VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: Local Government Finance Act 1988; offices and premises; comparable evidence: various valuation schemes; predominant use of properties; weighting of evidence; appeal dismissed.

APPEAL NUMBER: CHG100860554

RE: 37 Hyde Way, Welwyn Garden City, Hertfordshire AL7 3UG
(the "subject property")

BETWEEN: John Smale — Appellant

and

(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 07/06/2024 10:00

BEFORE: Dr T Gledhill, Presiding Senior Member

CLERK: Mrs S Morgan

APPEARANCES: Mr M Hawkins – Appellant's representative (Colliers International)

Mr M Green – Valuation Officer's representative

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed. The assessment was confirmed as £61,500 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. The subject property had been entered in the 2017 Rating List as 'offices and premises' at a RV of £61,500 with effect from 1 April 2017.

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO). After considering the proposal and evidence submitted during the challenge period, the VO decided to reduce the assessment from £63,500 RV to £61,500 RV. A decision notice to that effect was served on the appellant on 29 September 2023 and his representatives then appealed the VO's decision to the Tribunal on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

4. The subject property comprised of a two-storey office building of brick walls and a double-pitched tiled roof. There was a small parking area to the front of the premises and a larger one to the rear of the property. The original single storey part was built in 1950/60's. Around 1990 the building was partially demolished at the rear. The remaining ground floor was substantially refurbished, and offices were built on the first floor partially above the ground floor area. The property was taken out of the Rating List for the duration of the works and brought back into the Rating List on 1 April 1991, when it was valued as predominately offices. The property had a total significant area of 434.01m^2.

5. A photographic bundle, which included photographs of the subject property and a number of comparable properties, was provided the day before the hearing. This was an accepted document by both parties and was allowed to be admitted as evidence.

6. Mr Hawkins appeared on behalf of the appellant as both advocate and expert witness and declared that he was not instructed under a conditional or other success-based fee arrangement. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Hawkins' declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

7. Mr Green, on behalf of the respondent, was acting in the dual role as advocate and expert witness.

8. The hearing was held remotely via Microsoft Teams.

9. Under Tribunal Business Arrangements, I could hear this appeal alone, as the other member selected to attend this hearing was unable to participate on the day of the hearing and a replacement member could not be found at short notice.

10. This statement of reasons is not and does not purport to be a verbatim record of the proceedings.

<u>Background</u>

11. Arguments and factual evidence from both the appellant's representative and the VO's representative were provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission, location plans, reference to various valuation schemes, the respondent's challenge decision notice and reference to, and photographs of, properties deemed comparable to the subject

hereditament. The Lands Tribunal's judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 was also referred to.

12. The appellant's representative sought a reduction to £24,500 RV at the hearing. He contended that the following issues should be reflected in his revised valuation. Following the alterations made by the VOA, the line entries for references 1, 5, and 6 in the valuation were now incorrect and, as such, the relativities should be amended from 0.7 to 1.0. The production area and storage space should not be valued at the same relativity as the office space.

13. The appellant's representative also believed that the subject property was valued in the wrong scheme. Following the conclusion of the Check stage the subject property was moved from scheme 321289 into scheme 321290. The range of values covered in both schemes was from £140/m^2 to £170/m^2. In addition, the appellant's representative contended that the tone of £150/m^2 adopted for the subject property was excessive and that £50/m^2 was more appropriate and was in line with properties in scheme 300605, which he considered to be the correct scheme for the subject property.

14. The VO's representative stated that the appellant's representative had failed to declare the number of car parking spaces, the presence of solar panels on the roof and the partial air conditioning. The approved planning stated that there were 17 car parking spaces in total with 4 spaces at the front and 13 at the rear. The value attributed to the car spaces was currently included in the matrices value. The solar panels were not presence when the property was inspected in 2022 although the VO's representative contended that these should have been declared at Check stage. In relation to the air conditioning, it was accepted that this was in existence on the first floor. This element was now reflected in the revised valuation.

15. With regard to the valuation schemes, the move by the VO's representative to scheme 321790 reflected a lack of air conditioning and no raised floor for offices built in 1950/1960's and refurbished in 1991 to reflect the changes. The RV was reduced automatically from £69,000 to £63,500 with effect 1 April 2017. In addition, he stated that had the appellant's representative declared that there was partial air conditioning, the scheme may not have been changed.

Relevant Law

16. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

"(1) 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.

Discussion

17. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

18. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

19. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day was 1 April 2017.

20. It is a well-established rating principle that the starting point in the determination of a property's RV should be the rent passing on the subject hereditament itself as held in *Lotus and Delta.* When presented, rents on similar properties could also be considered. No rental evidence from either the subject property, or from any comparable properties were provided by either party for me to consider. The subject property was occupied freehold, therefore there was no passing rent. No rental evidence was provided nor any rental evidence for other properties. Therefore, in accordance with the fourth proposition outlined in *Lotus and Delta* I had to have regard to the assessments placed on other properties within the various schemes that had been referred to by the parties.

21. The appellant's representative contended that the subject property should be in valuation scheme 300605 which covered industrial estates in Welwyn Garden City for purpose-built units built before 1965. In this valuation scheme the values ranged from £37.50/m^2 to £85.00/m^2. He sought £50/m^2 for the main production space and store with an uplift for the office accommodation. The appellant's representative had referred to a mixture of comparable properties in Hyde Way to support his contention. However, it was discovered during discussions that although first floor offices at 35 Hyde Way had been placed in scheme 300605, they were incorrectly valued as industrial units.

22. I understood that valuation schemes provided guidance and placed similar types of property in the same scheme. In scheme 300605, as proposed by the appellant's representative, I noted that these properties were not comparable as they covered properties whose main description was for industrial use as opposed to offices. Therefore, they differed in terms of mode or category of use. In addition, the comparable properties referred to by the appellant's

representative as evidence of tone at 25 and 27 Brownfields, 33 Burrowfield and 3 Woodfield in Welwyn Garden City appeared to be valued as predominately industrial space at £50/m^2. This appeared to account for the difference in the values applied between predominately industrial properties with ancillary office space against those predominately having office accommodation with ancillary industrial usage like the subject property.

23. Reference was also made by the appellant's representative to numbers 3, 4, 5 The Beacons, Beaconsfield Road, Hatfield which were newer built office premises in scheme 321290, the same as the subject property, which had been valued at £150/m^2. With the aid of the photographic evidence, he highlighted the differences between these properties and the subject property in terms of their comparability. However, I attached less weight to these properties as they were located in Hatfield some distance away from the subject property in Welwyn Garden City.

24. I was more persuaded by and placed more weight on the comparable assessments provided by the VO's representative, who had provided office assessments for 27 and 31 Hyde Way, Welwyn Garden City that were in scheme 321289, and also valued at £150/m^2. They had been valued like for like in previous lists although they were older and of lesser quality compared to the subject property. I found these two properties in Hyde Way to be the best evidence as they were in the same locality, on a similar range of values within their valuation schemes (£140/m^2 to £170/m^2), which supported the level of value adopted of £150/m^2 for the subject property. More importantly they were in the same mode or category of use as the subject property as predominantly office-based assessments.

25. Having established that the current main space rate applied of £150/m^2 was not excessive and was in line with the assessments placed on similar predominately office-based properties in the same road that had not been challenged, I could see no reason to alter the revised relativities for the subject property which reflected all elements within the building. I did note that the VO's revised valuation of £61,500 RV showed no distinction between the production area, store and office space on the ground floor. Having examined the photographic evidence it appeared that these areas were all of similar office quality. I also noted that there was an uplift for the newer first-floor office accommodation which appeared reasonable.

26. 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 me, I concluded that he had failed to produce sufficient evidence to justify his claim for a reduced assessment by relying on the different valuation schemes in existence which reflected whether the predominant use was for industrial purposes as opposed to office-based accommodation. Consequently, I was satisfied that the grounds for the appeal were not substantiated, and the appeal was dismissed.

Disposal

27. In view of the above findings and conclusions, I was satisfied that the existing RV of £61,500 appeared fair and reasonable.

Date issued to parties: 10 July 2024

Right of further 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.