THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal allowed in part.

RE: 5 and 6, Arkwright Road, Bedford MK42 0LG (the 'subject property')

APPEAL NUMBER: CHG100792559

BETWEEN:	Cable Management Warehouse Limited	Appellant
	and	
	The Valuation Officer	Respondent

PANEL: Ms C Edwards (Senior Member) and Mr O Miller

CLERK: Mr A Johnson Tech IRRV

HEARING: Conducted remotely via Microsoft Teams

ON: 22 August 2023

APPEARANCES: Mr C Strong of Altus Group (representing the Appellant)
Mr D Walker (representing the Respondent)

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was allowed in part. The panel found that:

   (a) the unadjusted rate (UAR) of £45 per m^2 was not excessive; and
   (b) an allowance of 2.5% should be made to reflect the disadvantage caused by the presence of a large dividing wall.

2. Consequently, the rateable value (RV) was altered to £73,500 (when rounded down) with effect from 1 April 2017.

Introduction

3. This decision notice is not, and does not purport to be, a verbatim record of the proceedings.

4. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The subject property entered the 2017 non-domestic rating list with effect from 1 April 2017. It had been built in the early 1980’s and had been described as a ‘warehouse and premises’ measuring 1,759.57m^2 (this measurement had been agreed between the parties). The Appellant’s proposal sought alteration to the 2017 non-domestic rating list on the grounds that the RV of the subject property from 1 April 2017 was not reasonable and that an allowance of 5% should be made to reflect the disadvantage caused by a large dividing wall. The allowance sought was reduced to 2.5% during the remote hearing. The Appellant had challenged the Valuation Officer’s (VO) decision that the proposals were not well-founded. The RV was £75,500 and, if successful on both grounds, the revised RV would be £68,500.

5. Mr Strong stated that he was representing the Appellant in the dual roles of advocate and expert witness. Mr Strong also declared that he was representing the Appellant on a contingency fee basis. Mr Walker stated that whilst he was principally representing the VO as an advocate, he considered himself to be an expert as far as the relevant legislation was concerned. Both of them acknowledged that when presenting evidence as expert witnesses they understood and accepted that their duty was to the Tribunal regardless of whether or not the evidence supported their respective arguments.

6. Mindful of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT (LC), the panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

7. It was therefore appropriate for the panel to consider the ‘expert’ evidence and assess what weight, if any, to give it in the context of the issues before it.

Issues

8. The two issues for the panel to determine were:

    1. the Appellant had sought a reduction of the UAR from £45 per m^2 to £42 per m^2; and

    2. the appellant had sought an allowance of 2.5% to reflect the disadvantage caused by the presence of a large dividing wall between the units.

Summary of evidence and submissions

9. The evidence before the panel included the information contained within the Appellant's challenge document and the VO's decision notice. On 24 July 2023 the Tribunal received an application for the admittance of additional information which principally concerned Units 3-4 St Martins Way, Bedford MK42 0LF which had, since the submission of this appeal, been the subject of a reduction from £45.00 per m^2 to £42.00 per m^2. As no objection was raised by the VO, this was accepted into evidence.

Decision and reasons

10. This was an appeal against an entry in the 2017 rating list and so 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. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the subject property is 1 April 2017.

11. The starting point for consideration is the actual rent passing on the subject property. This was understood to be the product of two leases (one in respect of 5 Arkwright Road and another in respect of 6 Arkwright Road) which commenced in 2008 and were renewed in 2018 for a term of ten years. The latest rents commenced on 1 May 2018 and were the subject of stepped increases over the first five years (with a review after year five). These were £102,388 for year one, £104,714 for year two, £107,402 for year three, £109,369 for year four and £111,786 for year five. The panel placed less weight on this rent because it was the product of renewal leases and was more than three years post AVD.

12. Mr Strong placed significant weight upon the agreement (at the Challenge stage) relating to Units 3-4 St Martins Way which had become the subject of a reduced UAR of £42 per m^2 (from £45.00 per m^2). This property was, like the subject property, built in the early 1980's, was similar in quality and size (at 1,922.48m^2) and was located approximately 300m away on a neighbouring industrial estate. This, he contended, provided good evidence that the appeal property had been over-valued at £45 per m^2. In response, Mr Walker stated that the agreement form in respect of 3-4 St Martins Way had, in error, referred to a reduction relating to the main space price and was actually a 'quality adjustment'. Whilst the 2017 rating list was now closed, the error had been corrected in the 2023 rating list. Whilst the panel fully understood why Mr Strong had relied upon this reduction to support a similar reduction for the subject property (given that he had been led to believe that the main space price had been reduced), the panel concluded that it did not support his case.

13. Arguably the best evidence was provided by 1 Arkwright Road because its rent had been agreed closed to the AVD on 28 April 2015. This had been analysed to £51.31 per m^2 with an adopted UAR of £50.00 per m^2. However, this was significantly smaller in size at 774.24m^2. Units 13-14 Arkwright Road

(1,320.1m^2) was the subject of a new lease which was effective from 1 January 2013. This was a stepped rent which had been analysed to £32.61 per m^2 with an adopted UAR of £45.00 per m^2. Units 7-8 Arkwright Road (1,510.56m^2) and Units 11/12 Arkwright Road (1,543.37m^2) were close in size to the subject property and were themselves the subject of lease renewals in April 2014 which had been analysed to £42.62 per m^2 and 40.53 per m^2 respectively. Both had adopted UAR's of £45.00 per m^2. The panel, when viewing the basket of evidence as a whole, concluded that £45.00 per m^2 for the subject property was not excessive.

14. The panel considered the evidence and submissions of both parties concerning the presence of a dividing wall between units 5 and 6 with access between the two only possible through a gap measuring approximately 4/5 metres in width. The panel concluded that this represented a degree of inconvenience which was enough to influence the rental bid of a hypothetical tenant who was fresh to the scene on the AVD. Therefore, the panel found that the 2.5% allowance sought by Mr Strong was reasonable. This results in a revised RV of £73,500 (rounded down) with effect from 1 April 2017.

15. This appeal was therefore allowed in part.

Order

16. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the Valuation Tribunal for England orders the Valuation Officer to alter the rating list within two weeks of the date of this order to show the entry for the subject property from 1 April 2017 to be £73,500.

Refund of appeal fee

The appellant is entitled to a refund of the appeal fee in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 29 August 2023

Appeal Number: CHG100792559

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.