THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Warehouse and Premises; accuracy of rateable value in list; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal dismissed.

RE: 1D Chailey Ind Est, Pump Lane, Hayes, Middlesex, UB3 3NE

APPEAL NUMBER: CHG100119729

BETWEEN:	ASB Distributions Ltd	Appellant
and	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mrs X Holt (Senior Member)
Mrs V Hollender

CLERK: Mr D Jefferies

REMOTE
HEARING ON: 24 August 2021

APPEARANCES: Mr A Moore of Altus Group for the Appellant
Mr J Balogun for the Valuation Officer

Summary of decision

1. Appeal dismissed. The existing valuation is not unreasonable and the entry in the rating list is confirmed at £31,250 rateable value (RV) with effect from 1 April 2017.

Introduction

2. 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.

3. 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.
4. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £31,250 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. The appeal was made on 21 April 2021 against the Valuation Officer's (VO) Decision Notice of 21 December 2020 in respect of the appeal property and the RV of £31,250. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £31,250 RV was deemed as correct. The proposed RV sought by the appellant was £23,000.

5. The subject property comprises a terraced block of five industrial warehouse units of brick-built construction with pitched and asbestos sheeted roofs. The property is located on Pump Lane which lies within the Chailey Industrial Estate. The estate is accessed via the A312 to the east and lies close to Hayes town centre which is to the west.

6. Mr Moore appeared on behalf of the appellant as 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 Moore'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 or not the evidence supported his client's case.

7. The panel accepted the 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 the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Issue

9. The matter before the panel was to determine the correct level of the RV for the appeal property, having regard to the weight to be attached to the rental evidence and levels of value placed on comparable assessments on the Chailey Industrial Estate. Mr Moore, for the appellant, proposed a revised RV of £23,000, based on a valuation of £40/m^2. Mr Balogun, for the VO, defended the existing RV of £31,250, which was based on £55/m^2.

10. All relevant factual information was not disputed by the parties.

Preliminary Issue

11. Mr Moore raised a preliminary issue. He explained that he had not been given the opportunity of inspecting the forms of return (FOR) for the five rents quoted by the VO. Altus Group sent a response to the initial response on 2 November 2020 requesting to view the FORs for the rental evidence that the VOA had provided to support their case. Mr Moore had made several attempts to inspect the FORs. He was eventually able to view the FOR for Unit 1E only on 14 December 2020, however no FOR or alternative method for reviewing the information provided by the VOA for the other comparable properties were provided. Mr Moore argued that these rents should therefore be held inadmissible and excluded from the proceedings.

12. Mr Balogun submitted that the VOA had included the rental evidence within its initial response. He said that Mr Moore has stated that he has only seen one FOR for Unit 1E which, in Mr Balogun's opinion, was very useful evidence in supporting the VO's view that the subject property has been correctly valued in line with other units of a similar size on the Chailey Industrial Estate. Given the circumstances and after lengthy discussions on this point, Mr Balogun proposed that the hearing continued with the only rent that both parties had seen in respect of Unit 1E, and any other rents without a FOR should be disregarded in these proceedings.

13. Accordingly, as Mr Moore had repeatedly requested sight of the FORs for other units on the Chailey Industrial Estate which had not been forthcoming, and in view of Mr Balogun's acceptance that this evidence should now be disregarded from the proceedings, the panel found that the four rents provided by the VO in his summary of rental evidence should be held inadmissible and excluded from evidence. The hearing thus continued on that basis with the only rental evidence before the panel being in respect of the subject property itself and that of Unit 1E.

Evidence and submissions

14. Amongst other things, the evidence from the parties included rental evidence in respect of the appeal property and that of Unit 1E Chailey Industrial Estate cited as comparable, valuations, photographs, an aerial image, location and property plan, rateable value definition and related correspondence.

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 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.

16. Both parties have highlighted the Lands Tribunal decision of *Lotus and Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA141, which provides guidance on the weight to be attached to rental and assessment evidence. The rent was considered the starting point and more weight was attached to those rents closest to the statutory criteria of rateable value and which were agreed closest to the AVD. Other rents were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. Other comparable assessments were also relevant but to a lesser degree. In light of all the evidence an opinion could be formed on the rental value of the appeal property, the weight to be

attributed to the different types of evidence depending on one hand on the nature of the actual rent and, on the other hand, the degree of comparability found in other properties. In those cases where there were no rents available for comparison, a review of other assessments may be helpful, but in such circumstances, it would clearly be more difficult to reject the evidence provided by the actual rent.

17. Having regard to the above, the panel could fully understand Mr Moore's reliance on the appeal property's rent. The Appellant had agreed a renewed lease of the premises for three years from July 2015. The rent agreed was £24,780 per annum. Mr Moore submitted that on an ITMS area of 548.65/m^2, he had analysed this to £42.98/m^2 on a straight-line basis. He argued that although this was not a new letting, this transaction is on the subject property and it was within four months of the AVD. Mr Moore believed that the value applied to the subject property at £55/m^2, which results in a RV of £31,250 was excessive when looking at the subject rent. He proposed a revised RV of £23,000 based on £40/m^2.

18. Mr Balogun highlighted the fact that there was no FOR submitted on the subject property in order to establish the rental details relating to this rent. As a result, he felt that it would be unreasonable to alter the rating list based solely upon this lease renewal in isolation. Whilst this may be some form of starting point for consideration of the RV, Mr Balogun said that he has to look at other rental evidence of similar age and size property that supports the tone within the estate. He referred to Unit 1E Chailey Industrial Estate. This property at 546.46/m^2 ITMS was a new letting from 1 September 2017 at £37,692 per annum, which he had analysed to £56.80/m^2. From this evidence and considering the tone of similar size/type properties on the estate, Mr Balogun argued that £55/m^2 and a RV of £31,250 was not unreasonable for the subject property.

19. The panel had regard to the fact that Mr Moore has only provided the rent agreed on the subject property at £24,780 per annum from July 2015. This was on a three-year lease renewal which Mr Moore had adjusted on an ITMS area of 548.65/m^2 at £42.98/m^2. Apart from the subject rent Mr Moore has provided no other rental evidence to support his valuation. The rental agreement was a lease renewal and not an open market agreement and it had not been evidenced by the submission of a copy of the lease. The panel did dwell on this rent, however, it found that it could only attach little weight to this agreement as it was a lease renewal and not a new rental agreement made on the open market.

20. The panel also had regard to the rental evidence submitted by the VO of Unit 1E Chailey Industrial Estate which was for a new letting from 1 September 2017 at £37,692 per annum, which Mr Balogun had analysed to £56.80/m^2. However, this rent was agreed two years and five months after the AVD and therefore, in the panel's opinion, it also carried little weight as evidence. In this case the panel has heard what both parties have had to say regarding the two leases submitted as evidence but concluded that neither parties' rental evidence was compelling in this case.

21. The panel noted that in answer to questioning Mr Moore had indicated that he had been working in this patch of West London for some four to five years and was aware that the rental trend between the 2010 and 2017 rating lists for light industrial rents have been climbing since around 2005. Mr Balogun, on the other hand, stated that there was evidence to suggest that values were falling during this period and thus the tone of value for properties on the Chailey Industrial Estate had in fact been reduced in the 2017 rating list. In reaching its decision, the panel had regard to the fact that the largest units on the estate have been valued at a rate of £52.50/m^2 in the 2017 rating list and within the valuation matrix all similar size/type industrial units comparable to the subject property have been valued at £55/m^2.

22. The case for the Appellant was solely based on a single rent in isolation. The rent in question is a lease renewal with no rental details regarding its basis of agreement. In the panel's opinion, it would be unreasonable to alter the rating list based solely on this rent particularly when other comparable evidence is available across the subject matrix which are in support of the adopted values in the 2017 rating list. The adopted values for the various size bands across the valuation matrix on the Chailey Industrial Estate have all been reduced in the 2017 rating list.

23. In conclusion, having regard to the physical state of the appeal property and its locality at the material date of 1 April 2017, and the evidence referred to, the panel was of the opinion that the rate per m^2 adopted for this industrial unit of £55/m^2 was not excessive. In this appeal the panel has given greater weight to VO's tonal evidence on the Chailey Industrial Estate for similar size/type industrial units, which supported his valuation approach for the subject property. For the reasons outlined above, the panel found that no reduction in the subject property's assessment was warranted and it confirmed the RV of £31,250 in the compiled rating list as not being unreasonable.

24. In view of the foregoing, the appeal was unsuccessful and dismissed accordingly.

Date: 17 September 2021

Appeal number: CHG100119729