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: Holliod Plastics Ltd, Stephenson Road, Basingstoke, Hampshire RG21 6XR

APPEAL NUMBER: CHG100106432

BETWEEN: Total Solutions (Southern) Ltd — Appellant

and

Mr A Corkish (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 Hamblin of Altus Group (on behalf of the Appellant)
Mr S Forbes (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The current entry in the Rating List is confirmed as Holliod Plastics Ltd, Stephenson Road, Basingstoke, Hampshire RG21 6XR with a rateable value (RV) of £131,000 from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 25 June 2019, in respect of Holliod Plastics Ltd, Stephenson Road, Basingstoke, Hampshire RG21 6XR (the appeal property). The challenge was in respect of the entry in the rating list at £133,000 RV effective from 1 April 2017. The appellant sought a revised assessment of £107,000 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that the RV should be reduced to £131,000 and a decision notice to this effect was issued on 21 July 2020. The appellant made an appeal to this tribunal against the decision notice, which was received on 21 September 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 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

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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 located on Stephenson Road which is an established industrial area in Basingstoke. The property was held by the appellant on an open market letting for ten years commencing on 12 September 2015 with a passing rent of £120,000 per annum. It included a mixture of factory and offices with car parking and has an area of 2,946.95m^2. The appeal property was used by the appellant to store and hire out plant and machinery for construction.

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 Hamblin submitted a bundle of evidence which included details of the appeal property and relevant case law and the issues in dispute and photographs.

11. With reference to the appeal property he asked the panel to confirm a revised rateable value of £107,000 from 1 April 2017.

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

13. In consideration of his comparable properties admitted in evidence, Mr Forbes asked the tribunal to confirm the RV of £131,000 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. Mr Forbes and Mr Hamblin 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 Forbes served details of a revised RV for the appeal property on Mr Hamblin on 4 March 2021 just four days before the hearing date and Mr Hamblin served a rebuttal to that evidence on Mr Forbes on the 5 March 2021. This was brought to the panel's attention at the start of the hearing but both sides confirmed their agreement to both pieces of evidence being admitted into evidence at the hearing.

17. Mr Hamblin submitted that the rental evidence on the appeal property which was close in date to the AVD was, in his opinion, the best evidence. In the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council* the rent on the appeal property was found to be the first type of evidence to be considered when assessing a property to determine an RV. In the current case the letting was an open market lease commencing just over a year after the AVD on full repairing and insuring terms (FRI) and so was in line with the statutory definition for rating purposes. This, in his view, made it the best evidence to rely on when assessing the property's RV. The other properties in the area did not have leases which were in a free market or as close to the AVD.

18. The panel was aware that the case *Lotus and Delta* found that the rent passing on the appeal property was the starting point when assessing an RV for a property. The panel would therefore give the rental evidence on the appeal property a suitable amount of weight when determining the outcome of this hearing.

19. Mr Hamblin submitted that the valuation officer had relied on the rental information on the appeal property when setting the rent on Units A-D Houndmills, Stephenson Road which was next door to the appeal property. He argued that as this property's RV had been used in the assessment of that property it would not be useful to then use that property's details as a comparable property in setting the RV on the appeal property.

20. He argued that there were issues with the comparable properties offered in evidence by the valuation officer:

    - 10 Joule Road is substantially smaller than the appeal property and therefore it would have a higher rate per m^2 due to its size.

    - Unit 7, Telford Road was significantly smaller than the appeal property.

- Unit 9B Telford Road was on a lease renewal eleven months prior to the AVD and was a much more modern building than the appeal property.

- Gordian Strapping Ltd, Brunel Road was based on a rent review with an upward only rent review clause. The rent was not increased on the property at the renewal date and was subsequently purchased by the lessor in June 2017. Mr Hamblin therefore argued that this again was not an open market letting and would require adjustments to the rent in order to be able to be used as a comparable property.

21. Mr Hamblin confirmed that he no longer wished to pursue his claim for an end allowance for the appeal property due to its fragmented shape as this would have been reflected in the rent on the property.

22. Mr Forbes explained that he had reassessed the RV of the appeal property to £140,000 as a result of finding that an area of the assessment had been securely fenced which added value to the hereditament. This led him to do an external visit to the property as a result of which he added an extra element to the assessment for this area. He was unable to say when the area had become fenced in and was aware that in any event he was unable to increase a rateable value retrospectively. He did, however, argue that as the RV of £131,000 was lower than the revised RV of £140,000 then it showed how reasonable the present RV of £131,000 was.

23. In his rebuttal evidence Mr Hamblin argued that as the area of secure fenced land was always part of the hereditament then the value was already taken into account in the agreed rent. If, as Mr Forbes had done, you then added it in as an extra value you would be double entering the value of that land. If, however, the land was removed from the rental calculation it could then be added back in as a separate value but this would reduce the analysed rent and so adding it back in would still come to the same RV.

24. The revised RV submitted by Mr Forbes was proposing a higher RV than that in the list at present. The panel were aware that as this was an appeal against the compiled list entry the RV could not be increased back to the beginning of the list, 1 April 2017, but could only be implemented from the date of schedule.

25. Mr Forbes drew the panel's attention to the fact that in the case of *Lotus and Delta* the rent on the appeal property was only the starting point when assessing the RV. The case went on to find that a basket of evidence, including comparable properties of a similar type, design, size and location, were required. He therefore listed the following comparable properties and their rent:

Address	Description	Actual area m^2	Effective date of rent	Rent	Adopted Value (£ per m^2)
*Holliod Plastics Ltd	Factory and premises	2946.95	Sep 2015	£120,000	£45.00
Units A-D Houndmills	Warehouse and premises	1394.01	Sep 2015	£120,000	£55.61
10 Joule Road	Workshop an premises	180.63	Apr 2014	£15,514	£70.00

Unit 7, Telford Road	Workshop and premises	92.16	Feb 2016	£12,000	£75.00
Unit 9B, Telford Road	Warehouse and premises	3572.61	May 2014	£150,000	£45.00
Gordian Strapping Ltd, Brunel Road	Factory and premises	2631.95	Dec 2014	£145,000	£42.78

*appeal property

26. Mr Forbes submitted that the above comparable properties all had rental evidence in the form of new leases or lease renewals which were close to the AVD. The adopted value was between £42.78/m^2 and £70.00/m^2 dependent on size. This, he argued, supported the appeal property's adopted value of £45/m^2. He drew the panels attention to the fact that an indicative tone of between £42/m^2 and 45/m^2 therefore appeared to be the correct level for the appeal property.

27. Mr Forbes explained that he was unable to determine if the valuer who dealt with the discussions on the RV of Units A-D Houndmills had indeed used the evidence of the appeal property in assessing the RV on that property. In any event the size of Units A-D Houndmills was substantially smaller than the appeal property being less than half the size and that would, in his opinion, require a further adjustment.

28. The panel was aware that the *Lotus and Delta* case found that after the rent on the appeal property it was important to consider the whole basket of evidence when assessing an RV. Based on the comparable properties the panel found that the adopted value of £45.00/m^2 on the appeal property was not unreasonable

29. It found that whenever the rent passing did not fit the statutory definition for rating and required adjustments it became less reliable as a comparable property and less weight could therefore be placed on them.

30. Having considered both parties' evidence and analysis, the panel concluded that the adopted value of £45/m^2 was reasonable and confirmed the RV of £131,000 from 1 April 2017.

31. 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.

32. The appeal is therefore dismissed.

Date: 6 April 2021

Appeal number: CHG100106432