THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Warehouse and Premises; accuracy of rateable value in list; rental and comparable evidence considered; whether allowances warranted for poor access, shared access and surplus office space; removal of 2.5% allowance for poor access given on 2010 assessment; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal allowed in part.

RE: Baytree Foods, North Road, Lee Mill Industrial Estate, Ivybridge, Devon, PL21 9PB

APPEAL NUMBER: CHG100527561

BETWEEN:	Bay Tree Food Company 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 D Byrne for the Valuation Officer

Summary of decision

1. The appeal was allowed in part. The rateable value (RV) of Baytree Foods, North Road, Lee Mill Industrial Estate, Ivybridge, Devon, PL21 9PB, was reduced to £108,000, 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 £111,000 from 1 April 2017, with a description of Warehouse and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. The appeal was made on 5 July 2021 against the Valuation Officer's (VO) Decision Notice of 24 March 2021 in respect of the appeal property and the RV of £111,000. The proposed RV sought by the appellant was £94,000. However, at the hearing, Mr Lambert said that he was not now seeking a 5% allowance for restricted use on the loading bay, as contended at challenge stage, and the RV now sought was £97,000.

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.

Issue

9. The issue between the parties was whether end allowances were warranted to reflect the poor access, shared access and surplus office space at the appeal property. Mr Lambert, for the appellant, contended that a 2.5% allowance for poor access and a further 5% for shared access

should apply. He also sought a 2.5% allowance for surplus office space. He sought a revised RV of £97,000 with effect from 1 April 2017. Mr Byrne, for the VO, felt that no evidence had been provided by the appellant to justify any allowances and sought dismissal of the appeal.

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

Evidence and submissions

11. 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/plans and photographs, schedule of comparable rental and assessment evidence, a copy of the lease for Bay Tree Food Company Ltd dated 17 July 2013, rateable value definition and related correspondence.

12. The subject property is an industrial building located on Lee Mill Industrial Estate in Ivybridge. The property was built in 1975, has a total significant area of 4,245.23m^2 and is valued at £30/m^2 on valuation scheme – 404392 (The value is applicable to industrial properties built before 1975 and located at Lee Mill Industrial Estate near Ivybridge of up to 5000m^2).

13. Mr Lambert provided me with a history of the assessment. His client took part of this large industrial unit in 2013 and occupy the building with K N Drinks Logistics. The lease was for 10 years from 14 July 2013 at a rent of £119,593 per annum with a six-month rent-free period and a five-year review pattern. Stepped increase on 1 June 2018 to £128,793. This rent analyses to £31.29/m^2. Mr Lambert said, however, that due to subsequent restricted use of the loading bay a revised rent of £100,000 was agreed with the landlord effective from July 2018.

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 a 2.5% allowance for poor access and a further 5% allowance for shared access was warranted. Mr Lambert explained to me that a 2.5% end allowance for poor access was given prior to any split of the property in the 2010 rating list assessment, but this was not carried forward to the 2017 rating list. However, he said that this has now been compounded by the fact that the site is now shared with K N Drinks Logistics. In order to substantiate his contention, Mr Lambert provided me with various comparable properties where end allowances of between 8% to 10% for poor/shared access have been agreed with the VOA.

17. Mr Byrne, acting as advocate, said that the access to the site is reflected in the rent and as such any allowances given for poor/shared access to the RV would also need to be reflected in the rental analysis and as such the main rate would need to increase to reflect the allowance on the rental analysis. He said the resultant RV would remain the same. Mr Byrne was of the opinion that no allowances for poor/shared access are warranted in this case.

18. Mr Lambert had provided me with a number of comparable properties where allowances for poor/shared access had been given. However, he provided no other details on how these relate to the subject unit, e.g., in terms of positioning, location on the site or similarities on access issues. I must consider this appeal on its own merits, and I also have to consider whether these issues are reflected in the rental agreement. The rent on the subject unit was agreed at the start of the lease in July 2013 at £119,593. Therefore, the VO believed that this rent reflects any issues of poor or shared access.

19. I noted Mr Lambert's argument that as the appeal hereditament received a 2.5% allowance for poor access prior to any split in the 2010 rating list this should be carried over to the 2017 list. I considered, however, that as circumstances can change over time, something that may be right for one list would not necessarily be so for another, and therefore I placed little weight on this fact. I accepted the VO's contention that each rating list is not dependent on the entries in the earlier one but is separate and distinguishable and any scheme of valuation must ultimately produce values in accordance with the statutory definition.

20. I had regard to the photographs and plans provided by Mr Lambert. I noted that access to the site was fairly tight and that cars were parked at the entrance thus somewhat further restricting access. I accepted Mr Lambert's contention that this may at times cause access issues in getting to and from the subject unit, but I was not satisfied that the appellant has proved that an allowance as high as 7.5% for both poor and shared access was justified in this case. I therefore accepted Mr Lambert's argument that an allowance was warranted to reflect the poor access issues. However, I was not satisfied that Mr Lambert has proved that an allowance of 5% was justified in this instance for shared access. On the basis of such evidence as it was, I concluded that a 2.5% allowance for poor access was warranted in this case.

21. Secondly, I considered the appellant's request for an allowance of 2.5% for surplus office space at the subject property. Mr Lambert said that his client has little use for a large element of the office space, which amounts to some 650m^2 of offices. He said that a lot of this space is empty and surplus to requirements. He provided a comparable property - The Display Works, East Way, Lee Mill Industrial Estate, where a 2.5% allowance was given by the VOA for surplus office space, and he sought parity with this assessment.

22. Mr Byrne explained to me that the appellant's comparable has 516m^2 of office space against a total of 1,526m^2 thus giving a percentage office content of 33.8%. He accepted that this was high for an industrial unit and as such he believed that this allowance was reasonable. However, Byrne said that the subject property has an office content of 649m^2 and a total area of 4,091m^2. This gives a percentage office content of 15.9%. He said that this is not high for an industrial unit of this size, so he did not believe that an allowance was warranted here.

23. I accepted the VO's contention that when looking at the overall percentage of office content at the subject property this did not appear to be disproportionate when compared to Mr Lambert's comparable where the percentage of office space was more that double that of the subject unit. It is therefore my decision that no allowance should be given for the surplus office space at the subject property.

24. In conclusion, having considered all of the evidence, I found that 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, it is my opinion that an allowance of 2.5% is warranted for poor access, but I was not satisfied that the appellant has proved that allowances for shared access and surplus office space was justified in this case. This yields a RV of £108,263, rounded down to £108,000, which I direct with effect from 1 April 2017. The appeal is allowed to that extent.

Order

25. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show Baytree Foods, North Road, Lee Mill Industrial Estate, Ivybridge, Devon, PL21 9PB, at a Rateable Value of £108,000 with effect from 1 April 2017.

26. If the appeal was successful (either in part or full) 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: 23 November 2021

Appeal number: CHG100527561