THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: Units 3 & 5, The IO Centre, The Royal Arsenal, Skeffington Street, London SE18 6SR

APPEAL NUMBER: CHG100125801

BETWEEN:	Medequip Assistive Technology Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent
BEFORE:	Mr A Khurram (Senior Member) Mr M Collery	
CLERK:	Mr R Gath IRRV Hons	

REMOTE HEARING 3 on 28 July 2021

APPEARANCES:	Mr S Campbell from Altus Group (Appellant's representative) Mr J Balogun (Valuation Officer's representative)

Summary of decision

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

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 position.

4. This appeal has been brought in respect of the following: Units 3 & 5, The IO Centre, The Royal Arsenal, Skeffington Street, London SE18 6SR (the 'appeal property'), which was entered in the 2017 rating list as 'Warehouse and premises' at a rateable value of £99,000 effective from 1 April 2017.

5. The appeal property is a single storey warehouse with a mezzanine level on an industrial estate close to Woolwich and nearly two miles west of the A205 South Circular Road. The total area of the property is 1167.5m^2. There are also 17 car parking spaces.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Campbell 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 11 March 2021 following the Valuation Officer's Decision Notice of 8 December 2020 in respect of the appeal property.

8. Mr Campbell 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 Campbell'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. During the hearing, Mr Balogun suggested to the panel that the appeal property was leased to the appellant company and not owned as Mr Campbell had argued. Mr Balogun explained to the panel that during discussions with Mr Campbell this issue had been raised. The panel allowed a short adjournment for Mr Balogun to find these emails but he was unable to. However, with Mr Balogun suggesting that he had a form of return from the

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

property owner to prove that the appeal property was leased and Mr Campbell arguing that his records showed that the appellant company owned the appeal property, the panel suggested that a further adjournment may be in order to allow for further discussions between the parties.

11. The appeal had already been postponed from a hearing on 11 June 2021 as there was not enough time to hear it, and Mr Campbell stated that as the appellant company was suffering from hardship, he did not want a further adjournment and asked the panel to continue to hear the appeal.

12. Having considered this matter and given that Mr Balogun was unable to find any correspondence that had already been exchanged with Mr Campbell to support his contention that he had previously raised this issue Mr Balogun had, in effect, prejudiced himself by being unable to prove that argument. The panel therefore decided to continue to hear the appeal, based on the evidence that had already been exchanged between the parties.

13. 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 having been overlooked.

Issues

14. The issue for determination is the rateable value of the appeal property. Mr Campbell was also seeking a 5% allowance for a divided/split unit.

Evidence and submissions

15. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a location map, photographs of the appeal property, details of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice 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.

16. Mr Campbell contended that the appeal property was held freehold by the appellant and therefore there was no rental evidence for it.

17. He explained that the VO's scheme gave the following rates for the units at the IO Centre:

Size of unit	Unadjusted rate
0 - 49m^2	£97.50/m^2
50m^2 - 249m^2	£92.50/m^2
250m^2 - 499m^2	£90.00/m^2
500m^2 - 999m^2	£87.50/m^2
Those greater than 1000m^2	£85.00/m^2

18. However, he argued that the unadjusted rate of £85.35/m^2 for the appeal property was excessive, based on the rental evidence in the locality and provided the following comparable properties to support his argument:

Property	Area M^2	Rent	Analysed rent	Rateable value
Units 46-47, The IO Centre	1933.19	£133,920 effective from 1/9/14	£75.57/m^2	£155,000
Units 31 & 32, The IO Centre	1484.49	£132,726 effective from 1/6/14	£64.71/m^2	£129,000
Unit 48, The IO Centre	760.27	£69,600 effective from 24/4/15	£72.50/m^2	£67,500
Under One Roof, Unit 9, The IO Centre	970.95	£77,675 effective from 10/5/16	£79.50/m^2	£85,000

19. He argued that given the size of the appeal property Units 46-47 and 31 & 32 were comparable in terms of size and those rents analysed to £75.57/m^2 and 64.71/m^2 respectively. The average of these two analysed rents was £70.00/m^2 and the RV for the appeal property should be based on that unadjusted rate of £70.00/m^2.

20. He also referred to units 48 and 9 which were in the size bracket below that of the appeal property. He had analysed those rents at £72.50/m^2 and £79.50/m^2 respectively which further supported his argument that the assessments at the IO centre were over assessed.

21. Mr Campbell contended that there were 64 assessments in the scheme with five of those having rents close to the AVD. He had analysed these at £70/m^2 which further supported his argument that the rateable value was incorrect.

22. He also argued that the rents in the IO centre were reliable as they had been negotiated and signed off by other staff who were RICS valuers at Altus.

23. He also argued that the VOA's comparable properties were smaller than the appeal property, whereas, the appeal property would benefit from a quantum allowance due to it being larger and benefiting from economy of scale. He also disagreed with their analysis of the rents of Mr Balogun's comparable properties for the following reasons:

    a) Unit 39. The lease was for five years and therefore the rent would be greater than other units as a normal letting is for between 10 to 15 years. There was also a dispute about the number of car parking spaces declared on the form of return and the assessment;
    b) Unit 43. The form of return stated that the unit was an office and was therefore not a like for like comparison. The lease was for just over a year and the number of car parking spaces differed;
    c) Unit 14. The lease was for five years and therefore the rent would be more as a normal letting is for between 10 to 15 years. Part of the unit has been sublet and again the car parking spaces did not agree between the form of return and the assessment; and

d) Unit 45. Mr Campbell’s opinion was that the VOA had not analysed the rent correctly and he would have liked the opportunity to have viewed the form of return.

24. To support his argument for a 5% allowance for a split unit, Mr Campbell provided ten assessments in the locality where an allowance of between 5% and 10% had been given by the VOA. These were:

Property	Allowance
Hunter Plastics, Nathan Way	8% for split unit
AR Payne Autos, 125-129 Woolwich High Street and 1st Floor 1-4 Mortgrammit Square	7% layout
Abbey Forwarding Ltd, Purland Road	5% split site
Units 1 & 2 at 39-69 Westmoor Street	5% divided or split unit
Units C & D, 208 Warspite Road and 5 Westfield Street	10% split site
107 Nathan Way	5% layout
Stone Foundries, Woolwich Road	6% divided or split unit
Unit A, Neptune House, Holmwood Villas, Woolwich Road	5% layout
Cory Bargeworks, Lombard Wall, Riverside	10% split site
216D Siemans Road	

25. Given all of the above, he sought a revised rateable value of £78,000 with an additional 5% allowance and asked the panel to allow the appeal.

26. Mr Balogun was representing the VOA as advocate and expert witness. He contended that Mr Campbell was cherry picking the rents to support his argument. He also contended that Mr Campbell had not analysed the rents on his comparable properties correctly for the following reasons:

a) Units 31 & 32 - the initial rent was not reliable as there was a tenant’s incentive. Mr Campbell had also failed to provide the 2019 rent to the VOA; and
b) Unit 46 – 47 - the VOA’s rental evidence showed the rent to be £133,920.

27. However, Mr Balogun contended that the rents in the locality supported the unadjusted main space price of £85/m^2 and provided the following comparable properties which supported the tone:

Property	Area M^2	Rent	Analysed rent	Rateable value
Units 39, The IO Centre	572.76	£43,000 effective from 1 May 2015	£92.89/m^2	£41,000
Unit 43 The IO Centre	393.33	£36,000 effective from 1 May 2015	£90.74/m^2	£35,500
Unit 14 The IO Centre	278.37	£28,850 effective from 1 December 2014	£96.38/m^2	£24,500
Unit 45, The IO Centre	629.52	£45,833 effective from 1 January 2016	£101.69/m^2	£50,000

28. In comparison to other similar units the RV appeared to be in line with those in the IO centre.

29. He also contended that Mr Campbell had not analysed the rents for his own comparable properties correctly and had ‘cherry picked’ rents to support his argument, ignoring rents on units that would support the current RV.

30. Mr Balogun also contended that there was no evidence to prove how the tenant was affected by the split units and, therefore, there was no justifiable reason to award the 5% allowance.

31. Given all of the above, he asked the panel to dismiss the appeal on both grounds.

Decision and reasons

32. 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) of 1 April 2015. This 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.

33. 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.

34. 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;
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> 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”.

35. 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 weighted.

36. As the information presented to the panel was that the appeal property was held freehold, to determine the appeal, the panel first considered the rents on the comparable properties. Both parties had differed in their analysis of the rents presented by Mr Campbell. For Units 31 & 32 for example, the VOA had contended that there was a six month rent free period and a tenant's incentive with the rent being £64,000 per year, although they did not state what the incentive was. Mr Campbell had suggested that the rent included a 23 month rent free period. For Unit 48, the repairs and insurance was shared with the landlord, however, Mr Campbell had argued that the VOA had failed to adjust the rent for one year at half the rent.

37. The panel then examined the rental evidence presented by Mr Balogun. However, the VOA's rental evidence was for units that were smaller than the appeal property. Given all of the above, the panel applied little weight to the rental evidence as it was not reliable due to the number of adjustments or, they were not comparable in terms of size.

38. The panel then considered the tonal evidence. Mr Campbell was seeking a proposed RV of £78,000. The panel noted that Unit 9 was 200m^2 smaller than the appeal property and had an RV of £85,000 and Unit 48 was nearly 400m^2 smaller and had an RV of £67,500. Units 31 & 32 was just over 100m^2 larger than the appeal property and had an RV of £129,000. No evidence was presented to the panel to suggest that the RVs for these assessments had been challenged.

39. Based on this evidence, it was clear to the panel that Mr Campbell's proposed RV of £78,000 was far too low. It would not be correct for a smaller unit to have a larger RV, especially as the units appeared to be similar in age, style and construction and no evidence was presented to prove otherwise.

40. The panel then referred to the VOA's scheme which stated that the values for the IO centre ranged from £80/m^2 to £97.50/m^2, with those units with an area of greater than 1000m^2 being valued towards the lower end of that range due to the quantum allowance. The scheme values would be taken from the basket of rents from the IO centre, although Mr Campbell had argued that the VOA had not analysed the rents as he would have done. However, the panel had not been persuaded by Mr Campbell's analysis of the rents either.

41. Given the above tonal evidence, the panel was satisfied that the RV was in line with the other assessments in the locality.

42. The panel then considered the 5% allowance which Mr Campbell was seeking for a split unit. The panel established that the units were joined and there was a two metre wide space between the two units which meant that a fork lift truck was unable to go between them. Unfortunately, apart from a selection

of other assessments where an allowance had been given, no other evidence was presented to the panel to explain the reasons that an allowance should be awarded or why it caused the appellant company difficulties and if it did, no evidence was presented to prove that was the same as the other units that Mr Campbell had quoted in his evidence bundle. As there was a lack of supporting evidence, the panel concluded that it should not be allowed.

43. Given all of the above, the panel therefore concluded that the grounds of appeal, namely that the rating valuation was not reasonable, had not been made out and the panel dismissed the appeal.

Date: 27 August 2021

Appeal number: CHG100118726