VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; warehouse and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Units 6-8, Rexel Court, Poole BH12 3LN

APPEAL NUMBER: CHG100134604

BETWEEN:	Lion Catering Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Miss U Haque (Senior Member)
Ms J Morton

CLERK: Miss F Willson

REMOTE HEARING ON: 8 March 2021

APPEARANCES: Mr O Scorer from Altus Group (on behalf of the Appellant)
Mr S Lewis (on behalf of the Valuation Officer)

Summary of decision

1. Appeal dismissed. The current entry in the Rating List is confirmed as Units 6-8, Rexel Court, Poole BH12 3LN with a rateable value (RV) of £29,750 from 10 July 2018.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 17 October 2019, in respect of Units 6-8, Rexel Court, Poole BH12 3LN (the appeal property). The challenge was in respect of the entry in the rating list at £29,750 RV effective from 10 July 2018. The appellant sought a revised assessment of £25,250 RV with effect from 10 July 2018. 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 7 March 2020. The appellant made an appeal to this tribunal against the decision notice, which was received on 2 July 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 Scorer 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 Scorer 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

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6. The panel have 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

7. The appeal property is a warehouse and premises built in approximately 2007 and located in Rexel Court a modern new build industrial estate in Poole. It is a steel portal frame modern terraced warehouse unit with an area of 316m^2. The rent passing at the date of the challenge is £30,000 per annum which is effective from 6 July 2018.

8. 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 its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

9. The issue between the parties is the correct RV of the appeal property.

Evidence and submissions

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

11. With reference to his comparable properties and the appeal property he asked the panel to confirm a revised rateable value of £25,250 from 10 July 2018 based on a revised unadjusted rate UAR of £76.50 per m^2.

12. Mr Lewis referred the panel to the challenge application and decision.

13. In consideration of his comments on the comparable properties admitted in evidence by the appellant, Mr Lewis asked the panel to confirm the RV of £29,750 with effect from 10 July 2018.

Decision and reasons

14. 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 10 July 2018 (material day) which is the date it first entered the list. 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.

15. Both Mr Lewis and Mr Scorer referred the panel to the case *of Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. In this case it was determined that 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*.

    - 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.

16. Mr Scorer referred the panel to the fact that the appeal property was held on a lease which commenced on 6 July 2018 with a passing rent of £30,000 per annum and one month rent free. The tenancy was a new open market rent but he submitted that the rent was so far removed from the AVD that it should be given little weight.

17. In any event, he stated, if that rent was used the UAR would be £85.34 per m^2 and so was less than the valuation officer's UAR of £90 despite being three years and three months post AVD. He therefore submitted that the comparable properties should carry more weight when assessing the RV on the appeal property.

18. He drew the panel's attention to the following comparable properties in the direct vicinity of the appeal property:

Address	Postcode	Area (m^2)	2017 RV	Effective rent	2017 UAR	Revised 2017 UAR
*Units 6-8, Rexel Court	BH12 3LN	421.67	£29,750	£30,000	£90.00	£86.12
Units 16,17,20 & 21 Brixley Business Park	BH12 4PV	457.93	£35,000	£27,500	£90.00	£69.55
Unit 8, Poole Trade Park	BH12 4QT	267.12	£23,250	£20,637	£90.00	£69.00
Unit 14, Brixley Business Park	BH12 4PZ	159.09	£13,000	£9,000	£92.50	£62.93
Unit 25, Slader Business Park	BH17 0GP	135.01	£12,500	£11,000	£92.50	£80.31

*appeal property

Mr Scorer explained that these comparable properties were in the same valuation scheme as the appeal property. He particularly drew the panel's attention to Unit 8, Poole Trade Park as it was a new open market letting on the AVD and had a revised UAR of £69.00/m^2. He stated that it should be given the most weight in his view. He did, however, concede that the unit had a twelve month rent free period which should be taken into account in the revised UAR. These comparable properties, he argued, supported his submission that a revised UAR should be applied to the appeal property's assessment of £76.50 per m^2, resulting in an RV of £25,250.

19. The panel took into account that Unit 25 was being used as a gym and was three and a half miles away from the appeal property. Unit 14 and Unit 25 were significantly smaller than the appeal property. The panel, therefore put little weight on them as comparable properties. Unit 8, however, was similar to the appeal property and the panel therefore put some weight on this as a comparable property.

20. Mr Scorer submitted the following comments in connection with the comparable properties admitted in evidence by the valuation officer:

- Unit 7, Poole Trade Park this letting was not a new one and the same occupier had been in occupation of the property since 1 March 2009 on a ten year lease. The rent therefore was a rent review and not on the open market. He argued that on those grounds the panel should put little weight on this as a comparable property.

- Unit 3, Poole Trade Park he believed the form of return (FOR) had been filled in incorrectly. The lease had a three months rent free period, a stepped rent and there was strong evidence this was not an open market rent. These factors meant that the rent would need significant adjustment to comply with the hypothetical tenancy for rating.

- Units 9, 10 & 11 Concept Centre this is a rent commencing on 1 January 2010 which is more than five years prior to the AVD. The lease has a rent review on 1 January 2016. Further it has a yearly rolling break clause with only a nine months' notice period required. It only related to part of the area contained in the hereditament and is an ambulance station and so was a hybrid specialist property not a standard industrial unit in his view. This comparable property should, he argued not be given any weight.

- Unit 2, Poole Trade Park was agreed over twelve months post AVD in a rising market and so should be given little weight.

21. Mr Lewis' comparable properties were, he submitted, similar in location, size, age and quality to the appeal property:

Address	Postcode	Area (m^2)	2017 RV	Effective rent	2017 UAR	Revised 2017 UAR
*Units 6-8, Rexel Court	BH12 3LN	421.67	£29,750	£28,500	£90	£86.12
Unit 7, Poole Trade Park	BH12 4QT	267.12	£23,250	£23,992	£90	£92.22
Unit 3, Poole Trade Park	BH12 4QT	267.12	£23,250	£25,680	£90	£98.71

Units 9, 10 & 11, Concept Centre	BH12 4QT	434.27	£42,750	£52,699	£90	£110.44
Unit 2, Poole Trade Park	BH12 4QT	365.51	£32,000	£33,470	£90	£94.00

*appeal property

He submitted that these properties supported his UAR of £90 per m^2 for the appeal property. Mr Lewis drew the panel's attention to Unit 2, Poole Trade Park which is located only one mile from the appeal property, is similar in size and is based on an open market rent on FRI terms only nine months post AVD and so was, in his view, an excellent comparable property.

22. In connection with Mr Scorer's comments he submitted that the units that had rental evidence as a result of a rent review or stepped rents had had this taken into account when calculating the revised UAR. In relation to the properties being used as a gym or ambulance station the statutory basis for rating assumed that the property was vacant and to let. Its present use would not be taken into account and it would simply be assessed as an industrial unit.

23. Mr Lewis further argued that a tone had been set in accordance with *Lotus & Delta,* as the occupiers of these comparable properties had not issued a Check or subsequent Challenge. This was, he submitted, strong evidence in the basket of evidence used to calculate an RV.

24. The panel noted that Mr Lewis' comparable properties showed a tone had been established for a property of the same size, age and design as the appeal property and so it put weight on them. It particularly found Unit 2 Poole Trade Park to be a good comparable property to the appeal property and supported the valuation officer's UAR of £90 per m^2.

25. Having considered both parties' evidence and analysis, the panel concluded that the UAR rate of £90 per m^2 was reasonable. The panel held that the existing assessment was reasonable, and the RV was confirmed at £29,750 from 10 July 2018.

26. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, and the panel found that in this case the appellant had not done so.

27. The appeal is therefore dismissed.

Date: 6 April 2021

Appeal number: CHG100134604