Non-domestic rating appeal; 2017 rating list; Compiled list appeal; Warehouse and premises; Comparable properties; Lotus and Delta v Culverwell (VO) LVC/376/1975; *Appeal allowed.*

RE: Hayley Group Plc, Hayseech Works, Halesowen, B63 2PG

APPEAL NUMBER: CHG100060357

BETWEEN:	Hayley Group Plc	Appellant
	And	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Dr J Johnson (Senior member)
Mr A Wheeler

CLERK: Ms R Muller

ON: 28 October 2020

APPEARANCES: Mr S Geary of Altus Group for the appellant
Mr F Nawaz of the Valuation Office Agency for the respondent

Summary of decision

1. Appeal allowed. The existing valuation is unreasonable and the entry in the rating list was reduced to £194,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 compiled rating list appeal. The RV of the appeal hereditament was originally £201,000, with effect from 1 April 2017; therefore, the material day was also 1 April 2017. A Check had been completed on 26 September 2018 and a Challenge submitted on 23 November 2018. The Challenge stage was completed on 7 April 2020 with no change to the RV of the appeal hereditament, therefore, an appeal was received by the Tribunal on 31 July 2020.

3. The appellant's representative had originally sought a reduction RV to £166,000. However, during the discussions, the appellant's representative had submitted a revised RV of £194,000, which had been detailed within the appeal documents submitted to the Tribunal.

4. Mr Geary 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), Mr Geary explained that he was instructed on a contingency fee basis and he declared that he understood and accepted his duty 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 the evidence supported the client's case.

5. 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.

6. The subject hereditament was a warehouse, which was situated within an industrial location in Halesowen. The subject hereditament had been placed in valuation Scheme 319060 and measured 8,572m^2 in size. The hereditament was listed as warehouse and premises and was held on a freehold basis.

7. 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.

8. 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.

9. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Preliminary matter

10. Mr Geary had stated that upon receiving the Initial Response from Mr Nawaz on 9 March 2020, he had submitted further evidence via email to Mr Nawaz on 1 April 2020. However, Mr Nawaz had not detailed any of the evidence included by Mr Geary within the Final Challenge decision, which was dated 7 April 2020. Therefore, Mr Geary had provided the details of the evidence at the hearing for the panel's consideration.

11. After taking statements from both parties, the panel noted that Mr Nawaz had no objection to the inclusion of the evidence, which had been provided by Mr Geary, before the Final Decision notice had been issued. Accordingly, the panel held that the hearing should proceed, and the new evidence was to be included.

Issue

12. The issue for the panel to consider was the correct RV to be ascribed to assessment.

Evidence and submissions

13. Mr Geary stated that due to the mixed age of the subject hereditament, it was split into three separate Survey Units. Survey Unit 1 had a size of 3,499m². It was built in the 1970's and currently had been valued at an unadjusted rate of £27/m^2.

14. Survey Units 2 and 3 were older properties built in the 1950's, which had been valued at unadjusted rates of £20/m^2 and £19.50/pm^2 respectively. These units measured 3,172m² and 1,902m², respectively. There was no dispute regarding the current values applied to Survey Units 2 and 3. So, the dispute only concerned Survey Unit 1 (the appeal Unit).

15. Mr Geary provided details of the appeal Unit, along with photographs and location plans; a summary of comparable assessments and rental evidence; a witness statement, which detailed the issue in dispute; extracts from relevant case law; a copy of the current assessment and his revised valuation for the subject hereditament and his conclusion. Mr Geary had stated that the RV of £201,000 was not fair and reasonable and that the panel reduce the unadjusted rate in respect of Unit 1 from £27/m² to £25/m², which resulted in his revised valuation of £94,000 RV, with effect from 1 April 2017.

16. Mr Nawaz provided details of the Challenge decision; along with comparable rental evidence; the valuation assessment of the subject hereditament; a statement of grounds and a summary of disputed facts and issues. Mr Nawaz had stated that the RV of £201,000 with effect from 1 April 2017 was fair and reasonable. Therefore, he requested that the panel confirm the unadjusted rate of £27/m² for the Unit 1 of the subject hereditament.

Decision and reasons

17. The term ‘rateable value’ is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

    “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; and

    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”.

18. The material day in this appeal was 1 April 2017 and the antecedent valuation date (AVD) was 1 April 2015. The AVD was the common date used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

19. In his evidence bundle, Mr Geary introduced the Lands Tribunal judgment of *Lotus and Delta* v *Culverwell (VO)* LVC/376/1975, which provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject hereditament was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. The subject hereditament was held freehold by the appellant. Therefore, there was no rental evidence for the subject hereditament to determine the rateable value. In the lack of any rental evidence, the panel turned to the following key comparable assessments as provided by Mr Geary:

a) Units 1-2, Stambermill Industrial Estate, DY9 7BJ - measured 1,041.62m^{2,} and had been valued at the unadjusted rate of £33/m^2. It had been valued at £34,000 RV and had a rent of £32,000, with effect from 22 June 2015.

b) Units 3 & 4 Castle Mill Works, DY1 4DA – measured 1,711m^2 and had been valued at unadjusted rates of £32.89/£33/m^2. It had been valued at £34,500 RV/ £22,000 RV and had a rent of £55,250 with effect from 1 May 2015.

c) Unit 1, Castle Mill Works, DY1 4DA – measured 2,472.59m^2 and had been valued at the unadjusted rate of £29/m^2. This property was built in 1974. It had been valued at £71,500 RV and had a rent of £60,500 with effect from 1 October 2014. This comp had been agreed at £26/m^2; Revised Rateable Value therefore: £64,500.

21. All of the comparable properties provided by Mr Geary were built in the 1970's and were in the same valuation scheme as the appeal Unit, except for Unit 1, Castle Mill Works. This property had been in the same scheme until the settlement, when it had been changed to valuation scheme 319126 and the unadjusted rate had been reduced from £29/m^2 to £26/m^2. The panel attached a lot of weight to this comparable property. This property was the same age as the appeal property but was smaller in size and it unadjusted rate had been agreed at £26/m^2.

22. The panel noted that there had not been any material change to either the appeal Unit or Unit 1, Castle Mill Works during the 2010 and 2017 Rating Lists and as such, was not provided information as to why Unit 1, Castle Mill Works had been placed into a different scheme after the settlement of this appeal within the 2017 Rating List. Therefore, the panel considered that the revised unadjusted rate of £25/m^2 requested by Mr Geary with regards to quantum for the appeal Unit was fair and reasonable.

23. The panel also noted that the comparable properties provided above had rents which had effective dates close to the AVD of 1 April 2015, which was proven to be relevant to Mr Geary's contention of his revised valuation for the appeal Unit.

24. Mr Nawaz contended that the unadjusted rate of £27/m^2 was based on the basket of rents for a number of properties and not just those that had been presented by Mr Geary as comparable properties. The comparable properties that had been provided by Mr Nawaz were:

a) Quality Metal Products, DY9 7BQ. This property had an area of 6,539.81m^2 and was built in 1972. The unadjusted rate was £27/m^2 and the rateable value was £177,000; Rent was £160,000 with effect from 24 June 2012.

b) Lye Cash & Carry, DY9 8HU. This property had an area of 3,229.69m² and was built in 1971. The unadjusted rate was £29/m² and the rateable value was £88,000; Rent was £50,000 with effect from 29 September 2012.

c) Unit 3, Hayes Trading Estate, DY9 8RH. This property had an area of 1,704.23m² and was built in 1971. The unadjusted rate was £30/m² and the rateable value was £51,000; Rent was £77,000 with effect from 12 December 2014.

d) Unit 25, Pedmore Road, DY5 1TJ. This property had an area of 1,418.30m² and was built in 1976. The unadjusted rate was £30/m² and the rateable value was £42,500; Rent was £82,000 with effect from 25 March 2013.

25. The panel noted that the comparable properties provided by Mr Nawaz had rents that had effective dates between 2012 and 2014, which were four months to three years before the AVD of 1 April 2015. The rent set closest to the AVD of 1 April 2015 was Unit 3, Hayes Trading Estate, DY9 8RH. The rent had an effective date from 12 December 2014, which was only four months before the AVD and therefore was the best comparable property to consider in terms of rent. However, this property was much smaller than the appeal Unit at 1,705.23m² and had an adjusted rate of £30/m².

26. The panel paid attention to the comparable property of Lye Cash & Carry, DY9 8HU, which was the nearest in size to the subject hereditament at 3,229.69m ². It had an unadjusted rate of £29/m². The rent was effective from 29 September 2012, which the panel found was far too removed from the AVD to be of any assistance.

27. In coming to its conclusion, the panel found the rental evidence for Unit 1, Castle Mill Works, DY1 4DA the most compelling. The panel found that the two properties had been valued within the same scheme for both the 2010 and 2017 Rating Lists until the recent settlement on Unit 1 Castle Mill Works. As this comparable property was much smaller than the subject hereditament and had had an agreement to reduce the base value from £29/m² to £26/m², the panel held that the appeal Unit's current unadjusted rate was too high at £27/m², as the appeal Unit was larger and this should be reflected in the unadjusted rate. Therefore, the panel found the current unadjusted rate of £27/m² too high and reduced it to £25/m².

28. The panel found that the evidence presented by Mr Geary in support of an unadjusted rate of £25/m² was compelling. There appeared to be no substantial evidence presented to the panel to prove why the appeal Unit should be valued any higher than Unit 1 Castle Mill Works. Accordingly, the panel allowed the appeal in full, it found the existing assessment to be unreasonable and determined an assessment of £194,000 Rateable Value, with effect from 1 April 2017. The breakdown of the valuation is shown below:

Survey Unit	Floor	Description	Area (m²)	£/m²	Value
1 £25.00	Ground	Warehouse	1,309.70	24.38	£31,930
	Ground	Office	146.20	30.00	£4,386
	Ground	Canteen	23.60	26.81	£633
	Ground	Boiler House	12.00	24.38	£293
	First	Internal Storage	86.40	15.84	£1,369
	Ground	Warehouse	1,199.20	25.00	£29,980
	Ground	Offices	304.50	30.00	£9,135
	First	Offices	92.30	30.00	£2,769
	Ground	Offices (Refurb)	255.00	30.00	£7,650
	Ground	Boardroom	69.60	33.00	£2,297
2 £20.00	Ground	Warehouse	1,687.59	21.00	£35,439
	Ground	Mess/Staff Room	38.38	23.10	£887
	Ground	Office	382.72	25.20	£9,645
	Ground	Warehouse	1,063.40	21.00	£22,331
3 £19.50	Ground	Workshop	1,659.70	19.50	£32,364
	Ground	Internal Storage	113.70	19.50	£2,217
	Ground	Staff Toilets	21.80	19.50	£425
	Ground	Plant Room	5.50	19.50	£107
	Ground	Internal Storage	100.80	19.50	£1,966
		Sub total	8,572.09	Sub total	£195,823
Additional		Loading Bay	71.20	20.00	£1,424
		Canopy	15.40	8.00	£123
		Loading Bay	50.00	20.00	£1,000
		Plant and Machinery			£606
				Sub total	£198,976
		Allowance: Divided or split unit		-2.50%	-£4,974
				Total Value	**£194,002**
				Rateable Value	**£194,000**

Order

29. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list for property known as Hayley Group Plc, Hayseech Works, Halesowen, B63 2PG to rateable value £194,000 with effect from 1 April 2017.

30. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

31. The appellant is entitled to a refund of the appeal fees he paid 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: 12 November 2020

Appeal number: CHG100060357