THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and Premises; accuracy of rateable value; rent passing on subject property and comparable properties; 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 23, Dunkirk Business Park, Frome Road, Southwick, Wiltshire, BA14 9NL

APPEAL NUMBER: CHG1001112902

BETWEEN: The Automation Clinic — Appellant

(Represented by Altus Group)

and

Joanne Moore (Valuation Officer) — Respondent

PANEL: Ms L Dubow (Senior Member)
Prof P Catterall

REMOTE HEARING: 2 August 2022
CLERK: James Massey
APPEARANCES: Mr A Fowke of Altus Group for the Appellant.
Ms Fay Burton for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £29,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. Unit 23, Dunkirk Business Park, Frome Road, Southwick, Wiltshire, BA14 9NL (the ‘appeal property’) had been entered in the 2017 Rating List as ‘warehouse and premises’ at a RV of £36,750 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The challenge proposal was submitted by Altus Group on behalf of The Automation Clinic and was received by the Valuation Officer (VO) on 22 July 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed a revised RV of £23,500 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 21 January 2021 in respect of the appeal property. The VO's decision was to treat the Appellant's challenge as not well-founded, but that the current rating list entry was not reasonable and proposed that is should be reduced to £29,500.

5. The appeal hereditament comprises a modern industrial unit built around 2005 of a steel portal frame construction with clad, brick and blockwork walls, concrete floor and profile steel insulated roof with an eaves height of 5.36 metres. Dunkirk Business Park is located southwest of the village of Southwick approximately three miles from Trowbridge town centre on the A361 Frome to Trowbridge road and is well located for access to nearby towns and rail services to London.

6. About five minutes into Mr Fowke's presentation, the hearing clerk noticed that Professor Catterall had just rejoined the meeting. The point at which she had become disconnected was identified and Mr Fowke was asked to restart his presentation from the beginning. No further connection issues were encountered. The panel was satisfied that neither party had been disadvantaged by this loss of connection and that both panel members had been able to hear both parties' presentations in full.

7. 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.

Issue

8. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Fowke, for the Appellant, sought a reduction to £26,500 RV based on an unadjusted main space rate of £45.00 per m². Ms Burton, for the VO defended the amended assessment of £29,250 RV, which was based on an unadjusted main space rate of £50.00 per m².

9. All relevant factual information regarding the subject property, including its area, and the relativities used in their respective valuations were not disputed by the parties.

Evidence and Submissions

10. Mr Fowke appeared on behalf of the appellant as advocate only. Ms Burton appeared on behalf of the respondent 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), Ms Burton's declaration of truth included a statement that she was not instructed under any conditional fee arrangement. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body regardless of whether or not the evidence supported the respondent's case.

11. Mr Fowke referred to the rent passing on the subject hereditament. This had been agreed by the previous occupiers on a ten-year lease, with effect from 2 February 2015, with three- and five-year break clauses. The rent was agreed at £31,000 per annum (pa), with six months' rent-free spread over the first three years of the term. He had analysed the rent to the first review to an equivalent annual rent of £25,883 pa which he had calculated equated to £40.21 per m^2 based on the appeal property's area of 642.42m^2 (ITMS).

12. His area of 642.42m^2 ITMS had included the total area of the mezzanine store of 264.03m^2 however during the challenge uncertainty arose about whether the majority of the Mezzanine storage area was included in the demise for which the rent had been agreed. He could not definitively state that the mezzanine floor was part of the property at the commencement of the lease, therefore he had analysed the rent using a reduced area of 579.35 m^2 ITMS, which produced an increased main space rate of £44.59.

13. Mr Fowke considered that the comparable properties submitted in support of the current main space rate of £50 per m^2 by the respondent were in different types of locality, too far from the appeal property to be comparable and were in different valuation schemes. He considered that the passing rent on the appeal property, agreed only two months prior to the AVD, carries significant weight in determining the correct main space rate at £45.00 per m^2 for the subject property.

14. Within the challenge decision, the VO stated that the rent on the subject hereditament should be a starting point in accordance with the Lands Tribunal case in *Lotus and Delta v Culverwell (VO) and Leicester City Council*. Ms Burton considered that the analysed rent on the appeal property was out of line with rents achieved on similar properties, and taking these into consideration, along with the subject rent, she considered that the current unadjusted main space rate of £50.00 per m^2 was reasonable.

15. She did not consider the analysis of the subject rent to be particularly reliable. The Form of Return had referred to works being required by the tenant to remove the mezzanine floor, which would indicate that not all of the rent-free period was incentive but may have been to compensate the tenant for the inconvenience and expense of carrying out this work and other fit-out costs. She had provided a further analysis of the subject rent which allowed only three months' rent as incentive and had resulted in a main space rate of £49.05 per m^2.

16. Ms Burton referred to the lack of comparable properties on Dunkirk Business Park, where the size of the units ranged from 98m^2 to 178m^2. She therefore looked further afield and submitted details of what she considered to be more comparable properties ranging in size from 475m^2 to 774m^2. She had analysed the rents of these properties to between £47.69 and £66.92 per m^2 which she considered illustrated the rents achieved for older properties in similar locations supported the current unit rate for the subject property.

Decision and Reasons

17. 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.

18. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(1) 'Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) 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 s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) 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.

(4) 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 properly be referred to as giving an indication of that opinion.

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

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

19. Mr Fowke argued that the rent passing on the subject property itself suggested that the current assessment at £50.00 per m^2 was not reasonable and supported a reduction to £45.00 per m^2. The panel agreed that the rent passing on the subject property was a starting point for assessing its RV, and due to its proximity to the AVD, it held some weight in this process. There was some doubt over the rent-free period and how much of this represented compensation for removal of the mezzanine floor and other improvements by the tenant and how much was an incentive which required an adjustment of the rent.

20. In support of the current assessment of the subject property at £50.00 per m^2, Ms Burton had provided details of rents of five units on business parks in Wiltshire which she considered to be comparable to the subject property.

- Unit 1-4 Fusion House, Downton Business Centre, Downton, Salisbury – new letting £38,000 pa with effect from 1 December 2014 which, based on its area of 504.74 m^2 ITMS, analysed at £66.92 per m^2. RV £36,750 based on a unit value of £65.00 per m^2 (37.8 miles from subject property).

- 10-11 Devizes Trade Centre, Hopton Park Industrial Estate, Devizes - new letting £32,500 pa with effect from 28 February 2014, which, based on its area of 605.70m^2 ITMS, analysed at £61.13 per m^2. RV £24,500 based on a unit value of £60.00 per m^2 (15.8 miles from subject property).

- 1 & 2 Doric Business Centre, Avon Way, Canal Rd Industrial Estate, Trowbridge – rent review £41,256 pa with effect from 15 February 2013, which, based on its area of 705.41m^2 ITMS, analysed at £61.36 per m^2. RV £40,250 based on a unit value of £65.00 per m^2 (4.5 miles from subject property).

- Unit 1 & Storage Land, Clarke Avenue, Porte Marsh Trading Estate, Calne – new lease £69,828 pa with effect from 5 April 2013 which, based on its area of 774.39m^2 ITMS, analysed at £54.40 per m^2. RV £59,000 based on a unit value of £50.00 per m^2 (19.1 miles from subject property).

- Unit 5A Centurion Way, Crusader Park, Warminster - new letting £22,685 pa with effect from 21 June 2013 which, based on its area of 475.70m^2 ITMS, analysed at £47.69 per m^2. RV £24,000 based on a unit value of £47.50 per m^2 (8.5 miles from subject property).

21. The panel considered that the range of analysed rents for similar properties in Wiltshire was supportive of their current assessments of between £47.50 and £65.00 per m^2.

22. The subject property is assessed on the scheme 422804 applicable to industrial units on Dunkirk Business Park, Trowbridge. Mr Fowke argued that the respondent's comparable properties were located between 4.5 and 38 miles from the subject property and were all assessed under different valuation schemes.

23. The panel was not persuaded that a hypothetical tenant would limit himself to a property within a particular scheme and considered that the properties in the various schemes were similar enough in character, age and location to be considered by a hypothetical tenant alongside a property within the same scheme as the subject property. Whilst the panel noted that there was some differential in the locations of these properties, it concluded that the variation in their location was reflected in the rents agreed. It noted that their unit rates ranging from £47.50 per m^2 to £65.00 per m^2 were supported by these agreed rents. No rental or assessment evidence had been provided by the appellant for similar units to demonstrate that the rate applied to the subject property was excessive.

24. From the passing rent on the subject property and the basket of rental evidence provided by the respondent the panel was satisfied that the current assessment of the subject property at £50.00 per m^2 was reasonable and the appellant had not provided any evidence of rents or assessments to persuade the panel that it was excessive. The appeal is therefore dismissed.

Date: 30 August 2022
Appeal number: CHG100112902

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.