VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; warehouse and premises; valuation of hard surfaced, fenced land; accuracy of rateable value; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

RE: Unit 2, Marsh Road, Wembley, Middlesex HA0 1ES

APPEAL NUMBER: CHG100121513

BETWEEN: Nationwide Platforms Ltd — Appellant

and

Mr A Corkish (Valuation Officer) — Respondent

PANEL: Mr A Khurram (Senior Member)
Mr D Greensmith

CLERK: Miss F Willson

REMOTE HEARING ON: 7 December 2020

APPEARANCES: Mr O Hamblin from Altus Group (on behalf of the Appellant)
Mr J Balogun (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 £96,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 29 August 2019, in respect of Unit 2, Marsh Road, Wembley, Middlesex HA0 1ES (the appeal property). The challenge was in respect of the entry in the rating list at £103,000 RV effective from 1 April 2017. The appellant sought a revised assessment of £88,500 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that it was not well founded and a decision notice to this effect was issued on 23 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.

6. The appeal property is warehouse and premises located in Wembley. It is on Marsh Road ten miles west of London with good links to the M40. It is a hybrid property consisting of hard surfaced fenced land with an area of 1476m^2 and buildings of 813.64m^2 containing offices, warehouse space and storage. The land is used to store platform lifts used on construction sites nationwide.

7. 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

8. The issue between the parties is the RV of the appeal property specifically the value attributed to the land element of the assessment.

Evidence and submissions

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

10. With reference to his comparable properties and the appeal property he asked the panel to confirm a revised rateable value of £88,500 from 1 April 2017.

11. Mr Balogun referred the panel to the challenge application and decision.

12. In consideration of his comments on the comparable properties admitted in evidence by the appellant, Mr Balogun asked the tribunal to confirm the RV of £103,000 with effect from 1 April 2017.

Decision and reasons

13. 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.

14. 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.

15. Mr Hamblin confirmed to the panel that he was not contesting the value of the buildings included in the appeal property's RV; only the value of the land. He argued that the passing rent on the appeal property of £105,000 per annum did not represent the rental value of the assessment under the rating hypothesis at the AVD. It also did not reflect the physical factors and locality.

16. He 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*. He therefore had included other comparable properties located close to the appeal property and in the same valuation scheme as the appeal property.

17. He explained to the panel that scheme 411265 applied to the appeal property. In this scheme the base rate for hard surfaced land is stated to be at £10 per m^2. The appeal property has a base rate of £20 per m^2 applied to it despite having nothing in its size, location or physical factors which would suggest the need for the base rate to be increased to £20 per m^2.

18. 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 411265 should be applied to the appeal property which set the base rate for land as £10 per m^2 but he had used a higher base rate of £20 per m^2.

19. Mr Hamblin drew the panel's attention to his comparable properties which all included land. They were all different in size and location but they all had a base rate for land of £10 per m^2 and were in the same scheme as the appeal property. This he argued showed there wasn't any difference in the value of land depending on its location or size.

20. Mr Hamblin's comparable properties:

Address	Description	Land per m^2	Land £m^2
Parry Metal Holdings Ltd, Brentford	Workshops, land used for storage	6,340	£10
M4 Motorway Service Depot, Hounslow	Service depot	2,373	£10
Brentside Wharf, Brentford	Workshop and premises	1,170	£10
FCL Trucks Ltd, Staines Upon Thames	Workshop and premises	1,000	£10
Feltham Tyre Ltd, Feltham	Workshop and premises	782	£10
Easybus, North circular Road, London	Workshop and premises	718	£10
Unit 6 Fourth Way, Wembley	Warehouse and premises	511	£10
R/O 497 London Road, Isleworth	Workshop and premises	294	£10

R/O 628 Western Avenue, Isleworth	Workshop and premises	252	£10
1 Space Waye, Feltham	Warehouse and premises	220	£10

Mr Hamblin submitted that all these different types of property were all in the same valuation scheme and all had a base rate of £10 per m^2 not £20 per m^2 as in the case of the appeal property. He therefore argued the comparable properties supported his proposed base rate for land in the RV of the appeal property of £10 per m^2 and that a tone had been set. In accordance with *Lotus and Delta,* that was strong evidence in the basket of evidence used to calculate an RV.

21. The panel noted that the comparable properties did appear to provide a tone for a property of the same type as the appeal property. They were much smaller in size than the appeal property and so they put weight on these properties.

22. The 2017 rating list entry for the appeal property proposed by Mr Hamblin:

Floor	**Description**	**Area m^2/unit**	**Price per m^2/unit**	**Value**
Ground	Reception/entrance	55.44	£108	£5,988
Ground	Mess/staff room	24.15	£99	£2,391
Ground	Office	112.73	£108	£12,175
Ground	Warehouse	32.67	£74.59	£2,437
Ground	Warehouse	273.11	£87.75	£23,965
Ground	Area under supported floor	44.13	£61.43	£2,711
First	Internal Storage	162.94	£58.50	£9,532
First	Office	71.62	£108	£7,735
Mezzanine	Office	36.85	£99	£3,648
Ground	Hard surfaced, fenced land	1,476	£10	£14,760
Total		**2,289.64**		**£85,342**
Car park spaces				
12				£3,360
Total				**£3,360**
Total Value				**£88,702**

Say				**£88,500**

23. Mr Balogun drew the panel's attention to the rent passing on the appeal property. He argued that in *Lotus and Delta* the first type of evidence to be considered is the rent passing on the property. In the case of the appeal property the rent passing from the 1 April 2017 was £163,000 per annum. He argued that this supported the RV of £103,000 although he did acknowledge that the rent was two years post AVD and could not have been known or foreseen at the date of the AVD.

24. The panel was aware that the rent of £163,000 was from 1 April 2017 and so little weight was given to it.

25. Mr Balogun contended that the next best evidence as laid out in *Lotus and Delta* were the rents of comparable properties close to the AVD. He noted Mr Hamblin had failed to provide any rental evidence and relied only on evidence relating to the tone of the list.

26. An RV is derived from a basket of evidence with a hierarchy set out in *Lotus and Delta* and that the valuation of the appeal property was based on the first two types of evidence being the passing rent on the appeal property and the rent of other properties in the same mode and category of occupation.

27. Mr Balogun submitted that having reviewed all the comparable properties put forward by Mr Hamblin he noted that they all had an adjustment applied to them. This was due to the land in the assessments being less valuable than that in the appeal property. In the case of the appeal property no adjustments were applicable.

28. He further submitted that the comparable properties 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.

29. Mr Balogun drew the panel's attention to the following comparable properties and their rent:

Address	Description	Actual area m^2	Effective date of rent	Rent	Adopted Value (£ per m^2)
Unit 9 Edwards Yard Wembley	Land used for storage	558	1 Sep 2014	£21,600	£20
Hire Plant Ltd North Circular Road	Land used for storage	1165.73	1 Nov 2013	£52,500	£20
Unit 53B Sapcote Trading Centre	Land used for storage	277.43	1 Jul 2014	£20,000	£27.50
Compound 8A Lumen	Land used for storage	1235	1 Oct 2013	£41,268	£27.50

Road East, Wembley					
Compound 6B Lumen Road East, Wembley	Land used for storage	569	1 May 2014	£23,400	£27.50
Compound 6C Lumen Road East, Wembley	Land used for storage	477	1 June 2015	£17,724	£27.50
Compound 4 Lumen Road East, Wembley	Land used for storage	1617	15 Mar 2016	£52,224	£27.50
Yard 3 Ace Corner, North Circular Road	Land used for storage	780	1 Nov 2014	£31,800	£22
Brett Group Drury Way	Land used for aggregate storage	2961	1 Sep 2015	£70,000	£20

Mr Balogun 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 and the base rate adopted was between £20 - £27.50 per m^2 which supported the appeal property's base rate of £20 per m^2.

30. The panel noted that these comparable properties were in the general location of the appeal property although not in the same valuation scheme. They had rental evidence close to the AVD. All of them apart from one however were smaller; in some cases significantly smaller than the appeal property. A quantum allowance would possibly be needed in relation to the appeal property to compare it to these properties. The panel therefore did not attach much weight to these comparable properties.

31. Mr Balogun drew the panel's attention to the fact that the appeal property was a hybrid property. This meant it was possible for the land and the buildings to be occupied separately with one not being ancillary to the other. He submitted that none of the comparable properties introduced in evidence by Mr Hamblin were hybrid properties. They were therefore in Mr Balogun's view not good evidence to support Mr Hamblin's case. He did however admit that none of his comparable properties were hybrid properties either.

32. The panel noted that although all the comparable properties were not hybrid properties they were in the same mode and category of occupation. This gave the panel confidence to place weight on them. In the case of Mr Hamblin's properties they all had a base rate for the land of £10 per m^2 albeit that the land was considered to be less valuable. In the case of Mr Balogun's properties they were much smaller and a quantum allowance would need to be applied.

33. Having considered both parties' comments on the comparable properties provided by both sides, the panel concluded that the base rate for land proposed of £10 per m^2 was too low. The land in those assessments was less valuable than that in the appeal property's

assessment. The base rate for land in the present RV of £20 per m^2 was however not fair and reasonable in the panel's view.

34. The panel found the base rate for land in the appeal property should be £15 per m^2:

Floor	Description	Area m^2/unit	Price per m^2/unit	Value
Ground	Reception/entrance	55.44	£108	£5,988
Ground	Mess/staff room	24.15	£99	£2,391
Ground	Office	112.73	£108	£12,175
Ground	Warehouse	32.67	£74.59	£2,437
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First	Office	71.62	£108	£7,735
Mezzanine	Office	36.85	£99	£3,648
Ground	Hard surfaced, fenced land	1,476	£15	£22,140
Total		**2,289.64**		**£92,721**
Car park spaces				
12				£3,360
Total				**£3,360**
Total Value				**£96,081**
Say				**£96,000**

35. The ratepayer rate payer 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.

36. The appeal is therefore allowed in part.

Order

37. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £96,000 with effect from 1 April 2017 within two weeks of the date of this order.

Date: 7 January 2021

Appeal number: CHG100121513