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 dismissed.

Re: Irton House, Warpsgrove Lane, Oxford OX44 7RW

APPEAL NUMBER: CHG100183767

BETWEEN: Oxford Packaging Solutions Limited 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 M Evans of Altus group representing the Appellant

Mrs P Rowntree – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a warehouse and premises at £350,000 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 appeal was brought in respect of Irton House, Warpsgrove Lane, Oxford (the appeal property). The appeal property is a warehouse and premises built in the late 1960s, as an industrial building of standard portal frame construction. The property has a total area of 9,715.81m^2 and contains mainly warehouse space with some ancillary office/storage space and a canteen. It is located in a semi-rural location with good access and road connections to the M40 motorway.

6. This is a 2017 Rating List appeal, and the RV of the appeal hereditament was £350,000 with effect from 1 April 2017. The appellant's representative sought a reduction to £305,000 RV.

7. The challenge submission was received on 31 March 2020. The grounds for the challenge disputed the accuracy of the of the RV in the Rating List on 1 April 2017.

8. Mr Evans 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 Evan's declaration of truth included a statement that he was instructed under a contingency based fee.

9. Mr Evans 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.

10. 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).

11. 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

12. The appellant's representative contended that the adjusted main space rate adopted in the assessment for the appeal property was excessive and that there should be a nil increase between the 2010 and 2017 assessments. He sought a reduction to £35.00/m^2 as the unadjusted price (£30.71/m^2 adjusted rate) whilst the Valuation Officer contended that £40.00/m^2 as the unadjusted rate (35.10/m^2 adjusted rate) was reasonable.

13. The appellant's representative also believed that a 12.5% allowance for layout was justified, whilst the Valuation Officer contended that no allowance was warranted for this issue.

Evidence and submissions

14. In his revised valuation, Mr Evans had sought a unit adjustment as an end figure for size of 14.30% (which equated to £51,304) to arrive at £305,000 RV with effect from 1 April 2017. This represented a nil increase between the 2010 to the 2017 list assessments for the appeal property.

15. Mr Evans confirmed that the appellant had been in occupation since the 1990s. He referred to the subject property as being a lease renewal in 2018 as a stepped agreement at £275,000 per annum (pa) in year 1, rising to £440,000 pa for 2 years. This gave a net rent of £380,000 pa. However, he suggested that little weight be attached to this rent in light of it being too far away from the antecedent valuation date (AVD) to be of any assistance.

16. The appeal property was the largest property within valuation scheme 401772 and the lowest within the price range of £40.00/m^2 to £75.00/m^2. The scheme included properties on Monument Business Park in Warpsgrove Lane that were all below 1,310.29m^2 in size. Mr Evans contended that as these held little comparability in the open market, he had looked at units of a similar size to the appeal property.

17. To support his argument, Mr Evans referred to Ofquest Ltd, the adjacent unit to the appeal property, five units on Tower Estate in Warpsgrove Lane and a larger unit, Countax House which was in the general locality. Ofquest Ltd was of a similar specification to the appeal property and was, in Mr Evans opinion, the best comparable property albeit it was smaller in size at 6,370.99m^2. It had received a 10% reduction as a size allowance in a 2017 challenge, which resulted in a negligible increase between its 2010 and 2017 list assessments. Mr Evans believed that the same should apply in the appeal property's case in terms of a nil increase in its base rate. In relation to Units 1 – 5 Tower Estate, these were much smaller than the subject property. However, they also showed a nil increase or slightly lower figure in the 2017 list when compared to their 2010 list assessments.

18. As further support, Mr Evans had looked at properties in Valuation Scheme 376971, which covered rural assessments in South Oxfordshire. The value range within this scheme was £28.75/m^2 to £62.50/m^2. Countax House, Great Haseley, Oxford was part of this scheme. It

was also a standalone industrial unit in a rural location, approximately 3 miles from the appeal property. This unit was similar in size and age to the appeal property and was assessed at £28.75/m^2.

19. In light of there being limited open market rental evidence for larger industrial units in this locality, Mr Evans had applied a stand back and look approach to value this larger industrial unit and concluded that his evidence supported £305,000 RV with effect from 1 April 2017.

20. In response to the two rents supplied by the Valuation Officer, Mr Evans contended that these properties in Thame and Didcot, approximately 7 to 10 miles away from the appeal property, were both located in well-established industrial areas, with better access and transport links than the appeal property, which he believed would go some way in supporting their higher price per m^2 compared to the appeal property.

21. In support of her case, Mrs Rowntree referred to the rent on the appeal property. Her records showed that the current occupier agreed a ten-year lease renewal in 2008 on a full repairing lease at £450,000 pa. The current rent passing was £440,000 pa in December 2019. She contended that both agreements were too far away from the AVD to be useful, however, it should be noted that they were in excess of the current rateable value.

22. To show that £40.00/m^2, as an unadjusted rate for the appeal property was not unreasonable, Mrs Rowntree referred to two rents for properties of a similar size and age to the appeal property. She had placed more weight on rental evidence than the movement between the two lists and, as such, had cast her net more widely in looking for suitable rental evidence.

    1 Dormer Road, Thame was a 1970s constructed warehouse and premises. There was a March 2014 lease renewal on this property at a rent of £462,500 pa (adjusted to £400,062 pa), which analysed to £49.70/m^2.

    Warehouse and East, 184 Park Drive, Milton Park near to Didcot was a circa 1940s build. The was a five-year lease renewal from August 2014 as a stepped rent. At year 4 the rent was £369,048 pa (adjusted to £331,060 pa), which analysed to £41.00/m^2.

23. Turning to the appellant's representative's comparable evidence, Mrs Rowntree confirmed that Ofquest Ltd was a warehouse and premises adjoining the appeal property. It was valued on the same scheme as the appeal property. The 10% allowance agreed on the 2017 list for Ofquest Ltd was, unlike the appeal property, not given in 2010. She contended that having given an allowance to the Ofquest Ltd assessment, both this property and the appeal property were now aligned with each other. She believed this to be the only reason why there was a discrepancy over the percentage differences between the lists for the two properties, as referred to by the appellant's representative.

24. In relation to the Tower Estate units, these were valued on a different scheme specific to their estate. These properties were approximately ten times smaller than the appeal property and therefore provided little assistance. The Martin Baker Aircraft Ltd assessment was unique in terms of its construction as a former aircraft hangar of lesser quality and was

therefore not comparable to the appeal property. Countax House was also of a lesser quality with lower eaves height. It had a disjointed layout created by the merger of a number of units. Although the appeal property contained multiple units there was no suggestion that its interconnectivity or practical arrangements in terms of layout would cause any hinderance to the occupier. In her opinion, the appeal property did not warrant a layout allowance.

25. Mrs Rowntree added that it was important to note that the appeal property was subject to an overall allowance of around 15% for quantum which reduced the unadjusted rate from £40.00/m^2 to £35.10/m^2. Therefore, she contended that the current assessment for the appeal property appeared in line with the assessments provided by the appellant's representative.

Decision and reasons

26. The main issues in dispute concerned the level of value to be adopted for the appeal property and whether or not a 12.5% layout allowance was warranted.

27. 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;
> >
> > 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".

28. 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).

29. 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.

30. 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.

31. The appellant's representative had proposed a valuation for the appeal property based on a nil increase between the 2010 and 2017 list assessments. He provided evidence from Monument Business Park and Tower Estate which were located close to the appeal property and to Countax House in the wider location where there had been nil increases between the two lists to demonstrate his argument. In his opinion, the evidence suggested that the appeal property was overvalued and that a main space price of £35.00/m^2 was more appropriate.

32. The respondent, on the other hand, believed that the unadjusted main space price of £40.00/m^2 (adjusted to £35.10/m^2) was in line with similar sized and aged properties in the locality that were within the same valuation scheme. She had referred to two rents on properties in Thame and Didcot to support her contention that the RV of £350,000 was reasonable.

33. Having examined all of the evidence presented, the panel was of the view that more weight should be given to the rental evidence than the movement between the 2010 and 2017 list assessments. The panel found that the rent on the appeal property was accepted by both parties as being too far away from the AVD to be useful evidence. The rents on the two comparable properties provided by the respondent, which had analysed to between £41.00/m^2 and £49.70/m^2, were more helpful. Despite being up to 10 miles away from the appeal property, they were similar in size and age and within the same valuation scheme as the appeal property.

34. In his rebuttal, the appellant's representative had argued that the transport links were better for the respondent's two properties compared with the location of the appeal property. Having examined the location plans, it appeared to the panel that the transport links were compatible, as each site was relatively close to motorway connections. With this in mind, the panel was not persuaded that the respondent's comparable properties were any better located to transport links than the appeal property, therefore, little weight was given to this argument.

35. Turning to the other comparable properties provided by both parties, the panel found that those properties on Tower Estate were up to 10 times smaller in size compared to the appeal property and therefore, not directly comparable due to their size. Furthermore, they had been valued on a specific scheme applicable to that estate. In addition, the units at Monument Business Park were also much smaller than the appeal property and again not directly comparable due to their sizes. It appeared to the panel that the rental market for smaller sized properties was similar for the 2010 and 2017 lists, so much so, that there were nil increases between the lists. The panel weighted this evidence accordingly.

36. The panel accepted that Ofquest Ltd was a good comparable property. It adjoined the appeal property and was built to the same specification. However, it was over 3,344.82m^2 smaller. In addition, the panel noted the respondent's explanation that the allowance given to

the 2017 Ofquest Ltd assessment had brought it into line with the appeal property and that this accounted for the percentage difference between the two properties over the two lists. With this in mind, the panel was not persuaded that an additional reduction in tone was necessary.

37. In relation to the layout allowance, the panel found there was sufficient interconnectivity between the units within the appeal property not to warrant the allowance sought by the appellant's representative. The panel understood that the layout allowance given for Countax House was due to its disjointed layout through the merger of several units and its lesser quality and lower eaves height in comparison to the appeal property. Therefore, the panel considered that no allowance should be given for layout in the assessment for the appeal property.

38. The panel recognised that it was difficult to find rental evidence for larger properties in this rural location. However, having considered all the evidence submitted, the panel determined that the assessment should not be reduced. The price per m^2 that had been applied to others of a similar size and age in the same locality, on the same valuation scheme, supported the level of value adopted of £40.00/m^2 for the appeal property. Bearing this in mind, the panel was not persuaded to reduce the level of value for the appeal property, sought by the appellant's representative.

39. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value or justify a allowance for layout. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Friday 28 January 2022

Appeal number: CHG100183767