THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; warehouse and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; correct unadjusted rate to be applied to the subject property's assessment; appeal allowed as the evidence showed that the existing valuation was unreasonable.

Re: 13 Saxon Way, Hayes, Middlesex UB7 0LW

APPEAL NO: CHG100157922

BETWEEN: Global Freight Systems Ltd Appellant

and

Ms D Bunyan (Valuation Officer) Respondent

BEFORE: Mrs L Bryning (Senior Member) and Mr P Phelps

CLERK: Mrs R James

REMOTE HEARING 2: Tuesday 5 April 2022

APPEARANCES: Mr O Hamblin of Altus Group (on behalf of the Appellant)
Mr V Adams (Respondent's representative)

Summary of decision

1. Appeal allowed; the appeal property's assessment was reduced to £64,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 13 Saxon Way, Hayes, Middlesex UB7 0LW, which was entered in the 2017 Rating List as warehouse and premises at £72,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 22 January 2020. The appeal to this Tribunal was made on 15 October 2021, following the VO's Decision Notice of

28 June 2021, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The subject property comprised a two-storey industrial/warehouse building that had been constructed in the 1980s. It was located on Saxon Way Trading Estate in Harmondsworth, which was an established Heathrow location with good access to Heathrow Airport Cargo Terminal, the M4 and M25. The trading estate was approximately 16 miles to the west of London and was accessed from the A4. The subject property was 767.08 m^2. An unadjusted rate (UAR) of £90/m^2 had been applied to the appeal property's assessment.

5. Mr Hamblin 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 his 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).

6. Mr Hamblin explained that he was representing the appellant in this appeal on a conditional fee basis. However, he declared that he understood and accepted that his duty was 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.

7. The panel has 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.

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 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.

Preliminary Issue

9. On 4 April 2022, the day prior to the hearing, Mr Hamblin provided Mr Adams with a signed copy of the lease for the appeal property. Due to the late service of the lease, Mr Adams objected to it being presented in evidence.

10. As there were clearly issues regarding failures to comply with the requirements of the Standard Directions, the panel had regard to *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460. In this case, the Upper Tribunal's guidance to tribunal panels was that the three stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction.

    Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

    Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

Stage 3 - The panel must consider all the circumstances of the case including:

I. the need for litigation to be conducted efficiently and at a proportionate cost;
II. a failure to grant a sanction may leave an inaccuracy being uncorrected;
III. the need to enforce compliance with rules, directions and orders (para. 55). However, such matters are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice (para. 56).

11. In this case, it was clear that there had been a breach. In accordance with the requirements of the Standard Directions, a party should make a written application to the Tribunal no later than four weeks prior to the hearing if they intend to include any new evidence at the hearing. In this case, the lease had been provided to the Valuation Officer the day prior to the hearing.

12. Mr Adams had objected to the lease being presented due to its late service and explained that he had had insufficient time to fully consider the document. In response, Mr Hamblin explained that it was a duplicate of the lease contained in the evidence bundle, the only difference being that it was a signed copy. He explained that despite repeatedly requesting a signed copy from the appellant, it had only just been received.

13. After having a short adjournment to consider the matter, the panel decided to allow the lease to be admitted. In allowing the lease to be admitted, the panel acknowledged that the contents of the lease were identical to the one already provided, albeit with a signature. As such, the panel did not believe that Mr Adams was unduly prejudiced as he had already been in receipt of the unsigned lease within the appeal documentation. However, the panel did offer Mr Adams the opportunity of an adjournment in order to allow him ample time to consider the signed lease. Mr Adams declined this offer and wished to proceed with the hearing. Accordingly, the panel proceeded to hear the appeal having regard to all the evidence provided.

Issues

14. The issue in dispute related to the correct UAR to be applied to the subject property's valuation.

Evidence and submissions

15. The panel had been provided with a bundle of evidence, which comprised the challenge submission, VO Decision notice and the representative's expert witness report. The panel had also been provided with a signed copy of the lease on the appeal property dated 20 June 2014.

16. Having regard to the rental analysis he had provide on the appeal property and comparable units at Saxon Way, Mr Hamblin sought a reduced UAR of £80/m^2. This resulted in his proposed assessment of £64,000 RV, with effect from 1 April 2017.

17. Having regard to the rental evidence he had provided, Mr Adams contended that the current UAR of £90/m^2 was fair and reasonable for the appeal property. Mr Adams highlighted that the appeal property's UAR of £90/m^2 had not increased from the 2010 Rating List. He also

referred to a previous Valuation Tribunal decision issued in respect of 14 and 15 Saxon Way. Accordingly, he sought dismissal of the appeal.

Decision and reasons

18. 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, the Antecedent Valuation Date (AVD). 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.

19. 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 the parties. This case had established six propositions that 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.’

20. 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 and consideration to how that rent compared to the statutory definition of rateable value.

21. There was a stepped rent passing on the subject premises, which had been set on 20 June 2014. The rent had been stepped as follows:

Year 1 - £39,258
Year 2 - £52,344

Years 3 to 5 - £78,516

22. Mr Hamblin had provided an effective rent of £63,692 for the subject property. The subject property's lease was for a 10 year period on full repairing and insuring terms (FRI). Mr Hamblin has analysed the rent to £79.12/m^2, whereas Mr Adams' analysis of the rent was £98.47/m^2. Mr Hamblin explained that the differential in the analysed rents was due to the VOA not having regard to the fact that it was a stepped rent. As such, the panel placed more weight on the rental analysis of £79.12/m^2 as provided by Mr Hamblin.

23. The panel found that the rent passing on the appeal property was good evidence, being a new lease on the premises that had been set nine months prior to the AVD on FRI terms. As such, the panel found that Mr Hamblin's analysis of the rent at £79.12/m^2 suggested that the current UAR of £90/m^2 was excessive. However, the panel placed a degree of caution on this rent as it was stepped. Therefore, rather than arriving at its decision having regard to one rent in isolation, it went on to consider the third and four propositions outlined in the *Lotus & Delta* judgment and had regard to the rents and assessments placed on comparable properties in the locality.

24. Mr Adams had provided rents set on units located on Skyport Drive. He explained that the units at Skypoint Drive were of a similar construction to the subject property and had been valued in accordance with the same valuation scheme. However, the panel noted that Skyport Drive was situated on a different estate 1.7 miles from the subject property. Therefore, as there was a variety of rents set on units on Saxon Way around the AVD, the panel did not find it necessary to go further afield to Skyport Drive.

25. The following rents had been set on the units at Saxon Way:

Address	Area m^2	Rent	Effective Date	Evidence type	Analysed rent m^2	UAR
7 Saxon Way	1,092.77	Stepped £87,551	27/10/14	New letting	£74.58	£90.00
13 Saxon Way*	767.08	Stepped £63,692	20/06/14	New letting	£79.12	£90.00
4 Saxon Way	724.59	Stepped £51,371	01/03/14	New letting	£67.59	£90.00
1 Saxon Way (merged with Unit 1)	1,299.63	Stepped £115,006	04/09/15	Lease renewal	£86.53	£85.00
2 Saxon Way (merged with Unit 2)	789.55	Stepped £67,705	04/09/15	Lease renewal	£83.84	£85.00
12 Saxon Way	510.99	£51,004	04/06/15	Lease renewal	£94.64	£90.00
14 Saxon Way	852.51	£26,750	01/09/15	New letting	£82.00	£90.00
3 Saxon Way	537.64	£55,000	01/11/15	New letting	£87.54	£90.00
10 Saxon Way	727.12	£101,577	01/11/17	New letting	£136.00	£90.00
4 Saxon Way	724.59	£101,028	01/02/19	Rent review	£140.00	£90.00

*Subject Property

26. The panel attached less weight to the rents on 10 and 4 Saxon Way, which had been set in November 2017 and February 2019 and as such were considered too remote from the AVD to be particularly helpful in this appeal.

27. The panel was aware that new lettings were considered to be better evidence than lease renewals. Furthermore, the panel placed caution on the lease renewals for 1 and 2 Saxon Way as the unit had been taken on two separate leases at the same time. The panel agreed with Mr Hamblin that this evidence was less reliable as there was less certainty for the landlord.

28. As such, the panel agreed with Mr Hamblin and placed greatest weight on the new lettings, which were 7, 13, 4, 14 and 3 Saxon Way. Those units measured between 537.64 m^2 to 1,092.77 m^2 and their rents had analysed between £67.59/m^2 and £87.54/m^2, the average being £78.16/m^2. Mr Adams had explained that all those units were within the same size matrix which included units between 445 m^2 and 1,400 m^2. They were all currently valued at an UAR of £90/m^2.

29. After having regard to the analysed rents on other similar units located on Saxon Way, the panel found the current UAR of £90/m^2 excessive. The panel found the proposed UAR of £80/m^2 as suggested by Mr Hamblin fitted in well with the AVD analysed rents and was in line with the average of £78.16/m^2 on similar units on Saxon Way.

30. Mr Adams had referred the panel to a previous Valuation Tribunal decision issued in respect of 14 and 15 Saxon Way. However, the panel treated this evidence with caution as it had not been provided with a copy. The panel was also aware that unlike decisions from upper tribunals, it was not bound by previous Valuation Tribunal decisions.

31. Mr Adams explained that in the former appeal, the appellant's representative had sought a reduced UAR of £75/m^2 but the appeal was dismissed and the UAR had remained unchanged at £90/m^2. He stated that 14 and 15 Saxon Way fell within the same size bracket as the appeal property. However, in response Mr Hamblin stated that the main reason the previous panel dismissed the appeal was that 14 and 15 Saxon Way at 1,305.56 m^2 was much larger than the other units on Saxon Way and the previous panel had not considered it comparable in terms of size to those units in which there were AVD rents.

32. The panel noted that this was not the case in the current appeal as the subject property measured 767.08 m^2 and was of a comparable size to those units with AVD rents. The panel was not convinced by Mr Adams' statement that all units measuring between 445 m^2 and 1,400 m^2 should be valued at £90/m^2; Mr Adams contended that there was a settled tone for all units within that size bracket at £90/m^2. However, after hearing that there were 23 properties in the scheme, the panel was not convinced that two or three settlements established a tone for the whole size matrix.

33. Mr Adams had pointed out that the appeal property had seen a nil increase to the UAR applied to its 2017 Rating List assessment from the 2010 Rating List assessment. However, the panel was of the opinion that at each rating list, the assessment of a property must be considered afresh having regard to the available rental evidence around the respective AVD. As such, the panel placed little weight on the appeal property's 2010 Rating List assessment.

34. Having regard to the above conclusions, the panel allowed the appeal as it considered that the current assessment was unreasonable. The panel determined that the UAR should be

reduced to £80/m^2, which resulted in a revised assessment of £64,000 RV, with effect from 1 April 2017.

Order

35. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £64,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

36. 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: 14 April 2022
Appeal Number: CHG100157922