THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; factory and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rent passing on the appeal property as at the antecedent valuation date; appeal allowed in part as the evidence showed that the existing valuation was not reasonable.

Re: Unit A & B1, Faraday Park, Andover, Hants SP10 3SA

APPEAL NO: CHG100149253

BETWEEN:	Ashdale Engineering	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

BEFORE: Mr A Backway (Senior Member) and Mrs C Parkes

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING ON: Monday 16 November 2020

APPEARANCES: Ms A Deaney of Altus Group (on behalf of the Appellant)
Mr S Forbes (Respondent's representative)

Summary of decision

1. The appeal was allowed in part as the existing valuation was not reasonable and the entry was reduced to £45,750 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Unit A & B1 Faraday Park, Andover, Hants SP10 3SA, which was originally entered in the 2017 Rating List as factory and premises at £54,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 17 October 2018. The appeal to this Tribunal was made on 30 July 2020, following the VO's Decision Notice of 31 March 2020, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The appeal hereditament comprises a factory and premises. It was an industrial building constructed in the 1980s and measured 1,145.94 m^2. The valuation of £54,000 RV was based on an unadjusted main space rate of £47.50/m^2.

5. 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.

6. 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.

7. Ms Deaney was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with her obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. Ms Deaney explained that Altus Group was representing the appellant in this appeal on a contingency fee basis. However, she declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she will comply with this as well as the requirements of her professional body regardless of whether or not the evidence supports her client's case.

9. 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.

10. 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 when 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

11. Whether the appeal property's current assessment at £54,000 RV was reasonable?

Evidence and submissions

12. In a statement which accompanied the Challenge, together with her oral presentation at the hearing, Ms Deaney gave several reasons as to why she believed that the 2017 assessment was incorrect and excessive, which included:

i) The appeal property was let on a 15-year lease, which commenced on 1 April 2015 at a rent of £43,999 per annum. It was a new lease agreement and not a rent review as stated by the VO. The current assessment at £54,000 RV did not represent the rental value of the hereditament under the rating hypothesis as at the antecedent valuation date of (AVD) of 1 April 2015 and reflecting the physical factors of the property and its locality as at the material date of 1 April 2017.

ii) The Lands Tribunal judgment of *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] set out six propositions to be followed when considering the weighting of evidence. In this appeal, Ms Deaney considered the key evidence was the actual rent passing on the appeal property that had been set on the AVD. She had devalued the rent passing on the appeal property to £38.39/m^2, which was in contrast to the current unadjusted main space rate applied of £47.50/m^2.

iii) Ms Deaney had proposed a reduced assessment of £41,750 RV, based on an unadjusted main space rate of £36.50/m^2.

iv) In support of her proposed unadjusted main space rate, Ms Deaney provided a summary of rental evidence, which detailed comparable properties that had been cited by both herself and the VO. Whilst her key evidence was the rent passing on the appeal property, she also placed weight on two new lettings in respect of 19 Brunel Gate and 17 Smeaton Road, which were smaller units that had agreed new lettings on 1 April 2015 and 25 March 2014, respectively. Their rents analysed to £36.00/m^2 and £40.72/m^2, against the unadjusted main space rates applied of £50.00/m^2 and £55.00/m^2, respectively. Both these units had been placed in the same valuation scheme as the appeal property.

v) She also referred to the lease renewal on Unit 1 Telford Gate that had been agreed on 3 November 2015. She had analysed this rent to £41.09/m^2.

vi) Referring to the VO's comparable properties, she explained:

a) Unit B & C Faraday Park; there were two different Forms of Return (FOR) for this property stating differing rents and effective dates. She found this evidence confusing and had been unable to confirm which FOR entry was correct.

b) 19 Smeaton Road was an historic rent from 1 June 2013; so little weight should be placed on it.

c) 15 Hopkinson Way; no weight could be placed on this rent as it was a connected party deal.

d) Units 1-4 Sterling Park; little weight should be attached to this rent as it was from 2013. Furthermore, this property was placed in a different valuation scheme to the appeal property and was much larger.

e) 3A Stephenson Close; this was a 1975 unit placed in a different valuation scheme. The rent had been set in June 2016, post AVD in a rising market.

f) Cipher House; higher weight should be attached to this evidence as it was a lease renewal that had been agreed on 1 August 2015. She had analysed the rent to £48.32/m^2 and it had been valued at £47.50/m^2. However, this property was let to RMS Ltd, who also occupied 3 East Portway and Milton Court, East Portway on the estate so would have been 'special purchasers'.

vii) Also provided was a revised matrix for another 1980s valuation scheme for a neighbouring industrial estate.

viii) To summarise, Ms Deaney placed greatest weight on the appeal property's rent that was a new lease agreed on the AVD. She also found the rents passing on the smaller units of 19 Brunel Gate and 17 Smeaton Road of assistance, being smaller units valued within the same scheme. Having reflected quantum for the larger appeal property and the analysed rent on Unit 1 Telford Gate, Ms Deaney sought a reduced unadjusted main space rate of £36.50/m^2.

13. In the VO's Challenge case decision notice, it was stated that having considered the issues raised in the Challenge, the VO disagreed with the proposed list alteration. The statutory definition of rateable value was referred to, together with the six propositions as set out in the Lands Tribunal case of *Lotus & Delta*.

14. In oral presentation at the hearing and within the decision notice, it was also explained that:

i) Little weight should be attached to the rents passing on 17 Smeaton Road and 19 Brunel Gate, as they were much smaller units.

ii) In general, less weight had been placed on the rents passing on 1980s comparable properties as the rents had been set too remote from the AVD or due to incomplete records. Therefore, due to the scarcity of evidence from 1980s units, the VO had seen it proportional to look into the 1970s properties.

iii) The best two rents were those set on the appeal property and Cipher House. However, the appeal property was a lease renewal and Cipher House was a new lease set four months from the AVD so should receive greatest weight.

iv) Two rental summaries had been provided.

v) No evidence had been provided in support of Ms Deaney's statement that the occupier of Cipher House was a 'special purchaser'. Plus, the 6 months' rent-free period reported on Co-star report was considered to be hearsay evidence. The VO considered there were similarities between RMS Ltd's occupation of Cipher House and Ashdale Engineering's occupation of the appeal property. Both occupiers had a presence in the vicinity prior to taking on the leases; however, the VO did not believe that this had created a special purchase position for either RMS Ltd or the appellant.

vi) He did not consider Plot 36 and 1A Plot 35A Walworth Road to be good comparable evidence. These units were 4.45 km, as the crow flies from the appeal property and were almost four times larger.

vii) Historically, the rent passing on the appeal property had been lower than its rateable value.

viii) Within the appeal's property's assessment there was a 5% end allowance to reflect the nature of the merged units, which equated to an adjusted main space rate of £45.00/m^2.

ix) To summarise, Mr Forbes considered that having had regard to the whole basket of evidence, an unadjusted main space rate for the appeal property of £47.50/m^2 was not unreasonable.

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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD).

16. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976], as referred to by both parties. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

‘(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) 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.

(4) 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 properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.’

18. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property, especially as it had been set on 1 April 2015, the AVD. The panel noted the rent had been set by way of a lease renewal for a term of 15 years at a rent of £43,999 per annum, with effect from 1 April 2015. This rent analysed to £38.39/m^2. Therefore, when one solely compared the unadjusted main space rate applied to the appeal property’s assessment of £47.50/m^2, against its analysed rent of £38.39/m^2, it did appear that the current unadjusted main space rate was excessive.

However, the panel was not convinced that an unadjusted rate as low as £36.50/m^2 as proposed by the representative was justified.

19. Before arriving at its decision, the panel wished to have regard to the whole basket of evidence and not make a decision based on one rent in isolation. Therefore, in line with the third proposition of the *Lotus & Delta* judgment, the panel had regard to the rents passing on the comparable properties cited by both parties.

20. In the main, the panel found that there were just three rents relevant in this appeal, those being; the rent passing on the appeal property, together with the rents in relation to Cipher House and Unit 1 Telford Gate. The panel placed less weight on those rents passing on 1970s units, which had been valued in accordance with a different valuation scheme. In respect of Unit B & C Faraday Park, the evidence was unclear as details varied on two differing FORs. Plus, other rents were either suggested to be between connected parties, had been set a little too remote from the AVD to be particularly helpful in this appeal or the size of the units in question were not comparable to the appeal property.

21. Therefore, the panel was left with the following three pieces of evidence:

    i) Appeal property – 1,146.04 m^2 ITMS, lease renewal set on 1 April 2015 with an analysed rent at £38.39/m^2;

    ii) Cipher House – 1,050.76 m^2 ITMS. There was dispute between the parties as to whether this was a new lease or a lease renewal. The rent had been set from 1 August 2015 and analysed at £48.32/m^2 (representative) or £55.05/m^2 (VO); and

    iii) Unit 1 Telford Gate – 699.45 m^2 lease renewal set on 3 November 2015 at an analysed rent of £41.09/m^2.

22. The panel noted that if one took either parties' analysis of the rent passing on Cipher House, it appeared particularly high in comparison with the other two rents. However, that rent confirmed to the panel that the representative's proposed unadjusted main space rate was unjustified at £36.50/m^2. The panel was also mindful of the fact that an unadjusted rate of £36.50/m^2 would have resulted in a rateable value lower than the actual rent passing on the appeal property.

23. After carefully considering the whole basket of rents, the panel determined that the current unadjusted rate was not reasonable and that a reduced main space rate of £40.00/m^2 was fair and in line with the available passing rents. Whilst placing a great deal of weight on the appeal property's AVD rent, the panel also had regard to the higher rent passing on Cipher House and that in respect of Unit 1 Telford Gate. The rent on Unit 1 Telford Gate had analysed to £41.09/m^2, which when one allowed for quantum supported a slightly lower unadjusted main space rate of £40.00/m^2 for the appeal property.

24. Accordingly, the panel allowed the appeal in part and found the current assessment of £54,000 RV unreasonable. The panel determined that the correct unadjusted main space rate was £40.00/m^2, which resulted in a revised assessment of £45,750 RV. A breakdown of which has been shown overleaf.

Floor	Description	Area m^2	£/m^2	Value (£)
Ground	Production Area	255.60	40.00	10,224
Ground	Area Under Supported Floor	100.31	28.00	2,809
Mezzanine	Store	56.29	30.00	1,689
Ground	Production Area	566.25	40.00	22,650
Ground	Area Under Supported Floor	26.57	28.00	744
Ground	Internal Storage	17.28	40.00	691
Mezzanine	Internal Storage	26.57	20.00	531
Ground	Office	61.20	52.80	3,231
First	Office	36.11	52.80	1,907
First	Canteen	31.64	48.40	1,531
Mezzanine	Office	11.15	48.40	540
Mezzanine	Office	28.94	48.40	1,401
Ground	Compressor House	10.08	30.00	302
Sub total				48,250
Less 5% merged units				2,413
Total Value				45,837
Say £45,750 RV with effect from 1 April 2017				

Order

25. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £45,750 with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

26. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

APPEAL NO: CHG100149253

Date: 23 November 2020