THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; challenge against the accuracy of the compiled list entry on the grounds that the valuation for the hereditament is not reasonable; workshop and premises; unadjusted main space price in dispute; rental evidence; comparable evidence; Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; appeal dismissed.

Re: Unit 27 Commercial Road, Goldthorpe, Rotherham, South Yorkshire S63 9BL

APPEAL NUMBER: CHG 100090670

BETWEEN:	Union Chemicar UK Ltd	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent

BEFORE; Mr A Backway (Chairman) and Ms J Morton

CLERK: David Slater (Deputy Registrar)

REMOTE HEARING held on 30 November 2020

PARTIES PRESENT; Ms Emma Saunders from Altus (Appellant's representative)
Ms Rebecca Anderson (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The Valuation Officer's existing assessment of £39,000 Rateable Value with effect from 1 April 2017 was not unreasonable.

Introduction

2. The appeal property was a workshop and premises which was built in 1994. It had a significant gross internal area of 1066.43m². The property was situated on the Goldthorpe Industrial Estate which was just off the A635 via the Hollygrove roundabout.

Preliminary point

3. This appeal challenged the Valuation Officer’s decision that the proposal was not well founded. A proposal was served on the Valuation Officer on 17 April 2019 which challenged the accuracy of the compiled list entry. The Valuation Officer issued a decision notice on 20 April 2020 to the effect that the proposal was not well founded and that no alteration to the list entry was required. Following the release of the decision notice, the appellant made representations, in an email dated 27 May 2020, to the Valuation Officer that the decision notice was issued prematurely and a request was made for the challenge stage to be re-opened to allow discussions to continue. The Valuation Officer acceded to the appellant’s request and agreed to withdraw the decision notice and communicated this to the appellant in an email dated 23 June 2020.

4. The Valuation Officer reinstated the challenge on 25 June 2020, and gave it a different CHG number 100330929, and ultimately issued a later decision notice on 15 October 2020. In the decision notice, the Valuation Officer reiterated her determination that the proposal was not well founded and the existing list entry was considered correct.

5. In the interim, the appellant’s representatives lodged an appeal, on behalf of their client, against the Valuation Officer’s earlier challenge decision dated 20 April 2020 on 20 August 2020. The appeal was submitted to protect the client’s interest as under Regulation 13B of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 an appeal has to be made within 4 months of the date of the decision notice.

6. Prior to the hearing, the appellant made an application for the evidence that was exchanged after the appeal was made to be admitted in proceedings. The tribunal did not need to give judicial consideration to the evidence which the respondent consented to. However, the Valuation Officer did object to the appellant’s document entitled photographs and plans. This matter was dealt with as a preliminary issue by the panel.

7. On 13 November 2020, the Deputy Registrar emailed both parties to express the tribunal’s concerns over the parties’ unorthodox approach in this case. Whilst the regulations did permit the challenge stage to be extended by agreement with the parties, two decision notices had been issued by the Valuation Officer with different CHG (challenge) numbers and the appeal had been made against a decision notice that was later superseded.

8. On 17 November 2020, the tribunal received an email from Ms Sue Martin at the Valuation Office in which she confirmed that the earlier decision had been issued prematurely, because the appellant’s representative had not been given the opportunity to inspect the rental evidence derived from forms of return. Ms Martin suggested that the appellant’s appeal had also been premature because once the Valuation Officer had reinstated the challenge and withdrawn at the appellant’s request, the earlier decision notice, the appellant’s appeal was illegal and should not be heard. Therefore the appellant was required to make a fresh appeal against the later decision notice and any issue relating to fees was a matter for the tribunal.

9. Later that same day, the tribunal received an email from Mr Philp, the Rating Chairman for Altus. Mr Philp’s comments were as follows;

> Whilst Sue (Martin) is correct in stating that it was confirmed that the case would be reopened on 23 June 2020 it was not until the 17 August (as attached) that we were

made aware that the case had been provided with a new reference number. Furthermore the following statement was provided '***Effectively it's the same challenge but with a different number'*** and as such naturally assumed that the same appeal deadline date was still in place being the 20 August. On that assumption and given the short timescale available we proceeded to lodge our appeal in order that our client was fully protected which I am sure you can appreciate.

Furthermore on your direction Mr Slater we have approached the Valuation Office caseworker with a view to submitting an agreed statement of facts which we thought would overcome the situation that we now have. Those agreed facts appear to have now been abandoned in favour of seeking that the current appeal is considered unlawful. I have no knowledge as to why this change of direction has been put forward as it appeared to be a common-sense solution.

Having regard to the above, my thoughts would be that if the original submitted appeal (scheduled for hearing on the 30 November) is considered to be in contravention of Regulation 13A (copied below) of **The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2268** as put forward then we would be quite amenable to applying the already paid fee to the later appeal that we will be required to submit. In essence we have already been told that it is ***the same challenge*** and I would respectfully suggest that there cannot be a situation arise where we (or the ratepayer) is asked to pay twice in respect of a single appeal to be heard.

10. The Deputy Registrar, in an email on 20 November 2020 informed the parties that he would be offering legal advice to the panel at the hearing that the appeal was valid. The parties would then be given the opportunity to dispute that advice. In addition, he believed that any evidence that had been disclosed and exchanged during the extended challenge period, before the second decision notice was issued on 15 October 2020 was admissible. Any additional evidence that either party wished the panel to take into consideration would be dealt with as a preliminary matter.

11. In response to the Deputy Registrar's email, Ms Martin said in an email dated 23 November 2020 that following technical advice the Valuation Officer would no longer be challenging the lawfulness of the appeal.

12. Ordinarily, the tribunal would have considered and determined this appeal, following a public face to face hearing. However, in view of the Covid 19 pandemic and to avoid justice being further delayed, a remote hearing was held. The parties having not given their consent to the appeal being disposed of without a hearing.

13. 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.

14. 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.

15. Ms Emma Saunders appeared on behalf of the appellant in a dual capacity as both advocate and expert witnesses. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Ms Saunders was asked if she was instructed on a conditional fee basis and she confirmed that she was. However, she understood and accepted that her first duty was to the tribunal when giving expert evidence and this overrode any duty to her client, regardless of whether or not the evidence supported her client's case.

16. 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 Valuation Tribunal for England (Council Tax and Rating Appeals) Regulations 2009 ("the Procedure Regulations"). Further, under regulation17(2)(a) the Tribunal can admit evidence whether or not it would be admissible in a civil trial.

17. 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 before by the panel before it came to a decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

18. Following the Chairman's introduction, the parties were asked if there were any preliminary issues that either of them wished to raise. Ms Saunders requested that her bundle entitled photographs and plans be admitted to proceedings. The photographs depicted comparable properties when viewed from outside. The plans related to the subject property. The bundle which was originally sent to the respondent on 10 November 2020 also contained the Valuation Officer's summary valuations and a copy of a valuation scheme VO reference 380535 which related to Commercial Road and Fields End Business Park. Ms Saunders accepted that the bundle had not been disclosed to the respondent during the challenge stage but argued that none of the material within it would be prejudicial to the respondent.

19. In response, Ms Anderson said that the Valuation Officer objected to the photographs of the comparable properties because the respondent had no way of verifying if the pictures were an accurate reflection of the facts as at the material day. Although the tribunal's practice statement allowed for a party to submit photographs at the hearing, the respondent was of the opinion that the photographs referred to related to the appeal property not other properties.

20. The Deputy Registrar advised the panel to apply the three stage test in *Denton v TH White Ltd* [2014] 11 WLR 3926. Having applied the test, the panel determined that the appellant had breached the tribunal's directions by not informing the respondent, during the challenge stage, of her intention to produce photographs at the hearing and endeavouring to secure her agreement that they would assist the panel and were a true representation of the comparable properties at the material day. The respondent had had sight of the photographs since 10 November 2020 and Ms Anderson was unable to give the panel any good reasons why the respondent would be prejudiced if they were admitted.

21. The Deputy Registrar had advised the panel, in open tribunal, that the exterior of the comparable properties would not dictate how these industrial properties would be valued. What would be more important was the quality of the accommodation that lay within them. He also advised that if there was only a minor breach and the respondent could not show

that she was prejudiced, the additional material should be admitted. After a taking a short adjournment to consider this preliminary issue, the panel decided to admit the additional material from the appellant. This was on the basis that the breach was minor and that no prejudice would be caused to the respondent, if the material was admitted.

Issues

22. The only substantive valuation issue in dispute between the parties was the unadjusted main space price. The Valuation Officer had adopted a main space price of £35 per m² whilst the appellant sought a reduced unadjusted basis of £30. Survey data and relativities had been agreed.

Evidence and submissions

23. Both parties relied on comparable and rental evidence to support their respective cases. The appellant sought a revised valuation of £33,500 RV whilst the respondent requested a dismissal of the appeal.

Decision and reasons

24. The grounds for the appeal were as follows;

> The Valuation Office have not altered the assessment in the way requested through our challenge submission and later dialogue. Altus Group believe that rental evidence in the locality supports a reduction. The property is comparable in age and location to properties in scheme reference 372567. Properties in this scheme are valued on a comparable matrix and have been reduced from £35 to £30 as discussed with the valuation officer.

25. The existing assessment for the appeal property was based on an unadjusted main space price of £35 per m². The same unadjusted main space price had originally been applied to a number of industrial properties off Manvers Way in Wath upon Dearne. These properties were built post 1989 and were valued in accordance with VO scheme reference 372567.

26. Ms Saunders argued that the appeal property's locality was similar to the industrial parks off Manvers Way. Both sites had good access to both the M1 and the A1. She referred to a number of agreements which had been reached by ratepayers and their representatives and the Valuation Officer. For instance, Units 5, 9 and 10 Houndhill Park had originally been assessed at an unadjusted rate of £35 but a lower main space price of £30 per m² had since been agreed. The Bauer Equipment building in Rotary Drive had also had its basis of assessment reduced by agreement from £35 to £30 per m². She also referred to Unit B Brookfields Park and the Garnett Dickinson unit which were both assessed at an unadjusted main space price of £24 per m².

27. Ms Saunders argued that the rental evidence supported her proposed valuation. Moreover, three out of four of the Valuation Officer's pieces of rental evidence supported her client's case.

28. In her response, Ms Anderson argued that the appeal property's locality in Goldthorpe was not a comparable location to Wath upon Dearne. She stated that the competing locations were around 3 miles apart. She argued that the comparable properties that were situated in Goldthorpe and valued under VO scheme reference 380535 were more reliable for the

purposes of comparison than those referred to by Ms Saunders that were in Wath upon Dearne.

29. Ms Anderson did not agree with Ms Saunders that the majority of the rental evidence supported the appellant's case. Both had analysed and interpreted the rents differently.

30. The panel followed the judicial guidance in the Lands Tribunal's judgment in *Lotus & Delta v* Culverwell *(VO) and Leicester City Council* [1976] in analysing the competing evidence.

31. As was often the case, in appeals of this nature, there was no direct rental evidence to assist the panel as the appeal property was owner occupied. Therefore the panel had regard to the indirect rental evidence in relation to the parties' comparable properties.

32. Ms Anderson argued that the most compelling piece of rental evidence related to Factory 6 on the Fields End Business Park. This property was valued in accordance with the same VO scheme as the appeal property and was only 1.5 miles away. A revised rent was set in October 2014 as a result of a lease renewal. This property was around twice as large as the appeal property at 2317.26m² and the respondent had analysed the rent in terms of RV to be £33.25 per m². In the respondent's opinion this rent and others relating to the same estate indicated that quantum was a factor in this locality.

33. Ms Saunders did not agree with the respondent's view of the reliability of the Factory 6 rent. She argued that it was a lease renewal as opposed to a new letting. Whilst the tenant could have walked away, when the earlier lease term expired, this tenant had a significant amount of rateable plant and machinery (P & M) in the property. Consequently, having invested in this P & M the tenant would not have been minded to move and therefore was prepared to accept the landlord's offer of a new lease with a nominal increase.

34. Whilst the panel understood Ms Saunders's argument, based on the panel's experience, it was aware that if the current occupier was a good tenant, the landlord would have looked to strike an agreement with regard to the level of rent to keep them from moving. It would therefore have been in both parties' interest to reach an agreement over the level of rent, as the tenant wished to remain and the landlord did not want to risk losing them and having to advertise for a new tenant. Given that this level of rent was agreed close to the antecedent valuation date, the panel attached a lot of weight to this evidence.

35. There was a rent on Unit 18A Commercial Road arising from a new letting from 13 February 2015. This property was much smaller than the appeal property at 232.2m² and its rent was analysed to £42.30 per m². It was assessed at an unadjusted basis of £45 per m². This rent supported the respondent's argument that quantum was a factor in Goldthorpe.

36. The rent on the Power Park Unit 3 Goldthorpe Industrial Estate also arose from a new letting in February 2014. This unit was much larger than the appeal property at 6,436.26m² and the level of rent when analysed in accordance with RV was £22.20. The property was assessed at a main space rate of £24 per m². This rent also showed that quantum was a factor.

37. There was a rent on Unit 4 Houndhill Park, This was derived from a new letting from 1 September 2015. The property was smaller than the appeal property at 965.09m² and the level of rent analysed to £30.34 per m². The property was assessed at £35 per m².

38. The rental evidence referred to above was disclosed by the respondent. In response, Ms Saunders referred to rental evidence relating to Unit 6 Houndhill Park. This property was of a similar size to the appeal property at 1021m². The annual rent of £31,500 was set with effect from July 2014 on the basis of a new letting with a lease term of 9 years. There was a rent free period of 15 months which was above the norm. Ms Saunders had analysed the level of rent taking into account the rent free period to the first rent review. The respondent argued that the length of the rent free period, which was above the norm, should be analysed over the duration of the term. Ms Saunders had analysed the rent at £20.22 per m² in terms of RV. Because of the length of the rent free period and the level of adjustment required to conform to the rating hypothesis, the panel placed little weight on this rent.

39. Ms Saunders also referred to the rent passing on Units 7 and 8 Houndhill Park. The rent passing on this property was £115,000 with effect from May 2013. Ms Saunders had analysed this rent to £22.14 per m² in terms of RV. As this property was significantly larger than the appeal property at 5,194m², the panel did not find this rent helpful.

40. Similarly, little weight was attached to the rent passing on Unit B Brookfield Park. This property put forward by the appellant was almost four times the size of the appeal property at 4,561m². The rent passing was on a stepped rent basis and given the level of adjustment required to conform to the rating hypothesis and the size differential, the panel attached little weight to this evidence.

41. Ms Saunders also referred to rental evidence relating to Unit 14 Commercial Road because there was, as she put it, a clear lack of evidence from the appeal property's estate. This rent resulted from a new letting in June 2016. The lease term was five years and it was a stepped rent. The survey areas were not agreed (the respondent measuring it at 528.17m² and the appellant at 561.96m² in terms of main space). As a result the respondent's calculation of the analysed rent was £31.61 per m² with the appellant's working out at £29.69 per m². Because of the level of adjustment required to conform to the rating hypothesis, the panel placed little weight on this rent.

42. The parties were also aware that the occupier of Unit 14 had taken on the neighbouring unit on the same stepped rental basis. The level of rent was identical as the property was the same size as Unit 14. The panel also placed little weight on this rent.

43. Looking at the whole basket of rental evidence, the rents attached to Factory 6 Fields End Business Park and Unit 18A Commercial Road indicated that the Valuation Officer's unadjusted main space price for the appeal property of £35 per m² was not unreasonable. The rent on the larger property devalued to £33.25 whilst the rent for the smaller property (Unit 18A) devalued to £42.30 per m².

44. Ms Saunders had argued that the two locations were similar, an opinion not shared by Ms Anderson who argued that Goldthorpe was superior to Wath upon Dearne because its access from the Hollygrove roundabout off the A635 meant that the appeal property had better access to the M1 and the A1.

45. Following the questioning of the parties, it appeared to the panel that neither party had visited both competing locations. Ms Saunders was able to advise the panel that the appeal property was 8.6 miles from junction 36 of the M1 and Manvers Way was 6.8 miles. Neither party could advise the panel how far the competing locations were from the A1. Ms Saunders had produced a number of photographs relating to industrial properties which she considered comparable from Wath upon Dearne but had not internally inspected any

of them. In addition, neither party was able to inform the tribunal of the level of occupancy at the competing sites at the material dates.

46. Given the above, the panel was not persuaded by the appellant that the two locations were directly comparable. Consequently, the panel rejected Ms Saunders argument that the appeal property was comparable with properties from Wath upon Dearne which had been valued in accordance with VO scheme 372567.

47. Having considered the rental evidence, the panel had regard to the tone of the list evidence relating to the Goldthorpe Industrial Estate. The unadjusted main space prices applied to Unit 14 Commercial Road (£38.75), Unit 18A Commercial Road (£45) and Factory 6, Fields End Business Park (£33) did not show that the Valuation Officer's unadjusted rate for the appeal property of £35 per m^2 was excessive. Although the rating list was just over 3½ years old, there was no evidence produced to show that the assessment of any other industrial property valued in accordance with VO scheme 380535 had been challenged on appeal.

48. In summary, when looking at all of the evidence, neither the rental evidence when properly weighted nor the comparable evidence drawn from the Goldthorpe Industrial Estate supported the appellant's case that the existing valuation was not reasonable. The panel was not persuaded that Wath upon Dearne was a comparable locality. The appeal was therefore dismissed.

Date: 8 December 2020

Appeal number: CHG100090670