THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Office and premises; main space price; appeal dismissed.*

RE: Part 2nd Floor, 1 Marsden Street, Manchester, M2 4PH

APPEAL NUMBER: CHG100118726

BETWEEN:	A2E Industries Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE: Ms B Knight (Senior Member)
Mr D Gardner

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 4 on 11 June 2021

APPEARANCES: Mr A Fowke from Altus Group (Appellant's representative)
Mr A Frackleton (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The panel made no change to the rateable value.

Introduction

2. This appeal has been brought in respect of the following: Part 2nd Floor, 1 Marsden Street, Manchester, M2 4PH (the 'appeal property'), which was entered in the 2017 rating list as 'Offices and premises' at rateable value £56,500 effective from 1 April 2017. However, the rateable value was subsequently reduced to £49,500 effective from 3 August 2018, based on an unadjusted main space price of £210/m^2. The appellant was seeking a rateable value of £40,500 based on an unadjusted main space price of £185/m^2.

3. The appeal property is located on the second floor of an office block consisting of retail space on the ground floor, with 11 floors above. The total area of the property is 220.19m^2.

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 position.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Fowke made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 17 March 2021 following the Valuation Officer's Decision Notice of 21 January 2021 in respect of the appeal property.

8. Mr Fowke had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Fowke's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

9. The panel 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).

10. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

11. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

12. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, photographs of the appeal property, and details of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, copies of correspondence that had passed between the parties and extracts of a number of judgments such as *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA.

13. The appeal property was initially held on a four year lease which commenced in 2013. A new ten year lease was agreed, which commenced on 27 October 2017 at £62,646 per annum. Mr Fowke had analysed this rent to £225.06/m^2. However, he argued that this rent was too far from the AVD to be reliable and provided the following comparable properties to support his argument that the unadjusted rate was too high:

Property	Area M^2	Rent	Analysed rent	Rateable value
6th Floor, 1 Marsden Street	560.90	£169,500 effective from 8/6/15	£228.09/m^2	£217,000
7th Floor, 1 Marsden Street	560.90	£151,375 effective from 26/3/15	£167.10/m^2	£217,000
Suite B, Part 11th Floor, 1 Marsden Street	208.72	£62,580 effective from 9/1/15	£200.66/m^2	£53,500
Suite B, 1st Floor, 1 Marsden Street	110.00	£22,950 effective from 18/8/15	£149.73/m^2	£28,250
5th Floor, 1 Marsden Street	560.90	£169,540 effective from 1/12/15	£224.19/m^2	£117,000

14. Mr Fowke had argued that these rents were more reliable, being closer to the AVD. The average of these main space prices is £170/m^2 which he suggested should be adopted as the main space price for the appeal property and asked the panel to allow the appeal.

15. Mr Frackleton was representing the VOA as advocate and expert witness.

16. The VOA had analysed the 2013 rent at £299/m^2 and the 2017 rent at £225.06/m^2 which, it was contended, supported the unadjusted main space price of £210/m^2.

17. Whilst he accepted that the rents for some of the units were agreed in 2015 which analysed at between £149.73/m^2 to £228.09/m^2, Mr Frackleton contended that the rents for 1 Marsden Street were not reliable as they required extensive adjustment for the following reasons:

    a) 6th Floor, 1 Marsden Street had been given 13 months rent free, excluding three months fit out period;
    b) 7th Floor, 1 Marsden Street had been given 19 months rent free, excluding three months fit out period;
    c) Suite B, Part 11th Floor, 1 Marsden Street had been given 17 months rent free, excluding three months fit out period;
    d) Suite B, 1st Floor, 1 Marsden Street had been given 15 months rent free, excluding three months fit out period; and

e) 5th Floor, 1 Marsden Street was a stepped rent.

18. Furthermore, the 6th and 7th floor were occupied by the same tenant and Mr Frackleton suggested that the prospective tenant negotiated a lower rent for the 7th floor which made the rent unreliable.

19. Therefore, due to the unreliability of the rents for 1 Marsden Street, the VO had based the main space price on the tone of the list and provided the following comparable properties which, it was contended, supported the tone:

Property	Area M^2	Main Space Price	Rateable value
Vacant Part 8th Floor, Zenith Building, 26 Spring Gardens	152.40	£240/m^2	£36,500
Office 1 Part Ground Floor Left, Norfolk House, Norfolk Street	177.70	£200/m^2	£36,500
Suite 2 Part 1st Floor, Zenith Building, 26 Spring Gardens	180.20	£240/m^2	£32,500
Small Wing 1st Floor, 40 Spring Gardens	191	£260/m^2	£49,500
Suite A 4th Floor, Zenith Building, 26 Spring Gardens	223.30	£220/m^2	£49,000
Suite B 4th Floor, Zenith Building, 26 Spring Gardens	248.08	£220/m^2	£54,500
Ground Floor, Gre House, 42-44 Fountain Street	248.58	£235/m^2	£58,000
1st Floor A, 55 Spring Gardens	252.01	£237.90/m^2	£59,500
Robert Half International Ltd, Part 8th Floor, Zenith Building, 26 Spring Gardens	299.70	£220/m^2	£65,500

20. These comparable properties supported the VOA using an unadjusted main space price of £210/m^2 and Mr Frackleton asked the panel to dismiss the appeal.

Decision and reasons

21. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

22. There is another important date for rating appeals and that is known as the 'material day.' This is the date on which the physical factors have to be taken into account. In this appeal the material day was 1 April 2017.

23. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic; and

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

24. The Lands Tribunal judgment in *Lotus and Delta v Culverwell* provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighed.

25. To determine the appeal, the panel first considered the rent for the appeal property. The rent from 2013 had been analysed at £299/m^2, reducing to £225.06/m^2 for the rent in 2017. This suggested to the panel that the main space price would fall within the range of the analysed rents.

26. The pattern of these rents suggested that there had been a fall in rents between 2013 and 2017. However, if the main space price of £170/m^2 as Mr Fowke's was proposing, was adopted, this would suggest the rents fell by nearly half and then increased, within a four year period. No evidence was presented to prove that this occurred and therefore the panel concluded that his proposed main space price of £170/m^2 was too low.

27. Mr Fowke had also suggested the rents for the appeal property were too far away from the AVD to be reliable and therefore the panel should test these rents with his comparable properties. However, the panel noted that the 2017 rent for the appeal property of £66,146, although Mr Fowke's had analysed it at £62,646, but, however the rent was analysed, it was not too dissimilar from the 2013 adjusted rent of £65,896, which suggested a consistent picture for the appeal property, which the panel could properly take into account. Therefore the panel applied weight to the 2017 and 2013 rents.

28. Having applied some weight to the rents for the appeal property, the panel then considered Mr Fowke's comparable properties. The panel considered that the rent for the appeal property was comparable to Suite B, Part 11th Floor, the rent for Suite B, Part 11th Floor being £62,580. This property was also similar in size at 208.72m^2, with the appeal property being 220.19m^2. The panel applied little weight to the rents of the other comparable properties as they were either larger (and in the

case of 6th and 7th floors, would benefit from a quantum allowance) or smaller than the appeal property.

29. The panel then turned to Mr Frackleton's comparable properties. It found his comparable properties most compelling as he had provided a number of assessments which were similar in size and in the locality. The unadjusted rate per m^2 for these varied from £200/m^2 to £260/m^2. This range also fell within the range of Mr Fowke's analysed 2017 rent for the appeal property, which suggested to the panel that the passing rent was reliable to assist in determining the rateable value.

30. As the panel had already established that the proposed main space price of £170/m^2 was too low, it then considered the VOA's unadjusted main space price of £210/m^2. Given the VO's tonal evidence, the passing rents for the appeal property and the rent for one of Mr Fowke's comparable properties, Suite B, Part 11th Floor, 1 Marsden Street, the panel concluded that the main space price and the resultant rateable value was not unreasonable and dismissed the appeal.

Date: 9 July 2021

Appeal number: CHG100118726