VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Warehouse and Premises; analysis of rent passing on subject property and comparable properties on same estate and other estates; rent-free periods incentive or fitting out; found that weight of evidence did not support a reduction in the assessment of subject property; Decision: Appeal dismissed.*

RE: Unit 2, City Business Park, Bristol BS5 0SP

APPEAL NUMBER: CHG100075939

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| BETWEEN: | Resapol Ltd<br>(Represented by Altus Group) | Appellant |
| | and | |
| | Dal S Virk<br>(Valuation Officer) | Respondent |

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| BEFORE: | Mrs J Ellis (Senior Member) |
| REMOTE HEARING: | 14 April 2021 |
| CLERK: | James Massey |
| APPEARANCES: | Mr M Gittins of Altus Group for the Appellant.<br>Mr S Lewis for the Valuation Officer. |

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## Summary of decision

1. Appeal dismissed.

## Introduction

2. My fellow member was not in attendance and we had not been able to arrange for a replacement at short notice. However, I was authorised by the President of the Valuation Tribunal to sit alone as Senior Member for the hearing. This was in accordance with paragraph 9 of the Valuation Tribunal for England’s Tribunal Business Arrangements made by the President pursuant to the Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1).

3. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as having been overlooked.

4. This was a 2017 Rating List appeal. The RV of the appeal property was £23,750 with effect from 1 April 2017. Following a challenge made by the Appellant which sought a reduction to RV £19,750, the Valuation Officer (VO) revised the RV to £22,750 and issued a Decision Notice to that effect on 14 May 2020, and the Appellant appealed against that Decision Notice on 4 September 2020.

5. This appeal was originally heard and determined by a lay panel on 2 December 2020 and its decision was released to the parties on 24 December 2020. The panel's decision to dismiss the appeal was overturned following a review of the decision and the appeal has been relisted to the current hearing to be determined by me.

6. 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.

7. 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. This hearing was conducted via video conference using Microsoft Teams and I was satisfied that both parties were fully able to participate in the hearing.

8. Mr Gittins 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), he declared in open tribunal that he was instructed under a conditional fee arrangement.

9. Mr Gittins 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.

10. I 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). I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

11. The appeal hereditament is located on a modern industrial park located in the suburbs of Bristol, just outside the city centre. It is a 1990 built industrial unit with total significant area of 384.76m$^2$.

## Issue

12. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per $m^2$ that should apply. Mr Gittins, for the Appellant, sought a reduction to £21,750 RV based on an unadjusted main space rate of £55.00 per $m^2$ less a 1.5% end allowance for lack of central heating. Mr Lewis, for the VO defended the amended assessment of £22,750 RV, which was based on the existing unadjusted main space rate of £57.50 per $m^2$ less an end allowance of 1.5% (£56.64) to reflect its lack of central heating.

## Evidence and submissions

13. On 26 March 2021 the Respondent contacted the Tribunal to request that additional evidence be included in this hearing. The Respondent had issued a new form of return (FOR) to the rateable occupier of the subject property in order to clarify some factual matters which were in dispute at the previous hearing in respect of the rent and lease details for the subject property. As a result of the response to the FOR on 25 March 2021 the Respondent had adjusted his analysis of the rent for the subject property both for the initial rent in September 2013, and for the renewal rent in September 2018. The Respondent considered that this comprised factual information which had not been available for the previous hearing and would assist the Tribunal in making its decision.

14. Mr Gittins for the Appellant had objected to the Respondent's application to introduce new evidence, as he considered that such information as was being provided could have been available before the Challenge Decision had been issued on 14 May 2020, as there had been ample time to obtain this information subsequent to the raising of the challenge on 21 February 2019.

15. As a preliminary matter before the hearing day, I considered the Respondent's application, along with Mr Gittins' objections. I was satisfied that the representative for the Respondent had demonstrated good reason for having failed to seek the additional information from the occupier and adduce the evidence at the correct stage in the proceedings. Whilst I had not had sight of the decision from the previous hearing, I was aware that the information obtained by the Respondent from the Appellant via a new FOR was done so in order to clarify an issue which was raised at the previous hearing. Therefore I allowed the admission of the evidence in relation to the FOR referred to in the Respondent's application. In my decision on the preliminary issue, which was issued to the parties on 8 April 2021, I stated that the Appellant would have the opportunity to provide a rebuttal to this new evidence at this hearing, or if he required additional time to formulate his rebuttal, an application for a deferral could be made.

16. At the hearing, Mr Gittins stated that he did not require a deferral of this appeal and he did not contest the Respondent's amended analysis of the rent for the subject property in respect of the new lease in 2013 (£54.21 per $m^2$), or the renewal in 2018 (£71.50 per $m^2$).

17. In his challenge document Mr Gittins had originally sought a reduced RV of £19,750 based on £50.00 per $m^2$, but prior to the hearing on 2 December 2020 he had submitted a revised valuation, in which he sought a reduction to RV £21,750, based on a rate of £55.00 per $m^2$. Mr Gittins argued that in accordance with the Lands Tribunal judgment *of Lotus & Delta Ltd v*

*Culverwell (VO) and Leicester City Council* [1976] the hierarchy of rental evidence should be used to determine the correct RV for the subject property. He stated that the rent agreed of £22,715 per annum (pa) for the subject property on 5 September 2013, which included a rent free period of six months, had been analysed by the Respondent at £54.21 per $m^2$ and he no longer disputed this figure. Taking this as a starting point, he considered that the respondent's unadjusted main space price of £57.50 per $m^2$ was excessive.

18. To support his argument, Mr Gittins had analysed the rents of a number of similar properties in Bristol which he considered comparable to the subject property. These ranged in size from $178m^2$ to $682m^2$ where the rents had been agreed on the basis of new lettings or lease renewals between 5 September 2013 and 4 July 2016. The terms of these leases specified a rent-free period of between three and twelve months but did not specify that these periods were to allow for fitting out of the premises. Mr Gittins had considered that these rent-free periods were purely an incentive, and not to compensate the tenant for fitting out. He had adjusted the rents accordingly, to reach an analysed rent of between £47.19 and £56.92 per $m^2$ and he contended that the analysed rents for his comparable properties showed a rate of £55 per $m^2$ to be fair and reasonable.

19. Mr Gittins had provided copies of the leases for Unit 5 and Unit 7, Unicorn Business Park, Bristol; Unit 1 and Unit 9, Axis, Hawkfield Way, Bristol and for Unit 10, City Business Park, Bristol. He argued that the terms of these five leases detailed their respective rent-free periods with no reference to fitting out of the premises. He had therefore taken the whole of the rent-free periods as incentives and adjusted the rents accordingly.

20. Mr Lewis referred to the rent on the subject property, which had been agreed as £22,750 pa from 5 September 2019. Although he was aware the lease specified a 6 month rent-free period, he considered that based on the FOR provided by the occupier, three months of this was to allow for fitting out of the subject property. He therefore adjusted the subject rent to allow for three months' incentive. This resulted in the £54.21 per $m^2$ effective from 5 September 2013 which had now been accepted by the Appellant. He also referred to the rent agreed of £32,417 pa on the renewal of the lease on the subject property with effect from 5 September 2018. The FOR provided by the occupant had confirmed that the six months' rent-free period agreed on this renewal was wholly for incentive, and this had resulted in the Respondent analysing the renewal rent at £71.50 with effect from 5 September 2018. Mr Lewis contended that the rent agreed on renewal in September 2018 represented an open-market rent and indicated that the rent for the subject property was increasing over this five year period. It would therefore have exceeded the adopted unadjusted rate of £57.50 at the AVD.

21. Mr Lewis also referred to a number of similar Units, one on the same business park as the subject property and three units on Axis, Hawkfield Way, Bristol, which had let on new, five or ten year leases, between 1 December 2015 and 1 August 2016. He had analysed the rents passing on these units at between £59.23 and £72.73 per $m^2$ which he contended supported the adopted unadjusted rate of £57.50 on the subject property. He stated that his comparable properties were similar in age to the subject property and Axis, Hawkfield Way was a similar estate to City Business Park.

22. Mr Lewis stated that his and Mr Gittins analyses of the rents on both of their comparable properties differed due to their treatment of the rent-free periods. He argued that in his experience it was usual to consider 3 months of a rent free period to be reasonable for fit out of a property, particularly on a new letting, where decoration and alterations of office pods, IT infrastructure work, as well as some general maintenance and refurbishment work may take place, particularly on buildings of this age. Although the leases did not confirm the rent-free periods were for fitting out, he stated that where the FORs confirmed that the rent-free period had been negotiated for fitting out, he had assumed that three-months of this was for fitting out. He had considered that any rent-free period in excess of three months was an incentive and had adjusted the rent accordingly in each case.

**Decision and reasons**

23. 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.

24. I had regard to the Lands Tribunal judgment in *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* [1976], as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(1) 'Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

25. Both parties had placed weight on the rent passing on the subject property, but Mr Gittins argued that analysis of the rent agreed in September 2013 suggested that the respondent's unadjusted rateof £57.50 per $m^2$ was not reasonable and the rent supported a reduction to £55.00 per $m^2$. Mr Lewis argued that though the rent agreed in September 2013 had been analysed at £54.21 per $m^2$, this was 19 months before the AVD and he stated that he had demonstrated that the rent on the subject property had risen significantly by September 2018 and therefore would have reached at least £57.50 by the AVD.

26. Whilst I place some weight on the rents passing on the subject property, they were both agreed some time before or after the AVD and would require some adjustment to reflect the economic circumstances prevailing at the AVD. I am of the opinion that the rent agreed at the AVD would have been somewhere in the range of £54.21 and £71.50 per $m^2$, and therefore consider that the rents on comparable properties provided by the parties to be useful in determining the correct level.

27. The best comparable properties in my opinion are those of a similar size and age, located on the same industrial park as the subject property. Mr Gittins had provided details of the lease for Unit 3, City Business Park, with an area of 273.43$m^2$ ITMS. The level of rent was set following a lease renewal with effect from 21 December 2014. Mr Gittins had considered that the full six months' rent-free period specified was an incentive and had analysed the rent on this unit at £56.85 per $m^2$ on this basis. The Respondent had considered that some of the rent-free period related to fitting out of the unit and had therefore come up with an adjusted rent of £69.30 per $m^2$. Mr Lewis had not mentioned that the rent-free period had been specified on a FOR as being for fitting out, and as this was a lease renewal, I consider it more likely that this would have been an incentive. An existing tenant is unlikely to cease trading for three months to fit out, I am therefore of the opinion that Mr Gittins analysis at £56.85 is correct.

28. Mr Lewis had referred to the new letting agreed on 1 February 2016 for Unit 10, City Business Park with an area of 526.2 $m^2$ ITMS. The rent payable was £36,232 pa and the lease specified a rent-free period of three months. According to the FOR completed by the occupier, the rent was for a shell unit and the rent-free period had been negotiated to allow for fitting out. Mr Lewis had therefore analysed the rent at £63.00 per $m^2$ based on there being no incentive, whilst Mr Gittins had adjusted the rent for three months' incentive and analysed it to £59.48 per $m^2$.

29. Mr Gittins had argued that there were often errors in FORs completed by occupiers, and such information contained in them was not always reliable. Whilst Mr Lewis confirmed that there are instances where errors or discrepancies are found, there was nothing to indicate that the information provided in respect of Unit 10, City Business Park was incorrect. In this instance, I am not persuaded that the occupier had provided incorrect information in respect of the fitting out of Unit 10, City Business Park and I am satisfied that the rent-free period was to allow for fitting-out and not an incentive. I therefore accept Mr Lewis' analysis of the rent for this property at £63.00 per $m^2$.

30. Having considered the two parties' analyses of the rents on Unit 3 City Business Park and Unit 10 City Business Park, coupled with the analyses of the rents agreed on the subject property in 2013 and 2018, I am satisfied that the unadjusted rate of £57.50 proposed by the Respondent is reasonable.  I have also looked at both parties' analyses of the rents on units in other business parks which had been provided as comparable properties and find nothing to disturb my conclusion that an unadjusted rate of £57.50 per $m^2$ is not excessive.

31. The appeal is therefore dismissed.

**Date:** 11 May 2021
**Appeal number:** CHG100075939