THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list; compiled list appeal; warehouse and premises; rental evidence; comparable properties; settlements; appeal allowed in part.

RE: Unit B1 Suttons Business Park, Rainham, Essex RM13 8DE

APPEAL NO: CHG100174889

BETWEEN:	Members Only Clothing	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr J M Imperato (Senior Member)
Mr S M Hooberman

CLERK: Mrs A Keohane

HEARING: Remote Hearing No. 1 on 23 June 2022

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors on behalf of the appellant as advocate and expert witness
Mr T Jackson representing the Valuation Officer as advocate and expert witness

---

Summary of decision

1. Appeal allowed in part. The appeal property's assessment was reduced to £27,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This appeal is a 2017 rating list appeal brought in respect of Members Only Clothing, Unit B1 Suttons Business Park, Rainham, Essex RM13 8DE (the 'appeal property'). The property was entered into the 2017 rating list as a warehouse and premises at £38,000 RV with effect from 1 April 2017.

3. JMA Chartered Surveyors, on behalf of the appellant, submitted a Challenge proposal that was received by the Valuation Officer on 6 March 2020. The proposal sought a reduction in the appeal property's assessment to £25,500 with effect from 1 April 2017.

4. After a review of the evidence and available information, the Valuation Officer revised the assessment to £33,500 RV with effect from 1 April 2017 and issued the Challenge Decision Notice to that effect on 10 August 2021. As the assessment had not been

altered in the manner sought in the proposal, an appeal was made to the Valuation Tribunal on 2 December 2021 on the grounds that the valuation for the hereditament was not reasonable.

5. The appeal property was constructed in 1991 and is an end terrace unit located along a row of similar industrial units on Suttons Business Park. It is situated in an industrial area approximately 1.5km from the centre of Rainham with direct access to the A13. The property is owned by a Pension Fund.

6. Mr Bacon appeared on behalf of the appellant in the dual role of 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 Bacon confirmed that he was instructed under a contingency 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 the evidence supported the client's case.

7. It was therefore appropriate for the panel hearing the evidence to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

8. When submitting the appeal, Mr Bacon had indicated that the Valuation Officer had included in the Challenge Decision Notice evidence that was not referred to during the Challenge process, namely information from a Form of Return (FOR) in respect of the appeal property. Mr Jackson confirmed that this was the case. At the time he lodged the appeal Mr Bacon provided a response to this extra information. The panel decided to accept the information from the FOR and Mr Bacon's response to it.

9. This decision document 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 reaching its decision. The absence of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

10. The disputed issue was the main space rate to be applied in the appeal property's assessment. Several valuations had been put forward by Mr Bacon during the Challenge process. However, he proposed an assessment of £25,000 RV based upon the rent determined for the appeal property by an independent expert. The Valuation Officer maintained that the revised rate of £86.35/m^2, producing an assessment of £33,500 RV, was reasonable.

Evidence and submissions

11. A bundle of evidence comprising the information exchanged between the parties during the Challenge process was provided for consideration. This included location plans; a photograph of the appeal property; details of properties cited as comparable; a rental summary; comparable property settlements; a response to the extra information provided by the Valuation Officer; an independent report from a Chartered Surveyor relating to the appeal property's market rental value; and a copy of the lease in respect of Unit B11 Suttons Business Park dated 1 April 2015. Reference was also made to:
    - *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* [1976] RA141

12. In brief, Mr Bacon referred to the following:
    - There were smaller units on the appeal property’s estate and he believed that the Valuation Officer had applied the small unit rate to the appeal property.
    - Units C2 and C3 Thames View Business Estate had been agreed at a basic rate of £68/m^2, these appeared to be the same age and quality as the appeal property. Mr Bacon considered this supported a rate of around £65/m^2 for the appeal property to reflect that it was larger.
    - Mr Bacon submitted the lease for Unit B11 Suttons Business Park, effective from 1 April 2015, and explained that he had analysed the rent to £70/m^2. As the appeal property was much larger, he considered a rate below £70/m^2 should be adopted in its assessment to reflect quantum.
    - Mr Bacon considered that the Valuation Officer had initially ignored the appeal property’s rent of £25,000 per annum with effect from 1 April 2014. However, the Valuation Officer had then included in the Challenge Decision Notice rental information obtained from a FOR for the subject, which had been analysed to £90.39/m^2. Mr Bacon had divided the rent by the area ITMS quoted by the Valuation Officer and found the rent analysed to around £65/m^2 and not £90.39/m^2, as shown in the rental evidence schedule.

13. Mr Bacon explained that the appeal property was owned by a Pension Fund and an independent report had been commissioned to establish a market rental value of the premises. This was undertaken by a Chartered Surveyor who had prepared the valuation in accordance with the requirements of the Valuation Manual issued by the Royal Institution of Chartered Surveyors (the ’red book’) using the valuation date of April 2013. A copy of the report was provided and it concluded that the market rental value of the premises would be £25,000 per annum, which analysed to around £65/m^2. Having regard to this, Mr Bacon considered that the current assessment was excessive and should be reduced to £25,000 RV.

14. Mr Jackson contended that little weight could be attached to the appeal property’s rent of £25,000 per annum with effect from 1 April 2014 as outlined on the FOR, as it did not reflect an open market letting. However, after analysing this rent to £90.39/m^2, he considered that the price adopted in the appeal property’s assessment of £86.35/m^2 was not excessive.

15. Mr Jackson referred to the scheme for Rainham industrial properties and stated that, following a review in July 2020, some amendments had been made. When carrying out the review, units on the Star and Thames View Business Centres had been excluded as their rents had analysed lower than the level of those found on the Rainham Industrial scale. Therefore, they were not considered to be indicative of the levels of value pertinent to the subject locality.

16. In relation to other Challenges made, Mr Jackson referred to a similar sized industrial unit, namely Units 1E, 1F and 1G Barlow Way, Fairview Industrial Park, where an agreement had been reached to reduce the rate on which its assessment was based to £80/m^2. Two further Challenges on similar sized units at A12-A13 Dovers Corner Industrial Park and Units 3B-3C Barlow Way had since been rejected.

17. Mr Jackson referred to his schedule of rental evidence, which he considered supported the level of value adopted in the appeal property’s assessment. He therefore sought dismissal of the appeal.

Decision and reasons

18. The appeal hereditament must be valued for the purposes 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 detailed in 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 affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

19. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. In this case, the appeal property had been subject to a market rental value by an independent valuer. The valuer had concluded that a reasonable rent for the appeal property was £25,000 per annum, Mr Bacon had analysed this rent to around £65/m^2; however, the Valuation Officer had analysed the same rent to £90.39/m^2. After consideration, the panel decided that little weight should be attached to the rent of the subject as it did not reflect an open market letting but a valuation carried out on behalf of a Pension Fund using a valuation date of April 2013.

21. *Lotus & Delta* also required consideration to be given to the rents of similar properties to confirm or otherwise the level of value indicated by the actual rent of the subject. The Valuation Officer had provided rental evidence for four other properties, three were situated on Suttons Business Park and one on Manor Way Business Centre. One of the rents had been set in 2014 and analysed to £94.36/m^2, this was for a much smaller unit and its assessment was based on a rate of £100/m^2. The remaining three rents, set towards the end of 2016 and therefore 18-19 months post AVD, related to properties with areas ITMS of between 170.11m^2 and 319.31m^2. The rents had analysed to between £95.35/m^2 and £163.13/m^2, with assessments being based on rates of £90/m^2 and £100/m^2 dependant on the size of the unit.

22. Mr Bacon had provided the lease for Unit B11 Suttons Business Park, which commenced on 1 April 2015. Using the plan provided to determine the area of this unit, Mr Bacon had analysed its rent to £70/m^2.

23. Addressing the Valuation Officer's assessment of the appeal property, the panel found anomalies with the areas provided. In the initial response to the Challenge, the Valuation Officer had stated that, as the mezzanine within the property was a tenant's improvement, it had been excluded from the rental analysis and therefore the area ITMS was 265.63m^2. In the Challenge Decision Notice this area was quoted as 254.79m^2. However, when analysing the appeal property's rent from the FOR, the Valuation Officer had quoted the area ITMS to be 380.1m^2, which suggested that the mezzanine area had been used in the rental analysis.

24. Due to the distance of most of the Valuation Officer's rental evidence from the AVD, and in line with *Lotus and Delta*, the panel considered the available assessment evidence. The panel noted that an agreement had been reached in August 2020 in respect of the assessment of Units 1E 1F & 1G Barlow Way RM13 8BT. This was a property with an area ITMS of 278.5m^2 and the agreed rate was £80/m^2, which was lower than the rates

applied to two of the larger sized comparable properties subject to rental evidence on Suttons Business Park and Manor Way Business Centre. There was some discussion at the hearing over whether Unit C3 Suttons Business Park had also been subject to a settlement. It was clarified that it had, and an agreement had been reached to reduce the rate on which this smaller property's assessment was based to £80/m^2. In the panel's opinion, these settlements, together with Mr Bacon's analysis of the rent for Unit B11 Suttons Business Park, confirmed that the rate applied in the appeal property's assessment was excessive.

25. On balance, the panel considered that, having regard to the settlements, in particular that of Unit C3 Suttons Business Park, a smaller unit that had been agreed at a rate of £80/m^2 in June 2020, it would not be unreasonable to base the appeal property's assessment on £70/m^2, which would reflect quantum, given it was larger than Unit C3. As there was no evidence to show the relativities applied by the Valuation Officer were incorrect, the panel considered they should apply in its revised assessment, as follows:

Floor	**Description**	**Area**	**Price per/m^2 unit**	**Value/£**
Ground	Reception	78.78	84.00	6617
Ground	Area under supported floor	96.06	47.74	4586
First	Office	79.95	92.40	7387
Mezzanine	Office	94.59	84.70	8012
	Car Parking	3	300	900
			Total	£27,502
			Say	£27,500 RV

Order

26. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, as amended, the Valuation Officer is ordered to alter the rating list within two weeks of the date of the order to show Unit B1 Suttons Business Park, Rainham, Essex RM13 8DE at £27,500 RV with effect from 1 April 2017.

27. Any appeal fee paid will be refunded in full in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 22 July 2022

Appeal number: CHG100174889

Right of Appeal
Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.