THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: Unit 7, Bessemer Park, London SE24 0HG

APPEAL NUMBER: CHG100133731

BETWEEN:	Aquapac International Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs A Fielder (Senior Member)
Mr F Rogers

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 25 January 2022

APPEARANCES: Mr H Edwardes from Altus Group (Appellant's representative);
Mr C Cates (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The panel concluded that the main space price of £140/m^2 and the resultant rateable value of £39,750 was correct.

Introduction

2. This appeal has been brought in respect of the following: Unit 7, Bessemer Park, London SE24 0HG which was entered in the 2017 rating list as 'Warehouse, Office and premises' at rateable value £39,750 effective from 1 April 2017, based on an unadjusted main space price of £140/m^2.

3. The appeal property is in an industrial estate built in the early 1990s. It is a steel frame industrial unit with ground and mezzanine floors and included four car parking spaces. It had an area of 305.09m^2. There was a 10% uplift for the office.

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 that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Edwardes 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].

8. The appeal to this Tribunal was made on 27 August 2021 following the Valuation Officer's Decision Notice of 29 April 2021 in respect of the appeal property.

9. Mr Edwardes 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 Edwardes' 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.

10. 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).

11. 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.

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

Issues

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

Evidence and submissions

13. 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, external and internal photographs and layout plans of the appeal property, and details and photographs 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.

19. The rent for the appeal property was £26,000 effective from 20 December 2015 on a full repair and insurance terms. However, it was a lease renewal and the appeal property was rented from Aquapac International Ltd Retirement Benefits Scheme and was therefore between connected parties. Mr Edwardes therefore accepted that the reliability of the rent should be weighted accordingly.

20. However, to support the main space price of £116/m^2 he provided the following assessment:

Property	Size	Analysed rent	Unadjusted main space price	Rateable value
Unit 16 Bessemer Park	297.80m^2	£117.34/m^2	£140/m^2	£35,000

19. He argued that the lease for 16 Bessemer Park Part commenced on 20 December 2015 which was close to the AVD and it was identical to the appeal property.

20. Mr Edwardes analysed the rent included the mezzanine floor as he had concluded that the majority of the units had mezzanine floors. However, during questions, it had been established that he had based this assumption on all of the units having first floor windows, which Mr Edwardes' suggested were required for additional natural lighting to the mezzanine floors.

21. Given this rental evidence, Mr Edwardes argued that this supported the main space price of £116/m^2 for the appeal property and he asked the panel to allow the appeal.

22. Mr Cates was representing the VOA as advocate and expert witness.

23. He disagreed with the method the appellant's representative used to calculate the main space price as mezzanine floors are not included in the rental analysis as they are seen as ancillary, inferior to the main space price and as additions/tenants improvements. In response to Mr Edwardes' argument, he

contended that there were some units within the industrial estate where mezzanine floors had not been installed.

24. The VO had used market rental analysis to establish the April 2015 rent that the appeal property would have realised. He had analysed this at £159.79/m^2 which supported the current main space price for the appeal property.

25. Due to the rent being between connected parties he suggested that less weight should be applied to it, and provided the following comparable properties:

Property	Size	Analysed rent	Unadjusted main space price	Rateable value
Unit 7 Bessemer Park (appeal property)	305.90m^2	£159.79/m^2	£140/m^2	£39,750
Unit 17 Bessemer Park	277.30m^2	£223.06/m^2	£140/m^2	£26,750
Unit 15 Bessemer Park	306.88m^2	£252.08/m^2	£140/m^2	£39,750
Ground Floor, Unit 18, Bessemer Park	154.31m^2	£109.22/m^2	£140/m^2	£18,000

Given all of the above, Mr Cates contended that the current unadjusted rate of £140/m^2 and the RV of £39,750 was reasonable and he asked the panel to dismiss the appeal.

26. In response to the VO's evidence, Mr Edwardes disagreed with the VO's comps as Unit 18 Bessemer Park, he considered the lease, which commenced on 1 March 2014, was too far from the AVD. Unit 17 Bessemer Park, he suggested that the Form of Return (FOR) was incorrect as he could only find a ten year lease from 1 February 2017 at a rent of £34,000 per year and did not adjust for the car parking spaces. Whereas the VO's FOR stated that it was a ten year lease effective from January 2016 at a rent of £33,996.00 per year.

Decision and reasons

27. 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. 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.

28. 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.

29. 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".

30. The Lands Tribunal judgment in *Lotus and Delta v Culverwell and Leicester City Council* 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.

31. Firstly, the panel considered the rent for the appeal property. Although the lease was through connected parties, being a pension fund, the Trustees do have a duty to ensure that a market rent was achieved for the appeal property. The panel then tested the rent with the other comparable properties.

32. The only other comparable property presented by Mr Edwardes was 16 Bessemer Park. The rent was £33,588 per year although he adjusted it down to £29,791 per year as there was four months rent free, it was on full Repair and Insurance terms and included air conditioning. He also removed the four car parking spaces. This analysed at £117.34/m^2 which supported his argument.

33. The panel then considered the VO's comparable properties. The rents given ranged from £15,572 to £40,000 per year.

34. The panel noted that only one of the VO's comparable properties was similar in size to the appeal property, Unit 15, however, that lease was also between connected parties and the panel applied less weight to it. Unit 17, although the unit was nearly 90m^2 smaller than the appeal property, the rent was £33,996. The lease commenced in January 2017 with an agreement in principle before that. Mr Cates had also argued that the negotiations for the rent would have commenced in 2015 although there was no evidence to prove this.

35. Unit 18 had an area of 154.31m^2 which was just over half the size of the appeal property. The rent for this property was £15,572 which was approximately half the amount as the rent for Unit 17.

36. However, the rents for Units 17 and 18 did suggest that the rent for the appeal property was too low. The panel was aware that a larger unit would benefit from a quantum allowance, but no evidence was presented to the panel to show this.

37. Having considered the rental evidence, this suggested that smaller units commanded a rent of about £33,000 and therefore a larger unit would achieve a higher rent and concluded that the rent of £26,000 was not reliable to determine the rateable value for the appeal property.

38. Given all of the above, the panel was disappointed that there was very little convincing evidence to support either parties' arguments as the rents were either between connected parties or they were for smaller units.

39. However, it noted that the appeal property was in valuation scheme 309545 which was for all properties within Bessemer Park at a value of £140/m^2. Mr Cates had confirmed that this value would have been obtained from analysis of the rents in Bessemer Park and other local industrial estates.

40. No arguments or evidence was presented by Mr Edwardes to show that the appeal property should not be placed in that scheme.

41. Although the parties disagreed over how they analysed the rents for the units, Mr Edwardes had analysed them to between £94.28/m^2 to £173.94/m^2. The VO had analysed them to between £109.22/m^2 to £252.08/m^2. Therefore a value of £140/m^2 for the units did not seem to be unreasonable and the panel dismissed the appeal.

Date: 7 February 2022

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