THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; factory and premises; accuracy of rateable value; analysis of rent on comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

RE: The Innovation Centre, Manor Royal, West Sussex RH10 9QY

APPEAL NUMBER: CHG100102519

BETWEEN:	GEW EC Ltd	Appellant
	and	
	Ms Dawn Bunyan (Valuation Officer)	Respondent

PANEL: Miss U Haque (Senior Member)
Miss L Westwell

CLERK: Miss F Willson

REMOTE HEARING ON: 26 July 2021

APPEARANCES: Mr O Hamblin from Altus Group (on behalf of the Appellant)
Mr S Forbes (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed in part. The current entry in the Rating List is to be reduced to £300,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 6 June 2019, in respect of The Innovation Centre, Manor Royal, West Sussex RH10 9QY (the subject property). The challenge was in respect of the entry in the rating list at £315,000 RV effective from 1 April 2017. The appellant sought a revised assessment of £285,000 RV with effect from 1 April 2017.

3. After considering the merits of the challenge, the Valuation Officer determined that it was well founded. The RV was reduced to £310,000 due to the amended survey areas. The base rate was however increased to £82/m^2. This led to an RV of £310,000 being entered into the rating list and a decision notice was issued on 4 December 2020. The appellant made an appeal to this Tribunal against the decision notice which was received on 23 March 2021, on the grounds that the RV was not reasonable.

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. Mr Hamblin 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 Hamblin 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.

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. The appeal property is a factory and premises situated in the industrial area of Crawley, south of Gatwick Airport. It is a detached industrial building with predominantly dark glass elevations. It comprises production areas, offices and mezzanine floor and is sited over three floors. There is outside access for loading/unloading and car parking.

9. 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 their decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

10. The issue between the parties is the RV of the appeal property, specifically the base rate applied .

Evidence and submissions

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

12. With reference to his comparable properties and the appeal property he asked the panel to confirm a revised RV of £285,000 from 1 April 2017.

13. Mr Forbes referred the panel to the challenge application and decision.

14. In consideration of his comments on the comparable properties admitted in evidence by the appellant, Mr Forbes asked the panel to confirm the RV of £310,000 with effect from 1 April 2017.

Decision and reasons

15. 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.

16. 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 v Culverwell (VO) and Leicester City Council* [1976] RA 141.

    - 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.

17. Mr Hamblin confirmed that there was no passing rent on the subject property as the appellant owned the freehold. He therefore referred the panel to the need to extend the analysis to include other properties to create the basket of evidence as laid out in *Lotus and Delta*.

18. He drew the panel's attention to the fact that the subject property was in scheme 378368 which was applicable to all properties built since 1990 in Manor Royal, Crawley. This has led to the subject property (which was built in 1999) being included in the same scheme as those built only a few years ago. The scheme had also been extended to include properties in Space Gatwick which were only built in 2018 and were, in his opinion, built to a superior specification than the subject property. He therefore argued that the subject property had been placed in the wrong scheme and there should be a scheme for properties built since 2010.

19. In the alternative he argued that scheme 377727 is applicable to properties built since 1990 and in the Manor Royal area and so included properties of a similar size, age and in the immediate vicinity of the subject property:

    - Qiagen House, Fleming Way measured 2,055m^2 valued at a base rate of £80/m^2 and with an RV of £174,000. This property was last let with effect from 21 November 2013 at a rent of £178,500 per annum with a rent free period of 18 months. He had analysed the rent to average £69.25/m^2 which adding back an allowance of 5% for a dividing wall resulted in £73/m^2. Mr Forbes explained that the lease relied upon by Mr Hamblin was with effect from 21 November 2013 which is substantially before the AVD and so should have little weight applied to it.

    - Unit 3, Faraday Centre was subject to a lease renewal with effect from 24 December 2015 with a rent of £102,760 per annum. There was a four months' rent free period with the term of the lease expiring on 31 July 2018. This analysed at £72.50/m^2. The RV for the property is £171,000. Mr Forbes stated that this is a reconstituted property including Units 2 and 3 and less weight should be given to it as it was a lease renewal not a new lease.

    He submitted that both of these analysed to £73/m^2 and £72.50/m^2 respectively which supported £75/m^2 for subject property.

20. Mr Hamblin then drew the panel's attention to properties in scheme 375419 which includes all industrial properties built since 1990 in Faraday Road, Crawley. Within this scheme there is Unit 3, Faraday Centre, Faraday Road which was subject to a lease renewal with effect from 24 December 2015 with a rent of £102,760 per annum with four months' rent free and for a term expiring on 31 July 2018. The rent on this property analysed at £72.50/m^2.

21. The properties included in the same scheme as the subject property are:

- Unit B, The Dencora Centre, Manor Royal which only has a significant area of less than 1,000m^2.

- United Parcels Service Ltd, The Dencora Centre, Manor Royal measuring 2,861m^2 which is valued at £80.39/m^2 which is higher than the subject property base rate of £82/m^2 despite being significantly smaller than the subject property.

He submitted that as both of these units are significantly smaller than the subject property they are not directly comparable and the base rate would be lower. He therefore contended that this supported his revised base rate of £75/m^2 giving a revised RV of £285,000.

22. The panel was aware that the decision as to which scheme to put a property in was made by the valuation officer. The valuation officer had determined that scheme 378368 should be applied to the appeal property which due to its size would set the base rate as £80/m^2 but he had used a higher base rate of £82/m^2 due to it being slightly larger than the lowest size for the band it fell into.

23. Mr Hamblin provided the following:

Address	RV	ITMS	UAR
The Innovation Centre (subject)	£310,000	3,250	£82
Unit 1 Space Gatwick	£275,000	3,444	£80
Unit 2 Space Gatwick	£290,000	3,653	£80
5 Rutherford Way	£407,500	5,088	£80
Unit 1 Manor Gate	£92,500	1,090	£85
Units 2-3 Manor Gate	£235,000	3,365	£70
Unit 4 Manor Gate	£143,000	1,716	£70
Units 2-3 Faraday Centre	£171,000	1,928	£80

He stated that all these properties apart from Unit 1 Manor Gate had a base rate of between £70/m^2 and £80/m^2 except the subject property which had a base rate of £82/m^2. He therefore submitted that a tone had been set and properties with an ITMS of between 3,000m^2 and 4950m^2 had a base rate of £80/m^2 but the subject property had a base rate of £82/m^2 which did not fit in with the tone established. He submitted that in accordance with *Lotus and Delta,* that was strong evidence in the basket of evidence used to calculate an RV.

24. The panel noted that the comparable properties appeared to provide a tone for a property of the same type and size as the appeal property. Those with a similar ITMS as the appeal property had a base rate of £80/m^2 and so they put weight on these comparable properties.

25. Mr Hamblin submitted the 2017 rating list entry for the subject property as:

Floor	Description	Area m^2/unit	Price per m^2/unit	Value
Ground	Office	475.63	£99	£47,087
Ground	Office	453.50	£99	£44,897
Ground	Area under supported floor	994.16	£52.50	£52,193
Ground	Production Area	174.96	£75.00	£13,122
Mezzanine	Internal storage	994.16	£37.50	£37,281
First	Office	936.00	£90.00	£84,240
Second	Plant Room	74.00	£30.00	£2,220
Ground	Canopy	405.62	£11.25	£4,563
Total Area		**4,508.03**		**£285,603**
Subtotal				
Car park spaces 127				**£0**
Total Value				**£285,603**
Say				**£285,000**

26. Mr Forbes submitted that the subject property is a high specification building compared to the others of the same age in the vicinity. He therefore argued that including the property in a scheme with more modern properties was correct. It had the same specification as the newer buildings and was not a typical factory finish as it had dark glass elevations.

27. He contended that the base rate of £82/m^2 was because although the subject property was between 3,000m^2 and 4,950m^2 it had an ITMS of 3,205m^2which meant that the computer calculated a rate within the band of £80/m^2 and £85/m^2. Mr Forbes confirmed the scheme size bands were :

- 0-100m^2 £100
- 101-500m^2 £95
- 501-1000m^2 £90
- 1001-3000m^2 £85
- 3001-5000m^2 £80

28. The panel noted that none of the other properties had a base rate of anything other than the round value for their size and so put little weight on this argument.

29. Mr Forbes submitted that having reviewed all the comparable properties the ones he put most weight on were:

- Building C Dialog, Fleming Way, Crawley, West Sussex RH10 9NX had an RV of £199,000 with an ITMS of 2,491.67m^2 and a rent of £225,000 per annum from 31 July 2014 and a base rate £80/m^2.

- Unit 200 Focal Point, Fleming Way, Crawley, West Sussex had an RV of £219,000 with an ITMS of 2,866.76m^2 and a rent of £247,542 from 16 February 2015 and a base rate of £80/m^2.

He drew the panel's attention to the fact that both were very close in size to the subject property and the effective dates of the leases were close to the AVD. In his opinion they supported a base rate of £82/m^2 on the subject property which he asserted was a higher specification than these comparable properties.

30. He further submitted that the comparable properties put into evidence by Mr Hamblin were all different sizes and in some cases they were substantially smaller than the appeal property. The properties nearest in size to the appeal property were in a different location. This led, in his view, to them not being suitable comparable properties.

31. Having considered both parties' comparable properties the panel concluded that the base rate of £75/m^2 was too low. The base rate of £82/m^2 was however not fair and reasonable in the panel's view. It therefore found that the comparable properties presented by both sides supported a base rate of £80/m^2.

32. The panel determined a RV of £300,000 based upon £80/m^2:

Floor	Description	Area m^2/unit	Price per m^2/unit	Value
Ground	Office	475.63	£104.00	£49,466
Ground	Office	453.50	£104.00	£47,164
Ground	Area under supported floor	994.16	£56.00	£55,673
Ground	Production Area	174.96	£80.00	£13,997
Mezzanine	Internal storage	994.16	£40.00	£39,766
First	Office	936.00	£96.00	£89,856
Second	Plant Room	74.00	£32.00	£2,368
Ground	Canopy	405.62	£12.00	£4,867
Total Area		**4,508.03**		**£303,157**
Subtotal				
Car park spaces 127				**£0**
Total Value				**£303,157**
Say				**£300,000**

33. The appeal is therefore allowed in part.

Order

34. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £300,000 with effect from 1 April 2017 within two weeks of the date of this order.

35. The appellant is entitled to a refund in full of the appeal fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Date: 9 August 2021

Appeal number: CHG100102519