THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 rating list; Challenges against Compiled List entries; Workshop, office and premises; accuracy of rateable value; rent passing on subject property and comparable properties; value of additional mezzanine office accommodation added by tenant; found that weight of evidence supported the current assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.

RE: Unit 1690, Park Avenue, Almondsbury, Bristol, BS32 4SY

APPEAL NUMBERS: CHG100179707

BETWEEN:	Smartstream Technologies Ltd (Represented by Altus Group)	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mr J Rockliff (Presiding Senior Member)
Ms L Hussein-Venn (Senior Member)

CLERK: James Massey

REMOTE HEARING: 17 June 2022

APPEARANCES: Mr S Plowman of Altus Group for the Appellant.
Mr M Young for the Valuation Officer.

Summary of decision

1. Appeal Dismissed. The panel confirmed the Rateable Value (RV) of Unit 1690, Park Avenue, Almondsbury, Bristol, BS32 4SY at £98,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. Unit 1690, Park Avenue, Almondsbury, Bristol, BS32 4SY ("The subject property") had been entered in the 2017 Rating List as 'Workshop, office and Premises' at a RV of £98,500 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The challenge proposal was submitted by Altus Group on behalf of Smartstream Technologies Ltd and was received by the Valuation Officer (VO) on 19 March 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed a revised RV of £85,000 with effect from 1 April 2017 for the subject property.

4. The VO issued a challenge case decision notice on 17 August 2021. The VO's decision was to treat the Appellant's challenge as not well-founded and proposed no change to the rating list.

5. The subject property is a purpose-built warehouse constructed in 1982, the majority of which has been converted to office accommodation. It is located on the Aztec West Business Park, situated north of Bristol with good access to the M5 motorway. The total floor area has been agreed at 1,316.82m^2 of which 170.61m^2 is warehouse space. The remainder is office space, 646.81m^2 of which is spread over the ground and first floors, and the remaining 499.4m^2 on a mezzanine floor constructed by the tenants.

6. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

7. The issue between the parties concerned the RV of the appeal property. Mr Plowman, for the Appellant, sought a reduction to £85,000 RV based on a unit price of £56.00 per m^2 and a 5% allowance for disabilities. Mr Young, for the VO, defended the current assessment of £98,500 RV, which was based on the existing unit price of £60.00 per m^2.

8. All relevant factual information regarding the subject properties, including their areas, was not disputed by the parties.

Evidence and Submissions

9. Mr Plowman 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 Plowman's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

10. Mr Plowman 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 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. Mr Plowman referred to the rent on the subject property agreed from 1 January 2016 on a five-year lease renewal. The rent of £70,000 pa was analysed to £65,941 pa, which he divided by the subject property's total area of 1316.82m^2 to achieve a unit rent of £40.18 per m^2.

14. Due to the uncertainty in the analysis of the subject rent, Mr Plowman considered that less weight should be placed on the subject rent, and comparison should be made with properties similar in size to the subject property, which he considered should include the area of the offices on the mezzanine floor.

15. He referred to five warehouses which he considered to be comparable, which were between 1282.63m^2 and 1846.46m^2 in size and similar in location and construction to the subject property, and whose RVs were based on unit prices of between £53.00 per m^2 and £56.00 per m^2. Based on the size matrix of these comparable properties and other properties in the same valuation scheme, Mr Plowman considered that a unit rate for the subject property on £56.00 per m^2 was reasonable.

16. Mr Plowman referred to the disabilities of the subject property resulting from the adaptations to create the mezzanine office space, which now prevented vehicular access to the warehouse space, and a full-length dividing wall through the building. The creation of the mezzanine floor had also required supporting columns in the ground floor space which interfered with the use of that space and the raising of some of the floors in the offices had necessitated ramps being fitted, which occupy floor space which cannot be used. He considered that the net result of these disabilities warranted a 5% allowance. In support of this, he considered the disabilities at the subject property were more significant than at Units 1270-1280, Park Avenue, Almondsbury where a 5% allowance had been applied to the assessment.

17. Mr Young also referred to the subject rent, which he had adjusted to £62,532 pa. He divided this by the area of the subject property of 817m^2 as let (excluding the area of the Mezzanine floor), to achieve a unit rent of £61.20 per m^2. In light of this rent, he considered that a rate of £60.00 per m^2 was reasonable for the subject property. He contended that the mezzanine floor was a tenant's improvement which was not part of the demise which had been let to the tenant, and therefore the analysis of the rent paid should not include this area. He argued that the rent of the subject property supported its current RV when adding in the additional value of the tenant's improvements.

18. Mr Young had provided details of two properties which he considered to be comparable to the subject property, which were similarly located to the appellant's comparable properties. They measured 740m^2 and 769.35m^2 and had been assessed at a unit rate of £60 per m^2. He considered that the subject property should be compared to those similar in size to its unimproved size of 817m^2 and contended that the rate applied to these two properties supported that of the subject property.

19. With regard to the disabilities at the subject property, Mr Young considered these were a result of the tenant's improvements. As he considered the adaptations to be non-permanent, any such disabilities could be mitigated by the appellant and an allowance was therefore not appropriate. Mr Young also referred to the fact that the inherent disadvantages of the office space being incorporated into an industrial unit had already been taken into account by the fact that although valued at a higher rate than the industrial space, they were still valued at a lower rate than purpose built offices.

Decision and reasons

20. 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 of 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 1 April 2017 (material day) for this appeal. 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 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

21. 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 Respondent. 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 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 1976 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.'

22. The panel are aware that, following the propositions set out above, the rent on the subject property should be a starting point. It noted that the rent had been agreed nine months after the AVD. Whilst this presented difficulties in determining the rent passing on the subject property at the AVD, the panel was satisfied that this transaction provided a starting point but consideration of a basket of rents was necessary to come to a conclusion regarding the correct rate to be applied to the subject property.

23. Both parties had provided differing analyses of the rent on the subject property. After adjusting the rent for incentives, the respondent's effective rent was actually lower than that of the appellant. However, Mr Young had asserted that the analysed rent per m^2 should not take into account the area of the mezzanine offices as this area was not included in the demise. No copy of the lease was provided by either party to confirm whether this was the case. However, as no evidence was put forward by the appellant that the area of the mezzanine floor was included in the rent, the panel concluded that the rent agreed was for the unimproved subject property, with a total area of $817m^2$, resulting in a rent of £61.20 per m^2.

24. Whilst this would appear to support the adopted rate for the unimproved subject property, the panel was concerned with determining whether this rate would apply to the improved subject property, with an additional $499.4m^2$ of office space. Whilst the panel was aware that the current RV of the subject property was significantly higher than the rent agreed on 1 January 2016, it was required to determine the rental value at the AVD of the subject property as it physically existed at the material day of 1 April 2017.

25. Both parties had put forward their own comparable properties, which the panel considered were similarly located to the subject property, and these had all been valued using the same valuation scheme (369205). Mr Plowman considered that at the material day, the improved subject property had a total significant area of $1316m^2$ and had put forward five comparable properties, similar in size or larger, which he considered showed that the correct rate for the improved subject property was £56.00 per m^2. In considering the rates applied to these properties, the panel noted that they did indicate a degree of quantum in the size matrix, with the largest ($1864.46m^2$) being assessed at £53.00 per m^2 and the smallest ($1263.07m^2$) being assessed at £56.00 per m^2.

26. The panel noted however that Mr Plowman's comparable properties contained a much smaller proportion of office accommodation than the subject property, and whilst quantum may apply to warehouse space, the entirety of the additional area added to the subject property was office accommodation. It was aware that the additional area of the mezzanine offices has an uplift from the unit rate, however there was no evidence before it that quantum was applied to office space in this location. In light of this, the panel was satisfied that it should consider comparable properties similar in size to the unimproved subject property when determining its correct value.

27. Turning to the comparable properties submitted by Mr Young, the panel noted that these were both slightly smaller than the basic footprint of the unimproved subject property. Unit 4 Orpen Park ($740m^2$) and 1490, Park Avenue ($769m^2$) were both assessed at a unit rate of £60 per m^2. The panel considered that these supported the unit rate applied to the subject property in its unimproved state, and that it was not unreasonable for the additional area contributed by the mezzanine floor to be valued at the same rate.

28. Mr Plowman referred to Units 1270-1280, Park Avenue, Almondsbury, BS32 4SY in support of a 5% allowance for the disabilities at the subject property, contending that the disadvantages suffered at the subject were more severe. According to the respondent, Units 1270-1280 was formed of two units, with no internal access between the two units, and the 5% allowance was applied for this, and not for any tenant's improvements.

29. From the evidence before it, the panel was of the opinion that the disruption caused by the tenant's improvements at the subject property was minimal. The areas taken up by ramps were minimal, and the supporting pillars were narrow and widely spaced, creating little or no obstruction. It noted Mr Young's statement that offices in warehouse properties were valued at a significantly lower per m^2 rate than purpose built offices and considered that the disadvantages mentioned by Mr Plowman were already adequately reflected by this differential. The panel therefore did not consider that a 5% allowance to reflect the disabilities created by the addition of the mezzanine floor was warranted.

30. Having considered the evidence before it, the panel determined that the current RV of £98,500 was not unreasonable for the subject property and the appeal is therefore dismissed.

Date: 13 July 2022
Appeal number: CHG100179707

Appeal rights

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.