VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List and merger; Workshop and Premises; accuracy of rateable value; rental and comparable evidence considered; Basic price; Allowance for contaminated land ; Layout; Valuation Scheme; found that weight of evidence supported a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed in Part.*

RE: UNIT 1 Olympus Drive, Great Western Way, Tipton, West Midlands, DY4 7AU (CHG100059004) and UNITS 1 AND 2 Olympus Drive, Great Western Way, Tipton, West Midlands, DY4 7AU.( CHG100064113)

APPEAL NUMBERS: CHG100059004 and CHG100064113

| | | |
|---|---|---|
| BETWEEN: | Olympus Distribution Ltd | Appellant |
| | and | |
| | Dal Virk | |
| | (Valuation Officer) | Respondent |

PANEL: Mr A Jobanputra (Senior Member)
Mr J Percival

CLERK: Mr L Bertie

REMOTE HEARING ON: 23 October 2020

APPEARANCES: Mr K Rabbette of P Rabbette Ltd for the Appellant.

Ms J Hodgson for the Valuation Officer.

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**Summary of decision**

1. Appeals Allowed in part. Unit 1 Olympus Drive, Great Western Way, Tipton, West Midlands, DY4 7AU is determined at Rateable Value, £98,000 with effect 1 April 2017. Units 1 and 2 Olympus Drive, Great Western Way, Tipton, West Midlands, DY4 7AU is determined at Rateable Value £124,000 with effect 4 June 2018.

**Introduction**

2. The appeals before the panel were 2017 Rating List appeals. Unit 1, Olympus Drive, Great Western Way, Tipton, DY4 7AU (reference: CHG100059004) was entered into the 2017 Rating List with a Rateable Value of £123,000 with effect from 1 April 2017. This was increased to £128,000 with effect from 1 July 2017 to reflect an increase in floor areas. Following the Challenge, the Rateable Value was reduced to £110,000 with effect from 1 April 2017 and £115,000 with effect from 1 July 2017.

3. Units 1 & 2, Olympus Drive, Great Western Way, Tipton, DY4 7AU (reference: CHG100064113) were entered into the 2017 Rating List with a Rateable Value of £172,000 with effect from 4 June 2018. This reflected a merger of Unit 1 and Unit 2 following their occupation by the same ratepayer. Following the Challenge, the rateable Value was reduced to £147,000 with effect from 4 June 2018.

4. 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.

5. 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.

6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

7. Mr Rabette appeared on behalf of the Appellant as both surveyor-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 Rabette's declaration of truth included a statement 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 the client's case.

8. The Valuation Officer's representative, Ms Hodgson, advised the panel that he appeared as an advocate for the case but was an expert on general valuation matters.

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 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 it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

11. Unit 1, is the larger of the two units being 2788 m2, comprised a steel portal frame warehouse building with associated office and storage accommodation. Unit 2, the smaller of the two units at 929.76 m2, comprised a single-bay steel portal frame warehouse building with a small reception, office and toilet area at the front of the unit. The remainder of the unit comprises warehouse accommodation. Unit 1 and Unit 2 are separated by a 34.301 metre gap. The appeal property is 3,717.66m² in size.

**Issue**

12. The issue between the parties concerned the RV of the appeal property and specifically, ;the correct Valuation Scheme for the subject appeals Unit 1 and Units 1 and 2, and thus the value adopted on £ per m2 basis; the level of end allowance for contaminated land; and the level of end allowance for layout/fragmentation for Units 1 & 2 . The Appellant's representative, sought a reduction to £88,000 with effect from 1 April 2017 for Unit 1 Olympus Drive, Great Western Way,

Tipton, West Midlands, DY4 7AU based on a £m2 of £42 and a 25% allowance for contaminated land. Ms Hodgson for the VO was satisfied that £46/m² is the correct value for the Unit 1 based on 10 % for contaminated land. She sought confirmation of £110,000 Rateable Value with effect from 1 April 2017.

13. The Appellant's representative sought a Rateable Value of £102,000 with effect from 4 June 2018 for Units 1 and 2 Olympus Drive, Great Western Way, Tipton, West Midlands, DY4 7AU with a basic rate of £42 m2 ,25% allowance for contaminated land and 10% layout allowance .The VO, sought confirmation of the existing RV of £147,000 with effect from 4 June 2018 which was based on a basic rate of £46 m2,10 % allowance for contaminated land and 5% for layout /divided or split unit.

**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. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

15. In line with the decision in *Lotus and Delta v Culverwell (VO) [1976] RA 141* , the rent on the subject property was usually taken as a starting point, in trying to ascertain the rateable value. However, the subject hereditament is currently owned on a freehold basis by multiple Self Invested Personal Pension schemes owned by the directors of the ratepayer's business – Olympus Distribution Limited. The site was previously owned by Prime Developments (Midlands) Limited, a holding company which is also owned by the directors of Olympus Distribution Limited. The freeholder of the site and Olympus Distribution Limited have therefore been connected since the site was developed in the 1990s.

16. The details of the passing rent for the property are not disputed. The rent for Unit 1 is £150,000. This is a lease renewal rent effective from 17 June 2013 analysing to £53.55/m². The rent for Unit 2 is £55,000 agreed for a new lease rent effective from 04 June 2018 analysing to £58.48/m². Both rents were agreed between connected parties. Until relatively recently, Unit 2 was let to Toolstation Limited on a ten-year lease from 2007. They vacated the property at the end of their lease, in October 2017. As such there is no relevant rental evidence from this lease. Olympus Distribution Limited, the subject ratepayer, began occupying Unit 2 from 4 June 2018 on a new lease from 20 November 2017 with an initial rent of £55,000 per annum. Unit 1 has been leased from the respective SIPPs to Olympus Distribution Limited for many years. The most recent lease is from June 2013 for a rent of £150,000 per annum. The combined passing

rent of the two units is therefore £205,000 per annum with multiple effective dates. The various rental transactions between the respective SIPPs and Olympus Distribution Limited clearly amount to “Connected Party Rents”. The directors of Olympus Distribution Limited own the freehold interest in the hereditament and have sublet the property to the ratepayer. The rent collected from Olympus Distribution Limited therefore contributes towards the directors’ pensions.

17. Therefore, it was agreed by the parties that as this was a ‘connected parties’ rent , no weight should be attributed to the rents passing on the appeal properties.

18. Consequently, in accordance with Lotus and Delta v Culverwell (VO) [1976] RA 141 the rents of comparable properties in the locality should also be given weight. The basket of evidence, which did not include the rent on the subject property, and the rents on a number of comparable properties, was in Ms Hodgson’s opinion, indicative that the base rate of £46.00 per $m^2$ for the subject property, was not excessive.

19. Ms Hodgson had provided rental details of comparable properties within the locality of the appeal property in Wednesbury and Tipton to support the existing rate of £46 per $m^2$ for the subject property. The first of these was Workshop and Premises, RV 86,000 (1911.62 m2) ITMS 12-15 &16 Navigation Point, Golds Hill Way, Great Bridge, Tipton West Midlands. It was a lease renewal from 9 September 2013 of £81,235 on a 5 year lease on a stepped rent between £55,434 in year 1-£110,867 in year 5 . This rent analysed a £43.59/m2 with an adopted rate of £46 m2; Warehouse and Premises, RV 71,500. Unit 6, Brittania Park, Trident Drive, Wednesbury, West Midlands - which was 1493.06 $m^2$ ITMS was a new letting from 1 May 2014 of £75,000 on a 6 year lease with 3 yearly rent reviews . The rent analysed at £50.23 /$m^2$ ;Warehouse and Premises, RV £89,000 Unit 6 Wednesbury One, Black Country New Road, Wednesbury West Midlands which was 1,944.72 per $m^2$ ITMS. It was a new letting from 25 February 2015 of £104, 000 which analysed at £44.10/m2 as a new letting on a 10 year term with 5 yearly reviews and nine months’ rent free assumed for fit out. Warehouse and Premises, RV 182,000 Unit 4 Wednesbury One, Black Country New Road, Wednesbury, West Midlands which was 3,749.39 per $m^2$ ITMS. It was a rent review from 1 June 2015 of £104,000, which analysed at £44.10/m2. The adopted £m2 was between £46m2-£48m2 for these properties.

20. The panel gave some weight to the rents of these comparable properties as they were within two miles of the appeal property, similarly aged and fell within Valuation Scheme (286025) which is applicable to “modern industrial property located in Sandwell, and is generally situated on an industrial estate. The scheme applied to properties being between 1,879 and 5000m2 in size . The analysis of the rents indicated an unadjusted rate between £43.59 - £50.23 per m2.

21. The Appellant's representative contended that the appeal property should be valued within a valuation scheme that is specific to properties not situated in industrial estates such as Valuation Scheme (418780). This Scheme is applicable to "industrial property located in Sandwell in the following postcode areas: B18, B21, B66, B69, B70, B71, DY4 and WS10 built mainly post 1995, or is of a similar standard to property of this age, and is not generally situated on an industrial estate". In this Valuation Scheme, hereditaments with a floor area in excess of 2,000 m2 , such as the subject hereditament, have been assessed with an Unadjusted Rate of £42.00 per m2.

22. The panel considered that either analysis of the rents based on new lettings or rent reviews would support the Valuation Officer's contention that the current rate of £46 per $m^2$ ITMS adopted for most of the comparable industrial units on the locality was not excessive and this rate per $m^2$ was also applicable to the appeal property. The panel considered that the contention of the Appellant's representative was not supported by the rental evidence submitted for the locality.

23. Moreover, the panel found no substance in the contention of the appellant's representative that the appeal property should be valued in line with older properties mainly because it was not on an industrial estate was countered by the fact that the appeal property is positioned along the route of the Black Country New Road or Spine Road which was opened in 1995. This location was transformed in the mid 1990s after the opening of the Spine Road in 1995 which significantly improved access to this area between West Bromwich, Great Bridge and Wednesbury. Dual carriageway connectivity to Junction 1 of the M5 motorway and Junction 8 of the M6 motorway was provided and also Junction 10 of the M6 at Wednesbury. Occupiers along the Spine Road therefore have good access to the national motorway network and hence numerous large industrial occupations exist along its length. The fact that the appeal property was not on an industrial estate did not in the panel's opinion, have an adverse effect on its value, sufficient to warrant it having a reduced basic price £m2 below £46

24. The panel noted the comparable properties submitted by the Appellant's representative being; Linde Creighton, Radial Point, Dartmouth Road, Smethwick B66 1BG; .Royal Mail, Kings Hill Business Park, Darlaston Road, Wednesbury WS10 7SH Unit 1, Kings Hill Business Park, Darlaston Road, Wednesbury WS10 7SH Units 300-400, Vaughan Trading Estate, Sedgley Road East, Tipton DY4 7UU Unit 200, Vaughan Trading Estate, Sedgley Road East, Tipton DY4 7UU Unit 100, Vaughan Trading Estate, Sedgley Road East, Tipton DY4 7UU. These properties were considered by the panel to be older and surrounded by similarly aged properties to the appeal property and in inferior positions to that of the appeal property.

25. The panel then addressed the issue of the level of end allowance due for the contaminated nature of the site. The panel was presented with comparable assessments where allowances had been given for contamination ranging between 10%- 30% for Longcroft Services, Lumen Road Royston SG8 7A (10%)G; Ability Handlings Ltd, Mangham Way, Rotherham S61 4RL(10%); Storage Land for Drake Towage Ltd, Crab Marsh, Wisbech, PE13 3JG (50%); Elite Motor Group Service Area, Cambridge Road, Foxton, CB22 6SH (20%) ; Albion Bridge Works , Vickers Street, Manchester, M40 8EF (30%).

26. The Appellant's representative contended that an increased allowance from 10% to 25% was warranted for the buildings having been constructed on a former landfill site which emit various gases (methane, carbon dioxide, etc.) and therefore having various ventilation systems to mitigate occupational risks, which were apparent to visitors and workers on the site. The panel , in considering the effect that contaminated land would have on the hypothetical tenancy and subsequent rateable value and noted the guidance contained in the VOA Rating Manual Section 3 Part 7; that 10% ' for exceptional contamination to the site of the hereditament' was not unreasonable.

27. However, the panel is aware that any allowance for contamination was dependant on the particular facts for each case. Consequently, based on the severity of the contamination of the land on site of the appeal property, the panel considered that an increase in the allowance to 20% was warranted in line with the allowance given on Elite Motor Group Service Area, Cambridge Road, Foxton, CB22 6SH, which the panel found to be a good comparator.

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28. Finally, the panel considered the level of end allowance, to adopt to reflect the fragmented nature of the site, it being two buildings separated by a yard of 34.301 metre rather than one larger building. The panel noted the 9 comparable industrial assessments submitted by the Appellant's representative in Rowley Regis; West Bromwich, Smethwick and Wednesbury which had allowances between 7.5%-10% for varying degrees of fragmentation/layout related to combinations of terraced units usually designed to be occupied on an individual basis or are properties that have had significant extensions or separate buildings within the same curtilage .

29. The panel determined that based on the evidence submitted of separated buildings, the best comparable was on Hadleigh Industries Plc, Gaitskill Way Smethwick which had a 10% allowance for layout. The panel considered that the Valuation Officer's comparable of a bullion store/secure storage depot at Securicor Park Lane , West Bromwich which had a 5% end allowance, was materially different to the subject.

30. Consequently, based on the above reasoning, the panel saw no reason to alter the adopted basic price per $m^2$ to £42, contended for by the Appellant 's representative but revised the allowances for contamination to 20% and for layout to 10%. Therefore the appeal was allowed in part in accordance with the Order below .

**Order**

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 amend the entry in the 2017 Rating List for UNIT 1 Olympus Drive, Great Western Way, Tipton, West Midlands, DY4 7AU Rateable Value £98,000 with effect from 1 April 2017. UNITS 1 AND 2 Olympus Drive, Great Western Way, Tipton, West Midlands, DY4 7AU Rateable Value £124,000 with effect from 4 June 2018.

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

**Date:** 19 November 2020

**Appeal numbers:** CHG100059004 and CHG100064113

| Floor | Description | Area m2 | £ per m2 | Value (£) |
|---|---|---|---|---|
| Ground | Warehouse | 1949.10 | 46.00 | 89,659.0 |
| Ground | Office | 357.50 | 55.20 | 19,734.0 |
| First | Store | 236.60 | 29.90 | 7074.0 |
| First | Office | 132.00 | 50.60 | 6,679.0 |
| | | | | **£123,146.0** |
| | | | | |
| Contamination | | 20% | | 24629.20 |
| | | | | |
| | | | | **98516.80** |
| Unit 1 wef 1 April 2017 | | | | **£98,000 RV** |

| | | | | |
|---|---|---|---|---|
| Ground | Warehouse (1) | 1949.10 | 46.00 | 89,659.0 |
| Ground | Office (1) | 357.50 | 55.20 | 19,734.0 |
| First | Store (1) | 236.60 | 29.90 | 7074.0 |
| First | Office (1) | 132.00 | 50.60 | 6,679.0 |
| First | Off/Str/Tlts/ (1) | 112.70 | 50.60 | 5,703.0 |
| Ground | Whse (2) | 823.58 | 46.00 | 37,885.0 |
| Ground | Office (2) | 53.09 | 55.20 | 2,931.0 |
| First | Office (2) | 53.09 | 55.20 | 2,931.0 |
| | | | | **£ 172,596.0** |
| | | | | |
| Contamination | | -20% | | 34519.20 |
| | | | | 138076.80 |
| Divided/ Split unit | | -10% | | 13807.68 |
| | | | | |
| | | | | 124,269.12 |
| Unit 1 & 2 wef 4 June 2018 | | | | **£124,000 RV** |