, for the VO, defended the existing RV of £15,000, which was based on £95/m².

10. Also, in dispute was whether or not end allowances of 10% for mezzanine floor with restricted loading capacity and 5% to reflect the location of the subject property on an industrial park should be applied, as proposed by the appellant. The VO contended that no allowances were warranted and sought dismissal of the appeal.

11. All relevant factual information was not disputed by the parties.

Evidence and submissions

12. The appellant's representative had submitted documentation from both parties in respect of this appeal. Amongst other things, it included correspondence exchanged between the parties, the appellant's proposed valuation, VO's valuation, VO's decision notice, location maps and photographs, schedule of comparable rental and assessment evidence, rateable value definition and related correspondence.

13. The subject property is one of three newly constructed industrial sheds of steel frame construction with walls of part block with external cedar cladding under a shallow pitch of profile metal sheet roof. It has been constructed for use as workshop/industrial space or offices. The premises on completion of the shell were fitted out with the ground floor remaining as workshop and with a mezzanine first floor constructed to accommodate office space. It is situated on a small industrial estate on the outskirts of Totnes in a semi-rural location.

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 of 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.

15. Both parties have highlighted the Lands Tribunal decision of *Lotus and Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA141, which provides guidance on the weight to be attached to rental and assessment evidence. The RV represents the rent that the premises would have likely achieved on the open market at the AVD of 1 April 2015. *Lotus and Delta* also established that assessments of comparable properties were relevant and that an opinion of the value of the appeal property should be reached in the light of all of the evidence, weighed appropriately.

16. Firstly, I considered Mr Lambert's contention that the base rate should be £80/m^2 in line with his tonal and rental evidence. The net internal floor area of the subject property adopted for rating purposes is 158.4m^2, and it has been assessed on scheme 298632 (Offices outside main towns in the South Hams, may also include offices on the fringes of Plymouth if they are not located in modern business park or similar). The value range is £65 to £125/m^2. I noted that the subject property has been assessed by the VO at £95/m^2.

17. Mr Lambert's rental evidence included Ground Floor Unit A1, Webbers Way. However, although this unit is below the subject it is a workshop so for that reason Mr Lambert placed very little weight on this evidence. Ground Lower Tweed (Known as Rear Lower Tweed) is a warehouse unit of 192m^2. It has a rent of £15,892 from November 2016 and analyses to £81.38/m^2. The tone is £57/m^2 which reflects its use as a warehouse unit. Mr Lambert said that although the VO has this in the list as an industrial unit, but he believed it to be offices. First Floor Lower Tweed

is 43m^2 in area. It has a rent which was agreed in March 2015 of £4,175 which analyses to £96.80/m^2. He said the assessment tone for this property is £78.80/m^2 with an uplift of 20% for the lack of quantity which equates to £94.44/m^2.

18. The VO's rental evidence included Units 10-11 & 14 Combe Park, Totnes – this unit is pre 1900s with an area of 81m^2 and an analysed rent of £109.53/m^2. The Waterside Berry Pomeroy, Totnes – this unit circa 2004 build and is of similar size to the subject measuring 158m^2 and an analysed rent of £190/m^2. West Yarner, Dartington – this office was built circa 1940s and has an area of 183m^2 and an analysed rent of £87.77/m^2. South Moor Vets, Ivybridge – was a much larger unit at 235m^2 built circa 2005 and has an analysed rent of £107.13/m^2 and Units 7 & 8 Hannafords Landing, Salcombe – is an office unit built circa 2007 with an area of 288.04m^2 and an analysed rent at £115.21/m^2.

19. Mr Lambert's assessment evidence included Ground Floor and 1st Floor at Epic, TQ4 7RZ. In his opinion, this office was better situated being in Paignton. It is 104m^2 in area and has been assessed at a basic rate of £67/m^2. Rooms 15,16 & 17 Lescaze Offices are on the same scheme as the subject property. These offices are located on the lower ground floor and are 132m^2. The assessments are based on £95/m^2, but the adopted rate is £71.25/m^2. Mr Lambert accepted that because these offices are situated in the basement they would be assessed at a lower rate. Rooms 46,47 & 48 Lescaze Offices, at 192m^2 are larger than the subject and assessed at £89/m^2. Modbury House, Ivybridge, has been assessed at between £75 and £95/m^2 although Mr Lambert accepted that these offices are smaller at 23m^2 to 78m^2.

20. In this case I heard what both parties had to say regarding the rental and assessment evidence submitted by the parties but concluded that neither party's evidence was compelling in this case.

21. I had regard to the fact Mr Lambert's rental evidence includes units that are smaller, older or post AVD rents. Whilst these provide me a guide particularly in terms of the more similar size at Ground Lower Tweed (known as Rear Lower Tweed), this unit is used mainly as a warehouse and assessed as such at 57/m^2 which reflects that use. According to Mr Albert, the rental analysis is £70.72/m^2 and this unit was much older than the newly built subject unit. The VO had sought rental evidence of similar size offices to the subject unit, albeit differing ages. This evidence provided a rental analysis which, in my view, would support the current tone that the subject unit is assessed upon at £95/m^2. The range of data is between £87.77/m^2 and £190.62/m^2 all pre AVD with the floor areas ranging from 81m^2 to 288m^2. The smallest unit at 81m^2 is of an older office and the rent analysed at £109.53/m^2. The largest unit is 288m^2 and the rent analysed to £115.21/m^2.

22. In this case, I accepted the VO's contention that applying Mr Lambert's proposed rate of £80/m^2 would result in a rate which is lower than the 1940s unit which has a floor area of 183.86m^2 at West Yarner and an analysed rent of £87.77/m^2. Having carefully looked at the 'basket of rents' and considered the comparable properties and their respective locations, I found that based upon the totality of the evidence, and having regard to the physical state of the appeal property and its locality at the material date of 1 April 2017, and the evidence referred to, I was of the opinion that the rate per m^2 adopted for the subject property of £95/m^2 was not excessive.

23. Secondly, I considered the appellant's request for an allowance of 10% for mezzanine floor at the subject property. Mr Lambert believed that a 10% allowance should apply to the first floor as it is a mezzanine floor with a limited loading capacity of 2.8kn. Mr Lambert said that if this were a mezzanine in an industrial assessment it would first be assessed at 50% with a 20% uplift for

office quality. Whilst Mr Lambert sought an allowance of 10%, he acknowledges the fact that he had no evidence in which to support his contention. In response, Mr Albert was of the view that the subject unit is being valued as an office so the relativities applicable is that of an office use and not of an industrial unit.

24. I accepted the VO's contention and accepted that one would expect the purpose of the mezzanine was to satisfy building regulations and not to exceed the safety measures of weight applicable for the purposes to which it was intended. Having viewed the photographs and listened to the parties' descriptions the subject property lends itself to a high specification by creating a new, high-quality frontage to the road and new two-storey, sub-divisible business building added with flexible ground floor space, able to accommodate a range of employment/uses. The mezzanine space here appears to be built with a concept of high adaptability and I do not consider that an allowance is warranted for the reasons put forward by Mr Lambert.

25. Thirdly, I considered whether an end allowance was warranted for location. Mr Lambert had sought an allowance of 5% to reflect the fact that the premises is located on an old industrial estate, as opposed to a business park. I noted that the comparable evidence provided are of units which are not located in business parks but still have analysed rents which support the rate of £95/m^2 applied to the subject unit. I accepted the VO's contention that this suggests that the rate /m^2 applied has correctly reflected the location not being part of a business park.

26. The subject unit is located at the edge of the development fronting the road. I also had regard to the fact that the overall development description, as supplied to me by Mr Albert, has described the project as providing a natural appearance to the building which will ensure it blends into the surrounding context. It will also provide a historic reference to the original Sawmills located on the site. It is therefore my decision that no allowance should be given for the subject property being located on an industrial estate, as opposed to a business park.

27. In conclusion, for the reasons outlined above, I found that no reduction in the subject property's assessment was warranted, and I confirm the RV of £15,000 in the compiled rating list as not being unreasonable.

28. In view of the foregoing, the appeal was unsuccessful and dismissed accordingly.

Date: 23 November 2021

Appeal number: CHG100160585