THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; warehouse and premises; comparable properties; subject rent; basket of evidence; comparable properties let close to the AVD; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed in part.

Re: Unit 21 Bourne Industrial Park, Bourne Road, Dartford DA1 4BZ

APPEAL NUMBER: CHG100162226

BETWEEN:	Civica UK Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

BEFORE: Mr J Rockliff (Senior Member sitting alone)

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 19 May 2022

APPEARANCES:

Mr J Cheeseman of Altus Group for the Appellant
Mr R Das for the Respondent

Summary of decision

1. Appeal allowed in part; the appeal property's assessment was reduced to £62,250 Rateable Value (RV) with effect from 1 April 2017 based on a rate of £95/m^2.

Introduction

2. On the day of the hearing, my colleague who was due to sit with me was experiencing IT issues and was unable to connect to the remote hearing of this appeal. As a senior member to the Tribunal, and in such circumstances, in accordance with the Tribunal's Business Arrangements, I was authorised to hear this appeal sitting alone.

3. This appeal has been brought in respect of the following: On 3 February 2020, the agent submitted a challenge on behalf of the appellant in respect of Unit 21 Bourne Industrial Park, Bourne Road, Dartford DA1 4BZ which was shown in the 2017 Rating List as Warehouse and Premises at £69,000 RV, effective from 1 April 2017.

4. The property is an end terraced, 1970/80's built, industrial building with office accommodation on the ground floor. The assessment benefits from a mezzanine level used as an office and storage space, and car park spaces. It is situated in a prominent location within the Bourne Industrial Park, an established trade counter location which is well placed at the junction of Bourne Road (A223) and London Road (A2017), less than a mile from the A2 with quick access to junction 2 of the M25. Crayford town centre and the railway station were located close by.

5. Its current RV is based on an unadjusted rate of £105/m^2. Mr Cheeseman on behalf of the appellant sought a reduction to an unadjusted rate of £92.50/m^2 in his proposal but at the hearing amended this to seeking an unadjusted rate of £95/m^2.

6. Mr Cheeseman 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), his declaration included a statement that he was instructed under a contingency based fee.

7. Within his written statement, Mr Cheeseman 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.

8. I 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).

9. I therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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 before coming to my decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary issue

11. Mr Das raised a preliminary issue at the hearing so far as to inform all parties that he had inspected the appeal property the day before which had raised some factual differences/survey data errors. He accepted this was late in the day and therefore was not seeking an adjournment or admission of new evidence, but rather wanted to inform parties that a Valuation Officer Report will be issued following what had been discovered. He did not divulge too much as he stated that he still needed to finalise his findings. Furthermore, he stated that there were seven car parking spaces, not nine.

12. In response, Mr Cheeseman commented on the fact that the value was being considered as at the material date and that he had taken the number of car park spaces from the lease, which stated nine. He was content that the hearing of this appeal could proceed.

13. I accepted that the car park spaces may impact the analysis of the subject rent but found that changes to the property and the number of car parking spaces to be valued could be dealt with on the Valuation Officer Notice and largely would not fall within the scope of this appeal; which was valuing as at the material day of 1 April 2017, based on the evidence exchanged and agreed as part of the check and challenge process. I was not prepared to adjourn the hearing for a dispute over a difference of two car park spaces or other unspecified survey amendments. It was possible to hear arguments and make a decision on the main space rate without these matters being settled.

14. With the agreement of the parties, I decided it was in the interests of justice to proceed with the hearing of this appeal and not to adjourn. I proceeded to hear the appeal based on the evidence already placed before me.

Issue

15. The issue between the parties concerned the RV of the appeal property and, specifically, the unadjusted rate per m² that should apply.

Evidence and submissions

16. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the challenge process.

17. Mr Cheeseman submitted that he did not consider the rent passing on the subject property to be the best evidence given the rents were agreed some distance from the antecedent valuation date (AVD), he therefore referred to rental evidence available on the estate.

18. To support his argument that the subject property's assessment was unreasonable, Mr Cheeseman had analysed the rents of several comparable properties located on the same industrial park. He referred to the nine rents he considered most relevant, which included new leases and renewal leases agreed close to the AVD (between February 2014 and March 2016). He had adjusted the rents accordingly and provided his comments in support of the analysis.

19. Having regard to the basket of evidence he presented, Mr Cheeseman, on behalf of the appellant, submitted that a tone of £95/m^2 could reasonably be supported. This would result in a reduced RV of £62,250 with effect from 1st April 2017. As noted above this differed from the £92.50/m^2 he had previously requested which would have resulted in an RV of £61,000 with effect from 1 April 2017. Mr Cheesman stated that he was requesting this change after carrying out a further analysis of the rental evidence. He believed that the correct tone was £95/m^2

20. Mr Das confirmed that he had taken over this appeal from the previous case worker. He referred to the statutory definition of rateable value and the requirement to determine what the rent would be on 1 April 2015. He submitted that the subject rent will always hold some weight, and ultimately considered what rent would have been achieved at the AVD. He referred to the rents on the appeal property pre and post AVD which he considered supported that the rent achieved as at AVD would be in line with the RV.

21. His colleague had provided some rental evidence for comparable properties on the industrial park, this included lease renewals and reviews agreed between March 2015 and October 2018. A new letting was also referred to which was agreed in January 2014. The rents had been analysed, together with the analysis of the rents put forward by Mr Cheeseman; and the Valuation Officer's (VO) comments in respect of this.

22. Mr Das considered that having regard to the evidence, the current assessment of £105/m^2, was fair and reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

23. In considering this appeal, I had regard to the term 'rateable value' as 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".

24. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 1 April 2017.

25. In reaching its decision, I also had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). 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 is 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 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.'

26. Bearing these six propositions in mind, I acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. At the time of the proposal, the passing rent was a lease renewal of £77,500 per annum with effect from 1 February 2018. I was also informed of a rent review in December 2013 for £60,000.

27. The VO had provided an analysis of the rent at £107.66m^2 but I noted that this was considering nine car park spaces.

28. I placed less weight on the subject rent, being a renewal and a review further removed from the AVD, especially given that there was better rental evidence available agreed closer to the AVD. New lettings agreed closer to the AVD required less adjustment to conform with the statutory rating hypothesis. As per *Lotus v Delta*, the subject rent was the starting point, not necessarily the best evidence. I therefore found it necessary to turn to the third proposition and considered the rents passing on comparable properties. I considered the correct approach in this appeal was to examine the whole 'basket of evidence'.

29. There was a substantial amount of rental evidence presented for the locality. I had greater regard to the new leases closer to the AVD, as less adjustment would be required.

30. I attached greatest weight to Unit 22 Bourne Industrial Park, Bourne Road, Dartford, DA1 4BZ. It was a new lease agreed very close to the AVD, on 10 May 2015. The mezzanine had been included in the area when analysing it, as it appeared to be the previous tenant's improvement so therefore would have been included in the lease with the current occupier. The VO had analysed the rent to £82.44/m^2, and Mr Cheeseman analysed it to £89.08/m^2. I found that this was a good indication of the market at this time as it was so close to the AVD and found it supported his contention that the current rate of £105.00/m^2 was unreasonable.

31. Mr Cheeseman had provided evidence for new leases, where available had included a copy of the lease and had included the plans in respect of the car park spaces. Most of the VO's comparable properties were lease renewals or reviews. There was one new lease presented, details obtained from the form of return, but it was further removed from the AVD to those of which Mr Cheeseman was relying on.

32. Units, 16, 18, 25, 29 and 31 Bourne Industrial Park were all new leases agreed between February 2014 to September 2015 so closest to the AVD. There were some variances in the analysis of the rents but essentially Mr Cheeseman had analysed them from £81.07/m^2 to 105.42/m^2 and Mr Das' colleague had analysed them from £82.44/m^2 to £128.47/m^2.

33. Mr Das referred to the range and submitted that you could argue any figure in-between this and therefore the evidence must be compelling to reduce the tone from £105/m^2 which he considered was supported. Furthermore, taking a stand back and look approach, and considering the headline rent pre and post AVD, he submitted that the RV was a reasonable reflection on what rent would be achieved as at the AVD. I did not find the VO's approach to be a sound one, he was effectively taking the headline rents (not analysed to conform with the statutory definition) and submitted that the RV looked to be reasonable, especially when it is probable all tenants would have made

improvements and on the assumption of a steady market. I had little regard to this argument given that new lettings for similar properties, within the immediate locality and let close to the AVD, were available.

34. In conclusion, I attached greater weight to Mr Cheeseman's analysis of the basket of rents, given his firm had overlooked some of the lease agreements or where available, agreements had been obtained as had the car park plans. Having regard to the range of values and placing greatest weight on Unit 22 as it was agreed within weeks of the AVD, I found £95/m^2 to be reasonable. The appeal was therefore allowed in part.

Order

35. Under the provisions of regulations 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 reduce the entry in the rating list to show the following:

    Unit 21 Bourne Industrial Park, Bourne Road, Dartford DA1 4BZ
    £62,250 Rateable Value effective 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.

Refund of fee

37. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 8 June 2022

Appeal number: CHG100162226