THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Store and Premises; accuracy of rateable value; rental and comparable evidence considered; Allowances; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.

RE: Unit D Monument Bus Park Centre , Monument Way East Woking GU21 5LG

APPEAL NUMBER: CHG100097629

BETWEEN:	D H Mansfield Ltd	Appellant
	and	
	David Jackson (Valuation Officer)	Respondent

PANEL: Ms N Talbot-Hadley (Senior Member)
Ms N Chesterman

CLERK: Mr L Bertie

REMOTE HEARING ON: 12 November 2020

APPEARANCES: Mr D Snell of Altus Ltd on behalf of the Appellant.
Mr S Forbes for the Valuation Officer.

Summary of decision

1. Appeal dismissed.

Introduction

2. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £78,000 from 1 April 2017, with a description of Warehouse and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage, the Valuation Office Agency (VOA) did not alter the Rating List. The appeal dated 12 June 2020 was received against the Valuation Officer's (VO) final Decision Notice of 24 April 2020. The VO's decision was to treat the appellant's proposal as not well founded and

the entry of £78,000 from 1 April 2017 was deemed as correct. The appellant sought a rateable value of £61,500

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 Snell 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 Snell'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 the evidence supported the client's case.

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

7. 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.

8. 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.

9. The subject property which was built in 2010 and refurbished in 2001, comprises a ground floor warehouse unit, with ancillary accommodation. It is situated on an industrial estate with other industrial properties. The area of the subject property is 744.49 m^2 with a base rate of £105 per m^2.

Issue

10. The issue between the parties concerned the RV of the appeal property and specifically, the £m2 rate that should apply. The Appellant's Representative sought a reduction to £61,500 with effect 1 April 2017 based on a £m2 of £85. Mr Forbes for the VO sought to defend the existing RV of £78,000 which was based on £105m2.

Evidence and Submissions

11. It was the Appellant's contention in his challenge, that the rent passing on the appeal property indicated that the £m2 of £105 was excessive, he appeal property was located at the rear of the estate, being built in 1960s and refurbished in 2001, was not of the same quality as other units on his estate or locality; that the appeal property had been placed in the wrong valuation scheme. He argued that the rent passing indicated that the adopted rate of £ 105 per m^2 was excessive and should be reduced to a lower base rate of £82.66 m2 in line with its rent.

12. The Valuation Officer considered that rental evidence of older and similar properties in the locality supported an underlying base rate of £105 m2 for the appeal property with 5% allowance for mixed age; ie. 1960 build and 2001 refurbishment and 2.5% allowance for no wall insulation, which was now questionable following the refurbishment in 2001. The Valuation Officer sought a dismissal of the appeal.

Decision and reasons

13. 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.

14. In line with the decision in *Lotus and Delta v Culverwell (VO) [1976] RA 141* , Mr Snell stated that the rent on the appeal property which was £70,000 with effect from 13 March 2015 on a new 10 year lease should be taken as a starting point in ascertaining the rental value of the appeal property . Following an adjustment for a six month rent free period, Mr Snell contended that the analysed rental figure would be £82.66 m2 and the rateable value should be £61,500 with effect from 1 April 2015, in line with the rent.

15. Mr Forbes stated that, in accordance with Lotus and Delta v Culverwell (VO) [1976] RA 141, *'the rents of comparable properties in the locality should be given weight'.* The basket of evidence, which included the rents on comparable properties in the locality, was in his opinion, indicative that the base rate of £105.00 per m^2 for the subject property, was not excessive.

16. Mr Forbes had provided the rental details of a number of comparable industrial properties in the locality of the appeal property within the same valuation scheme for properties built in 1980s to mid-2000s, throughout the course of the challenge process to support the existing rate of £105 per m^2 for the subject property. These comparable properties included Brewers, Monument Way East, Woking Surrey GU21 5LY, which had a new 5 year lease of £34,500 effective from 24 June 2014. Following an adjustment for a six month rent free period, Mr Forbes contended that the analysed rental figure would be £105.14 m2. This property is 289.28 m2 in size; Unit 7, Glen Court, Canada Road Byfleet West, Byfleet Surrey KT14 7JL, which had a new 4 year 8 month lease of £64,350 effective from 1 November 2015 . The rent analysed at £112,01 m2 and Unit 2,122 Oyster Lane, Byfleet West, Byfleet Surrey KT14 7JQ which had a new 15 year 3 month lease of £158,000 effective from 25 March 2015.

17. This evidence showed rents analysed between £96.74 m2 - £112.01 m2, having been built in 1997/1998 with sizes between 289.28m2 – 1633.28 m2 and Brewers, Monument Way East and Unit 7, Glen Court, Canada Road Byfleet West, Byfleet had basic rates of £105 m2, whilst and Unit 2,122 Oyster Lane, Byfleet West, Byfleet had a basic rate of £100 m2.

18. The panel noted Mr Snell's comments that the commencement date of the lease of the appeal property rent as stated by the Valuation Officer was incorrect as it commenced in March 2015 not February 2015 or May 2015. Moreover, he contended that the rents on the comparable properties should carry less weight than the appeal property regarding the retail use, smaller size and main frontage location of Brewers, Monument Way East; the 5 miles away location of Unit 7, Glen Court, Canada Road Byfleet West with high office content and proximity to the AVD and the 5 miles away location of Unit 2,122 Oyster Lane, Byfleet West, Byfleet being used as a Data Centre which would attract significant rental premiums . Moreover, Mr Snell contended that there was a stepped rent on this property which would affect its rental analysis.

19. In terms of the disagreement over the appeal property's lease commencement date, the panel did not consider that this difference would adversely affect its analysis, so gave no weight to this point.

20. However, the panel gave more weight to the Valuation Officer's rental analysis of the appeal property and assessments of comparable properties in the locality of the appeal property, which supported a basic rate of £105 m2 . These comparable properties were built in 1997/98 but as the appeal property was built in 1960s but refurbished in 2001 then the appeal property did not have any disadvantages over the comparable properties. The adjustments to this rate of £105 m2 reflected its mixed age and lack of insulation in comparison to more modern industrial properties built in the locality at the same time and therefore the panel did not find the current assessment to be excessive.

21. The Panel was mindful that the onus of proof is on the appellant to demonstrate that a reduction was warranted. In this instance, the appellant's representative had failed to convince the Panel that a lower Rateable Value than that contended for by the Valuation Officer's representative was appropriate.

22. The appeal was therefore dismissed.

Date: 9 December 2020

Appeal number: CHG100097629