VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; factory and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Hellermanntyton, Sharston Green Business Park, Robeson Way, Manchester M22 4TY

APPEAL NUMBER: CHG100079249

BETWEEN: Hellermanntyton Ltd — Appellant

and

Mr R Roberts (Valuation Officer) — Respondent

PANEL: Miss U Haque (Senior Member)
Ms J Morton

CLERK: Miss F Willson

REMOTE HEARING ON: 8 March 2021

APPEARANCES: Mr O Scorer from Altus Group (on behalf of the Appellant)
Mr B Slater (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The current entry in the Rating List is confirmed as Hellermanntyton, Sharston Green Business Park, Robeson Way, Manchester M22 4TY with a rateable value (RV) of £595,000 from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 7 March 2019, in respect of Hellermanntyton, Sharston Green Business Park, Robeson Way, Manchester M22 4TY (the appeal property). The challenge was in respect of the entry in the rating list at £595,000 RV effective from 1 April 2017. The appellant sought a revised assessment of £500,000 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that it was not well founded and a decision notice to this effect was issued on 10 December 2019. The appellant made an appeal to this tribunal against the decision notice, which was received on 26 March 2020, on the grounds that the existing RV was not reasonable.

3. 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.

4. 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.

5. Mr Scorer 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 Scorer stated that he was instructed under a conditional fee arrangement. 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 his client's case

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6. The panel have accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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.

7. The appeal property is a factory and premises located in Sharston Green Business Park in Greater Manchester. It is a post 1990s industrial property consisting of a ground floor and mezzanine level with an area of 15,251m^2 which is the largest in the direct area. The property is held freehold by the appellant.

8. 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 item of evidence, should not be construed as it having been overlooked.

Issue

9. The issue between the parties is the correct RV of the appeal property.

Evidence and submissions

10. Mr Scorer submitted a bundle of evidence which included details of the appeal property and comparable properties, the issues in dispute and photographs.

11. With reference to his comparable properties and the appeal property he asked the panel to confirm a revised rateable value of £500,000 from 1 April 2017.

12. Mr Slater referred the panel to the challenge application and decision.

13. In consideration of his comments on the comparable properties admitted in evidence by the appellant, Mr Slater asked the tribunal to confirm the RV of £595,000 with effect from 1 April 2017.

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 to 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, paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

15. Both Mr Scorer and Mr Slater referred the panel to the case *of Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. In this case it was determined that where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta*.

- Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

- 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 section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

- 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.

- 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 be properly be referred to as giving an indication of that opinion.

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

- In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

16. Mr Scorer referred the panel to the fact that the appeal property was held freehold and so there was no rental evidence to use in assessment of the RV the appeal property. This meant that in regard to the case *of Lotus v Delta* it was necessary to look at other assessment evidence when determining the rateable value for the appeal property.

17. He drew the panel's attention to two comparable properties in the direct vicinity of the appeal property which had significantly different differentials between their unadjusted rate (UAR) and the appeal property's in the 2010 list and the 2017 list:

Address	Total area (m^2)	2017 RV	2010 UAR m^2	Difference from subject 2010 UAR	2017 UAR m^2	Difference from subject 2017 UAR
*Hellermanntyton, Sharston Green Business Park	15,251.82	595,000	£40		£38	
Unit 2-3, Sharston Green Business Park	4,958.33	201,000	£50	20%	£40	5%
Units 4 & 5, Sharston Green Business Park	3,689.17	174,000	£52.18	23.34%	£40.32	5.75%

*appeal property

Mr Scorer referred the panel to the fact that the comparable properties had a differential of 20% and 23.34% from the subject UAR in the 2010 list and 5% and 5.75% in the 2017 list. This, in Mr Scorer's opinion, showed consistency of approach between the two lists. In the case of the appeal property, however, those differentials were 20% in the 2010 list but 10% in the 2017 list showing an inconsistency of approach between the 2010 and 2017 list. He therefore suggested a UAR of £32 per m^2 should be adopted on the appeal property.

18. The panel was aware that each new rating list was de nuovo and so the differentials between the UAR on different properties between one list and the next could not be used to assess the RV of a property. It was therefore unable to put much weight on this argument.

19. Mr Scorer submitted that the appeal property is by far the largest property in the locality and in the valuation scheme. A quantum allowance on the appeal property was agreed at 20% on the 2010 list entry. Mr Scorer submitted that the same allowance should be applied to the 2017 list entry. This, he argued, would support a UAR of £32 per m^2. The next largest unit is less than 5,000m^2 and has a quantum allowance of 5%. This, in his view, supported a

quantum allowance of 20% on the appeal property due to the substantial difference in size between the units.

20. He explained to the panel that the comparable properties relied on by the valuation officer were some distance from the appeal property. The comparable properties he had used, however, were on the same industrial estate. He therefore submitted that his comparable properties were more persuasive and should carry more weight than those of the valuation officer.

21. Mr Slater out lined that the appeal property was unusually large in size for that locality as the other properties on the industrial estate were significantly smaller than the appeal property. He had therefore used properties further afield as comparable properties. He submitted that the choice of which comparable properties were most persuasive was not limited to the issue of proximity but also design, construction and condition as well.

22. The panel was aware that factors other than distance from the appeal property had to be considered when choosing comparable properties. The fact that the valuation officer had included properties that were some distance from the appeal property did not, in the panel's opinion, make them unsuitable as comparable properties for the appeal property.

23. Mr Scorer confirmed to the panel that he was not seeking to rely on any rental evidence in this case but instead he was relying on his comparable properties which were located next door to the appeal property.

24. Mr Slater's comparable properties were, he submitted, similar in size and gave a better indication as to the correct level of quantum that should be applied to the appeal property. They were therefore, in his opinion, more comparable to the appeal property than Mr Scorer's comparable properties:

Address	**Area m^2**	**UAR per m^2**
*Hellermanntyton Ltd, Sharston Green Business Park, Robeson Way, Manchester M22 4TY	15,251	£38
Searchlight Electric,900 Oldham Road, Manchester M40 2BS	13,405	£39
Fine Lady Bakeries, 125 Grimshaw Lane, Manchester M40 6AX	16,796	£39

*appeal property

Mr Slater submitted that these properties were all similar in size, age and quality to the appeal property. He therefore argued that these comparable properties supported his UAR of £38 per m^2 for the appeal property. He further argued that a tone had been set in accordance with *Lotus & Delta,* as the occupiers of these comparable properties had not issued a Check or subsequent Challenge. This was, he submitted, strong evidence in the basket of evidence used to calculate an RV.

25. Mr Scorer asked Mr Slater in cross examination about the height of the eaves of the properties he had submitted in evidence. Mr Scorer argued that the two comparable properties included in the evidence by Mr Slater had higher eaves and that any extra height in the eaves would add value to the assessment. Mr Slater submitted that this argument had not been included in the appellant's Check or Challenge and so was not admissible in the appeal stage.

26. The panel found that the height of the eaves had not been raised in either the Check or Challenge stage of this appeal and so did not put any weight on this evidence.

27. The panel noted that Mr Slater's comparable properties showed a tone had been established for a property of the same size, age and design as the appeal property and so they put weight on them. It particularly found Searchlight Electric to be a good comparable property to the appeal property.

28. Having considered both parties' evidence and analysis, the panel concluded that the UAR rate of £38.00 per m^2 was reasonable. The panel held that the existing assessment was reasonable, and the RV was confirmed at £595,000 from 1 April 2017.

29. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, and the panel found that in this case the appellant had not done so.

30. The appeal is therefore dismissed.

Date: 21 March 2021

Appeal number: CHG100079249