THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; warehouse and premises; comparable properties; subject rent; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed.

Re: Unit 2, Coin Steet, Royton, Oldham OL2 6EE

APPEAL NUMBER: CHG100153795

BETWEEN:	Trade Kitchen by DTN Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Mr M Smith (chairman)

Mrs L Stuart

CLERK: Mrs C McAvoy

REMOTE HEARING No.3 on 27 October 2021

APPEARANCES:

Ms E Sauders of Altus Group on behalf of the appellant as both advocate and expert witness

Mr A Glover on behalf of the respondent Valuation Officer as both advocate and expert witness

---

Summary of decision

1. Appeal allowed; the appeal property's assessment was reduced to £46,750 Rateable Value (RV) on a rate of £32/m^2.

Introduction

2. This appeal has been brought in respect of the following: Unit 2, Coin Steet, Royton, Oldham OL2 6EE which was entered in the 2017 Rating List at £52,000 RV, effective from 1 April 2017.

3. The appeal property was shown in the list as warehouse and premises. The unit comprised a L-shaped industrial/warehouse until which was constructed in circa 1986 of steel portal frame. It was located on the outskirts of Oldham on the junction of Coin Street and Edge Lane. As of 1 April 2017, its area in terms of main space was 1340.12m^2.

4. As a result of factual changes during the list, the assessment featured additional valuations. In response to the proposal, the Valuation Officer reduced the RV to, £46,750 with effect from 1 April 2017, £45,250 with effect from 1 January 2018 and £45,250 with effect from 6 April 2018. This valuation was based on an unadjusted rate of £35/m^2.

5. Ms Saunders, on behalf of the appellant, disputed the rateable valuation on the grounds the revised valuation officer's valuation was still unreasonable. She proposed a revised RV of £42,750 with effect from 1 April 2017 based on a unadjusted rate of £32/m^2.

6. 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.

7. 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.

8. In accordance with that Practice Statement, the hearing of this appeal was conducted remotely via Microsoft Teams conference call using audio/video-link. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

9. Ms Saunders 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), her declaration included a statement that she was instructed under a contingency based fee.

10. Within her written statement, Ms Saunders declared that he understood and accepted that his duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

11. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was

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).

12. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

13. 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 evidence, should not be construed as it having been overlooked.

Issue

14. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m^2 that should apply.

Evidence and submissions

15. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the check and challenge process.

16. Ms Saunders, on behalf of the appellant, sought a reduced rate of £32/m^2, resulting in a reduced RV of £42,750 with effect from 1 April 2017.

17. Ms Saunders argued that in accordance with the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976 the hierarchy of rental evidence should be used to determine the correct RV for the appeal property. She argued that the passing rent on the appeal property should be the starting point when determining a suitable RV. She submitted that the subject property in this case is held on an eight-year lease effective from November 2015, in close proximity to the antecedent valuation date at a stepped rent increasing from £36,000 to £38,000 per annum across the initial 3 years of the term prior to review. She had analysed the rent to a figure of £27.57/m^2. A copy of the lease was provided which included a list of tenants works which were to be completed no later than 1 March 2016. Ms Saunders submitted that the parties had agreed during the challenge process that the works described would be of minimal cost. Taking this as a starting point, she considered that the current assessment at £35/m^2 was excessive.

18. To support her argument, Ms Saunders had analysed the rents of a number of similar properties which she considered comparable to the subject property. In respect of the properties being relied on for the appeal, these ranged in size from 475.21m^2 to 1306.22m^2 and had been let on new or renewal leases between 7 December 2013 and 9 September 2016. She had adjusted the rents accordingly, to reach an analysed rent of between £22.01 and £37.20 per m^2 and she contended that the analysed rents for her comparable properties supported a revised RV at £32 per m^2 to be fair and reasonable.

19. Ms Saunders also referred to comparable assessments where agreements had been reached at the challenge stage or decision by the Valuation Tribunal. They were all located in Oldham and ranged in size from 356.20m^2 to 2688.10m^2.

20. Mr Glover confirmed that he had taken over this appeal from the previous case worker and as such he had not been involved during the challenge process. He had not inspected the property but was appearing in a dual role of advocate and expert witness due to his experience and knowledge of industrials in the North West.

21. He also referred to *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976. He submitted that he agreed the rent on the appeal property was the starting point, but he argued that little weight could be attached to this evidence given it was a stepped rent. Whilst a stepped rent had advantages to the tenant, it was not in line with rating hypothesis and, in his opinion, usually started below the market rent and ended above the market rent. He also submitted that improvements which are to be carried out by the tenant and are set as a condition of the lease. It was argued that this would usually be undertaken by the landlord prior to the lease and consequently, he submitted that the lease should be taken at arm's length when compared to the basket of rents he provided.

22. Mr Glover referred to a number of properties in which his colleague had deemed comparable. Some of which were located in Oldham and the other units were located in Rochdale, Manchester and Bolton. These ranged in size from 944.60m^2 to 2092.04m^2 and had been let on new or renewal leases between 1 June 2014 and 1 November 2016. The rents had been analysed to £31.72 to £39.23 per square metre.

23. Mr Glover considered that having regard to the basket of evidence, the current assessment of £35/m^2, was fair and reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

24. In considering this appeal, the panel had regard to the term 'rateable value' as defined in paragraph 2(1), 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;

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".

25. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 1 April 2017.

26. In reaching its decision, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value.

27. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements, the more weight should be attached to it.

28. The appeal property was let on 20 November 2015. A rent-free period of two months and twelve days was given as an incentive and therefore the rent commencement date was 1 February 2016. It was agreed on a stepped rent as follows:
    - 1 February 2016 to 19 November 2016: £36,000 per annum
    - 20 November 2016 to 19 November 2017: £37,000 per annum
    - 20 November 2017 to 19 November 2018: £38,000 per annum with a rent review due on 20 November 2018.

29. The rent was agreed at £43,000 at the 2018 review. Ms Saunders had analysed the rent to £36,949 which devalued to £27.50/m^2 based on the area (in terms of main space) as of 1 April 2017 of 1,340.12m^2.

30. During proceedings, Mr Glover also submitted that within the lease there was a user restriction. This point had not been discussed specifically during the challenge process but there was a copy of the lease provided and therefore this was not considered new evidence. However, as it was not raised sooner, Ms Saunders had not had the opportunity to investigate this and respond formally. She did however submit, in response, that in her opinion it was referring to intended use of the tenant as opposed to a restriction and she considered that a reasonable landlord would not restrict use and it was not marketed as such. As this had only been brought up during proceedings and given the fact that there was no evidence to support that such restriction

would impact the rental values or how it was marketed, the panel attached no weight to this argument.

31. The panel recognised that whilst the lease was agreed close to the AVD, it had to consider that this was originally a stepped rent, and that the rent agreed at review was agreed three years post AVD. It found that adjustments to the rent would be needed to conform with the statutory rating hypothesis. The panel also found that as per *Lotus v Delta*, the subject rent was the starting point, not necessarily the best evidence. The panel therefore found it necessary to turn to the third proposition and examined rents passing on comparable properties and considered the correct approach in this appeal was to examine the whole 'basket of evidence'.

32. The panel was presented with various properties in which the parties had exchanged during the challenge process. The panel was aware that a difference in location could impact rental values and therefore attached little weight on the properties located outside of Oldham. The panel had greater regard to the properties provided which were of similar size, age and locality.

33. It was apparent that both parties were primarily relying on the assessment of Unit 2/1West Point Industrial Estate, Hargreaves Street, Oldham, OL9 6QH. It was a 1980s unit located in Oldham which measured 1201.20m^2 and was valued in the same scheme as the appeal property. It was let in June 2014 for £40,000. The valuation officer's analysis was £33.43/m^2. The analysis was based on the mezzanine level being excluded but the panel was informed that the mezzanine had been included in the valuation since 2006, and therefore was in the property prior to the start of the current occupier's tenancy. Ms Saunders had therefore included the mezzanine, as it was a Landlord fixture and she considered it should be reflected in the analysis which was at £30.29/m^2.

34. Reference was also made to Moorhey Place, Moorhey Street, Oldham OL4 1JE which was a new lease on 1 June 2016 for £41,500. It measured 1060.50m^2, however, it was noted that this was considered better quality and nine years newer, and the landlord was responsible for roof repairs.

35. The panel found unit 2/1 West Point Industrial Estate to be the best comparable. It was comparable in size, age and location and let in June 2014, just ten months prior to the AVD. The panel agreed that the mezzanine should have been taken into consideration and therefore attached more weight to Ms Saunders' analysis of £30.29/m^2.

36. Considering this rental evidence in combination with the comparable assessment of 3-5 Monarch Place, which had previously been reduced by decision of the Valuation Tribunal, further supported that the proposed £32/m^2 was reasonable, accounting for the slight difference in age. 3-5 Monarch place was reduced at Valuation Tribunal from £31.50/m^2 to £27.50/m^2. It was comparable in size and location. It was a 1979 built property and prior to the VT decision there was an age adjustment of 12.5% between the properties.

Applying this same % rate to the current assessment supports that the proposed rate of £32/m^2 to be reasonable.

37. In conclusion, the panel considered Ms Saunders proposed valuation at £32 per metre square to be reasonable and the appeal was therefore allowed.

Order

38. Under the provisions of regulations 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to show the following:

    Unit 2, Coin Steet, Royton, Oldham OL2 6EE

    £42,750 effective from 1 April 2017

39. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

40. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 15 November 2021

Appeal number: CHG100153795