THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic 2017 Rating Appeal; The Local Government Finance Act 1988; The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2268; The Non-Domestic Rating (Alteration of Lists and Appeals) (England)(Amendment) Regulations 2017; Lotus & Delta Ltd v Culverwell (VO) & Leicester City Council [1976]; Garton v Hunter (VO) [1969] RA 11; Offices and premises; Valuation scheme; Appeal Dismissed.

Re: 7th Floor East, 1000 Great West Road, Middx TW8 9ES

APPEAL NUMBER: CHG1000185485

BETWEEN: Avia Reps UK Ltd Appellant

and

Mr A Ricketts Respondent

(Valuation Officer)

PANEL: Mrs J Cole – Senior Member

Dr P Thomson

CLERK: Ms M Mwambazi

REMOTE HEARING ON: 14 May 2021

APPEARANCES: Mr P Emerick – of Altus Group representing the Appellant as Advocate

Mr A Hair – of Altus Group representing the Appellant as Expert Witness

Mr D Alford – representing the Respondent as Advocate and

Expert Witness

Summary of decision

1. The appeal is dismissed. The entry in the 2017 Rating List for the property at Rateable Value £84,500, with effect from 1 April 2017, is supported by the available rental evidence in the appeal locality.

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. The subject property had been entered in the 2017 Rating List at Rateable Value (RV) £96,500 with effect from 1 April 2017. The challenge proposal, received by the Valuation Officer on 6 April 2020, sought a reduction in the appeal property's assessment to RV £77,000 with effect from 1 April 2017.

5. Following receipt of the challenge proposal, the Valuation Office Agency (VOA) reviewed all the available rental evidence in the appeal building and subsequently, reduced the subject property's assessment to RV £84,500 with effect from 1 April 2017. As the Valuation Officer did not agree to amend the assessment in accordance with the challenge proposal, Altus Group, on behalf of the Appellant appealed to this Tribunal on 10 March 2021 on the grounds that the valuation for the hereditament was not reasonable and that the Respondent had provided insufficient evidence to support the RV in the 2017 Rating List.

6. Mr Emerick appeared as advocate only. Mr Hair appeared as Expert Witness. Therefore, it was important to ascertain if there was a success related fee involved and if so, whether such a fee was compatible with his obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

7. Mr Hair's declaration set out that Altus Group was representing the Appellant 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.

8. The expert witness evidence was accepted on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of 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). The "expert" evidence was considered, and the panel attached weight to it as it saw fit.

Preliminary issues:

9. Mr Alford, representing the Respondent, objected to additional evidence being included after the challenge discussions had been concluded. Mr Alford contended that, as part of the appeal submission, the Appellant had contravened Regulation 13(c) of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 and had submitted additional information that was not exchanged at the challenge stage.

10. The panel understood from Mr Alford that Mr Hair of Altus Group had submitted an Expert Witness Report (EWR) that had not been available or exchanged during the challenge process. The Respondent's representative objected to its inclusion and considered it to be a substantial document compared to the limited evidence provided by the Appellant's representatives in the initial challenge.

11. When invited by the panel to identify the new evidence/information that Mr Alford was objecting to, the Respondent's representative stated that the parties to the appeal had discussed all the evidence and that there was no new evidence included in the EWR. However, the Respondent's representative wanted to make a point that all evidence, including an EWR, must be included with the Challenge documentation and should not be provided after the challenge discussions had been completed.

12. Mr Emerick maintained that the EWR contained no new evidence, but the information previously exchanged 'tidied up' to assist the panel. It was ascertained through questioning that the EWR appeared more substantial than the information provided at the challenge stage because it included some of the evidence that had been exchanged between the parties.

13. Having noted that the EWR contained no new evidence, the panel accepted the report which was not considered to be new evidence as all the evidence contained within the report had been discussed between the parties during the challenge process.

14. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as being overlooked by the panel.

Issues

15. The main issue in dispute between the parties was the price per square metre (m^2) to be adopted for the appeal property. The Respondent had adopted a value of £175/m^2, whilst the Appellant's representatives sought a value of £160/m^2. In addition, the parties disagreed with the methodology used in analysing the rental evidence.

Evidence and submissions

16. The subject property was located on the 7th floor of a twelve-storey office block known as The Mille, 1000 Great West Road in Middlesex. The appeal building was built in 1985 and was located in an office hub in Brentford on the A4, Great West Road.

17. The Appellant's representatives considered that the assessment of the appeal hereditament was not in line with the assessments on comparable properties in the locality, considering the differences in the physical attributes between the properties. In their appeal submission for this hearing, the Appellant's representative contended that the rate adopted by the Respondent of £175/m^2 was excessive and should be reduced.

18. To support the contention that the rate of £175/m^2 should be reduced, the Appellant's representative relied on past Valuation Tribunal decision in respect of the 8th floor West, 1000 Great West Road, Brentford, TW8 9ES (CHG1000029494). This case related to the tone to be adopted within the 2017 Rating List for the hereditament. The Tribunal found for the Appellant's case and a revised tone of £160/m^2 plus 10% for air conditioning was confirmed.

19. Further, the Appellant's representatives relied on rental evidence in respect of the 10th floor East, 5th floor West and 11th floor West. The Appellant's representatives had analysed the rents for these properties to be between £158.27/m^2 and £160.87/m^2, and hence, the adopted rate of £160/m^2. These were new lettings with the rents being agreed between November 2014 and August 2015.

20. The Respondent's representative submitted that the appeal property had a passing rent of £123,000, agreed on 01 March 2017. The panel understood that the occupier had spent £267,314 in fitting out costs prior to the property being occupied.

21. The Respondent's representative considered that the value of £175/m^2 he had adopted in the assessment of the subject hereditament had been supported by the available rental evidence, within the appeal building, and by having regard to all the factors which would affect the level of rental value at the antecedent valuation date of 1 April 2015 (AVD), including location, age, size, layout, construction and character of each property.

22. The Respondent's representative relied on six pieces of rental evidence, all drawn from the appeal building and included: 10th floor East, part 10th floor West, 5th floor West, 9th floor West, 11th floor West and 4th floor West. The rents for these properties analysed between £160.52/m^2 and £188.72/m^2. The panel understood from the Respondent's representative that the subject property's rent analysed to £183/m^2. It was, therefore Mr Alford's opinion that the rate of £175/m^2 adopted in the assessment of the subject property had been supported by the available rental evidence, in the appeal building.

23. Regarding the Tribunal's ruling in respect of the 8th floor West, 1000 Great West Road, Brentford, TW8 9ES (CHG1000029494), the Respondent's representative explained that at the hearing in January 2020, no rental information or rental schedules were provided by the VOA during the discussion process. The only rental information supplied at the Challenge stage had been in relation to CoStar rental transactions, which the presiding panel on 7 January 2020 agreed was not a reliable source of information. However, for the purposes of the subject appeal, the Respondent sought to rely on a basket of rents, all drawn from the appeal building.

24. Both parties had referred to various case law in their respective submissions. However, the parties were in agreement that when considering the weighting of rental and assessment evidence in determining a rateable value, guidance laid down by the Lands Tribunal in the case of Lotus and *Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*, should be followed.

Decision and reasons

25. In considering the arguments presented by both parties, the panel had regard to the legislation as found in the Local Government Finance Act 1988. Schedule 6, paragraph 2 (as amended), which, in essence states that the rateable value is determined by what market rent is obtainable on a hereditament, at the antecedent valuation date, assuming that the property is in reasonable repair and that the landlord is prepared to pay all or any necessary expenses to maintain the property at a standard to achieve that rent.

26. The panel must also consider the premises vacant and to let, with a hypothetical tenant coming fresh to the scene, as at the antecedent valuation date of 1 April 2015 (AVD). As this is a compiled list appeal, the material day is also 1 April 2017.

27. All the relevant factual information regarding the subject property, including the net internal area (NIA) was not disputed by the parties. The parties were also in agreement that a 10% uplift to reflect the air conditioning system be applied to the assessment of the subject property.

28. However, the parties disagreed over how the rents had been analysed. The Respondent had adopted a yield of 7% for adjusting any incentives with the Appellant's representatives adopting a yield of 10%. Having reviewed the parties arguments regarding this issue, the panel considers the approach taken by the Respondent to be the correct approach as there

is rationale behind adopting a yield of 7%. The panel acknowledged the fact that the Bank of England interest rate at the AVD was 0.5%, with savings accounts and gilts paying between 1-2%. Therefore, it is the panel's opinion that a yield of 7% would be considered a healthy return for an investment, at that time.

29. In addition, the parties disagreed on the methodology of applying the Present Value (PV) factor. The Appellant's representatives made the point that their analysis of rental evidence, using Parry's Valuation Tables (as they had done) was more accurate than the Respondent's method as it assumed the full level of value was available to the landlord at day one. However, the panel is not persuaded that applying the PV factor to a year one rent was correct, as there is no deferral, even allowing for a rent free period, a landlord would, at some point, still receive rental payments in year one. For this reason, the panel is satisfied that the Respondent's method of applying a PV factor after year one is the correct and accepted valuation convention.

30. The panel understood that the subject property had been let in an open market, with effect from 01 March 2017, on a five year term with four months rent free period as an incentive, plus eight months at half rent, with a headline rent of £123,110 per annum. The Appellant's representative had analysed the passing rent on the property to be £178/m^2. The Respondent's base analysis of the rent was £182.81/m^2, which reflected the rateable fit-out expenditure of £267,314 which the occupier had spent on fitting-out the property prior to its occupation.

31. Both parties presented rental evidence drawn from within the appeal building for the panel's consideration. The rents had been analysed as follows: -

<u>Appellant's evidence</u>

- 10th floor East, new letting, November 2014, £158.27/m^2
- 5th floor West, new letting, June 2015, £160.87/m^2
- 11 floor West, new letting, August 2015, £160.13/m^2
- 8th floor West determined by VT at £160/m^2

<u>Respondent's evidence</u>

- 10th floor East, FOR, new letting, November 2014, £160.58/m^2
- Pt 10th floor West, FOR, new letting, 01 April 2015, £180.14/m^2
- 5th floor West, new letting, June 2015, £160.52/m^2
- 9th floor West, FOR, rent review, August 2015, £188.72/m^2
- 11th floor West, new letting, August 2015, £174.23/m^2
- 4th floor West, FOR, rent review, September 2015, £178.65/m^2
- 7th floor East (subject property), 1 March 2017, £183/m^2

*FOR (form of return)

32. *Lotus and Delta v Culverwell (VO) and Leicester [1976]* RA 141 laid down several propositions for the treatment of rental evidence. This case defined the weight that should be attributable to such evidence starting with the rent payable on the appeal property. The closer the circumstances under which this rent was agreed accorded with time, subject matter and conditions relating to the statutory requirements, then the greater the weight attached to it.

33. The panel adopted this approach in considering the evidence. While the panel acknowledged that the rent on the subject property was relevant, it also notes that the rent had been agreed two years post AVD. Consequently, less weight was attached to this evidence.

34. The panel then examined the evidence presented by the parties. The Appellant sought to rely mostly on past VT decision in respect of the 8th floor West, 1000 Great West Road, Brentford, TW8 9ES (CHG1000029494). This case was heard by the Tribunal on 7th January 2020 and related to the tone to be adopted within the 2017 Rating List for the hereditament. The Tribunal found in the Appellant's favour and revised the value to £160/m^2 plus 10% to reflect air conditioning system. Mr Hair contended that the subject property should also be valued based on £160/m^2 as both properties were offices and located in the same building. It was his view that the Tribunal decision on 7 January 2020 set precedent for the rate of £160/m^2 to be applied to other offices within the building.

35. However, the panel considers that no Tribunal can bind another and is satisfied that the presiding panel on 7 January 2020 reached its conclusions, based on the evidence that had been before it on the day. Specifically, one piece of evidence had been provided by the Respondent for that hearing and it was on that piece of evidence that the Tribunal reached its decision. Therefore, the panel considers that it must stand back from the previous Tribunal decision and determine the subject appeal, based on the evidence that is before it.

36. The panel acknowledges that evidence of actual rents is most useful in determining what the rateable value should be. However, in this case, the rent on the subject property had been agreed two years post AVD to be of much significance. Therefore, the panel must consider the next best evidence, being the rents of other hereditaments within the appeal building. The Respondent provided a basket of rents, with the rents being analysed at between £160.58/m^2 and £188.72/m^2.

37. The panel accepts that new lettings on a property carry the most weight as to open market value. The Respondent's basket of rents consisted of six rents on offices within the appeal building. The rents analysed to between £160/m^2 and £188/m^2. Four of the rents from the basket of evidence were on new lettings with two being rent reviews. These rents were effective from 01 November 2014 to September 2015. The lease on the 10th floor West commenced on the AVD – 01 April 2015. Therefore, the panel attached significant weight to the Respondent's evidence as these transactions had taken place at or around the AVD.

38. It was also noted that the three rents being relied upon by the Appellant's representative

were also included in the Respondent's basket of rental evidence. The 2015 rent review rents saw increases from their previous rents, as shown by the Respondent during his submission. Therefore, in line with the rent review provisions in their leases, these rents also carry weight as to the market rent as at 2015.

39. The panel is of the considered opinion that it cannot look at the rents presented by the Appellant's representative in isolation but must consider the basket of evidence in order to adopt a rate for the subject property. *Lotus and Delta* requires that any rent prevailing on a property is set in context by examining rents in the locality. Consequently, all the available rental evidence, at or around the AVD, in the appeal building, must be considered.

40. Having noted that the key comparable properties in the building had rents agreed between November 2014 and September 2015 with the rents analysing to values between £160.52/m^2 and £188.72/m^2, the panel considers that the rate of £175/m^2 adopted by the Respondent in the assessment of the subject property had been supported by the available rental evidence in the appeal building.

41. In the circumstances, the appeal is dismissed.

Date: 11 June 2021

Appeal number: CHG1000185485