THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; retail warehouse and premises; accuracy of rateable value; analysis of rent; comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: (1) Sofology, Unit 4, Wallsend NE28 9PD
(2) Wren Kitchens, Unit 2, Wallsend NE28 9PD

APPEAL NUMBERS: CHG100691169 and CHG100691175

BETWEEN (1) Sofology Ltd Appellants
(2) Wren Kitchens Ltd

and

Amanda Hitchings Respondent
(Valuation Officer)

PANEL: Ms C Edwards (Presiding Senior Member)
Mrs A Fielder (Senior Member)

CLERK: Miss N Shepherd (IRRV Hons)

REMOTE HEARING: Wednesday 20 February 2024

APPEARANCES: Ms M Oates from Lambert Smith Hampton, representing the appellant
Ms C Jones, representing the Valuation Officer

Summary of decision

1. Sofology, Unit 4, Wallsend, NE28 9PD – appeal dismissed; Rateable Value (RV) confirmed at £325,000 effective from 1 April 2017 to 1 April 2019 and £342,500 effective from 2 April 2019.

2. Wren Kitchens, Unit 2, Wallsend NE28 9PD – appeal dismissed; Rateable Value confirmed at £350,000 effective from 1 April 2017 to 1 April 2019 and £370,500 effective from 2 April 2019.

Introduction

3. It was agreed by both parties that these appeals would be heard together as they were all made by the same representative on the same grounds with similar evidence.

4. These were 2017 rating list appeals. The challenge proposals were submitted by Lambert Smith Hampton on behalf of Sofology Ltd and Wren Kitchen Ltd and were received by the Valuation Officer on 10 May 2022. The proposals had been made on the grounds that the RV's shown in the rating list on 1 April 2017 were inaccurate. The appellant's representative sought a reduction in main space rate from £350m^2 to £250m^2 effective from 1 April 2017 and a 5% allowance to 1 April 2019 to reflect the disruption of nearby roadworks. During the challenge process the appellant's representative reconsidered the evidence and amended the proposed main space rate from £250m^2 to £275m^2.

5. The Valuation Officer issued challenge case decision notices on 27 July 2022 which disagreed with the proposed alterations but stated that the rating list entries were unreasonable based on the evidence and information available. The Valuation Officer concluded that a temporary allowance should be awarded until 1 April 2019 and that main space rate should be reduced to £300m^2.

6. The appellant did not consider these allowances to be appropriate. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, appeals to this Tribunal were then made on the grounds that the valuation of the hereditaments was not reasonable. The appeals were registered by the Tribunal on 25 November 2022.

7. The subject hereditaments were described in the 2017 Rating List as retail warehouse and premises. They were two of a terrace of four retail warehouses known as Silverlink Point, constructed between 2015 and 2016. Unit 4 measured 1173.15m^2 and Unit 2 measured 1059.92m^2.

8. Ms Oates 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) her statement of truth included a statement that she was not instructed under any conditional fee arrangement. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she 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.

9. The panel 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

10. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issues

11. The issue in dispute was the main space rate that should be applied to the subject hereditaments.

Evidence and submissions

12. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

Decision and reasons

13. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis 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 the 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.

14. 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).

15. 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 appeals, the material day is 1 April 2017.

16. The panel had regard to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The panel was aware that this was a leading

judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. The remaining propositions required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

17. The panel noted that rents had been provided for the subject hereditaments with ten-year leases at each property commencing with effect from 5 August 2016. Unit 4 had a headline rent of £431,250 per annum (pa), with six rent free months at the commencement of the lease and a capital contribution of £456,520. Unit 2 had a headline rent of £395,000 pa, with a capital contribution of £430,000 and a rent-free period of 12 months at the commencement of the lease.

18. Ms Oates referred to the rents at the subject hereditaments, contending that when these were analysed to take account of the rent-free periods and capital contribution incentives, they adjusted to £342,500 for Unit 4 and £273,000 for Unit 2. This analysed to a main space rate of £232.71m^2 for Unit 2 and £323.14m^2 for Unit 4. It was Ms Oates' contention that taking an average of these figures clearly demonstrated that the current assessment of £300m^2 was incorrect, and an assessment of £275m^2 would be more reasonable.

19. During questions, Ms Oates submitted that she had analysed the capital contribution over the duration of the lease, however had only analysed the rent-free period for the first five years up until the rent review. Ms Jones contended that the rent-free period should also be averaged over the full ten years of the lease. The level of incentive given was not for a five-year period, but rather the full term. Furthermore, there was no break option in the lease furthering that the expectation of the landlord was that the tenant would be in there for the full ten-year term, which was why the levels of incentive were as high as they were. As such, there was no justification for the rent-free period to be analysed over only half the term of the lease. Ms Jones submitted that £300m^2 was a reasonable assessment based upon averaging the rent-free period over the 10 years.

20. The panel had consideration to the treatment of the rent-free period and preferred the approach of the Valuation Officer as it could see no reason as to why this incentive would not be averaged over the whole period of the lease. The panel noted that when analysing the rent-free periods over the ten years that the analysed rent for Unit 2 equated to £312,500 RV at £266.37 m^2 and Unit 4 to £364.06 at £343.48m^2. The panel considered that an average based upon these two figures was slightly higher than the current £300m^2, and therefore supported the current assessment to be reasonable.

21. Ms Oates also referred to the two other retail warehouses within the same terrace as the subject hereditaments in support of the assessments of Unit 2 and Unit 4 being reasonable. Unit 1 was smaller than the appeal dwellings at 569.47m^2 with a main space rate of £350m^2 and Unit 3 was significantly larger

at 2494.54m^2 with a main space rate of £300m^2. The panel noted that Unit 1 had previously had a main space rate of £425m^2 but this had been reduced upon challenge.

22. Taking into account the size difference the panel considered that the main space rate of £350m^2 at Unit 1 supported £300m^2 at the larger subject hereditaments. The panel noted that although Unit 3 was larger than the subject hereditaments it had the same main space rate. The panel considered that taking the difference in sizes into account it would not be unreasonable to expect the larger Unit 3 to have a lower main space rate than the subject hereditaments. Taking this into consideration, the panel therefore found this comparable to support a lower assessment for the subject hereditaments. However, it also noted that Unit 3 was currently at challenge stage in regard to the main space rate adopted.

23. Having consideration to the evidence and submissions of both parties the panel attached most weight to the rental evidence provided in respect of the subject hereditaments. Applying an average of the two analysed rental figures as both parties had done, the panel considered that a main space rate of £300m^2 was not unreasonable. The panel considered that this was further supported by the main space rate of £350m^2 adopted at Unit 1.

24. The panel therefore confirmed the RV at Unit 4 at £325,000, effective from 1 April 2017 to 1 April 2019 and at £342,500, effective from 2 April 2019. The RV at Unit 2 was confirmed at £350,000, effective from 1 April 2017 to 1 April 2019 and at £370,500, effective from 2 April 2019.

25. In view of the foregoing the panel dismissed the appeals.

Date: 19 March 2024

Appeal Numbers: CHG100691169 and CHG100691175

Right of appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.