THE VALUATION TRIBUNAL FOR ENGLAND

*2017 Non-domestic rating list appeal; Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Shop and premises; Price per m$^2$ in dispute; Appeal allowed in part.*

RE: Unit 1, The Corn Exchange, Derby DE1 2DS

APPEAL NUMBER: CHG100180387

| | | |
|---|---|---|
| BETWEEN: | Morgan Industrial Properties Limited | Appellant |
| | and | |
| | The Valuation Officer | Respondent |

PANEL: Mrs A Adeola (Senior Member)
Miss J Lewthwaite

CLERK: Mr A Johnson Tech IRRV

ON: 14 February 2022

APPEARANCES: Mr R Riley of David Brown Commercial (for the Appellant)
Mr I Iqbal (for the Valuation Officer)

REMOTE HEARING

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**DECISION AND STATEMENT OF REASONS**

**Summary of decision**

1. This appeal was allowed in part. The Panel determined that the rateable value of Unit 1, The Corn Exchange, Derby DE1 2DS (hereafter referred to as the 'appeal unit') was £16,500 with effect from 1 April 2017.

## Introduction

2. This is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that all of the evidence presented was fully considered by the Panel before coming to its decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009, challenging the Valuation Officer's decision that the appellant's proposal was not well-founded.

4. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the appeal hereditament on the compiled date of 1 April 2017 were not reasonable. The rateable value was £23,250 (having been reduced at the 'Challenge' stage from £29,000).

5. Mr Riley 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 Riley stated that David Brown Commercial Limited (DBCL) had been instructed on a fixed fee basis and that he, in turn, was in receipt of a fixed fee from DBCL for representing them on a consultancy basis in this appeal.

6. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO0* [2018] UKUT (LC), the Panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

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

### Remote hearings

8. 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.

9. 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.

10. At the commencement of the hearing it became apparent that Mr Iqbal was experiencing technical issues which his camera which prevented him from visually joining the hearing. However, Mr Iqbal was able to participate using an audio link and, when asked, he confirmed that he was prepared for the hearing to proceed on this basis. No objections were raised by Mr Riley and the Panel was content to proceed accordingly.

**Issue**

11. The issue in dispute was, following the appellant's challenge, whether the valuation for the appeal hereditament was reasonable and, in particular, the price per $m^2$ to be adopted in the valuation of the appeal unit.

**Decision and reasons**

12. The Panel considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process.

13. The Panel followed the VTE's model procedure and Mr Riley presented the appellant's case first.

14. The appeal unit was located to the north of Albert Street close to a traffic island which joins Morledge and Corporation Street. A lengthy bus stop was located immediately in front of it which, it was said, detracted from its kerbside appeal. The appeal unit was part of a parade of shops which had been let on a ten year lease from July 2018 with a rent review after five years. The rent was £16,000 per annum with a rent free period for the first two months.

15. The Panel understood that Mr Riley was, at the time of the hearing, seeking a reduction of the adopted Zone A rate to £135 per $m^2$ which, after the agreed allowances for masking and merged units (5% each), resulted in a revised rateable value of £15,500.

16. In support of this, Mr Riley referred the Panel to rents relating to units two, three and four in the same parade:

    _Unit two_
    Rent of £8,400 per annum from September 2015, analysed by Mr Riley to £140 per $m^2$ for Zone A.

    _Unit three_
    Rent of £5,000 per annum based upon a twelve month licence followed by a three year lease from May 2016 on a stepped basis of £6,000 for year one, £8,000 for year two and £10,000 for year three. This had been analysed by Mr Riley to £135 per $m^2$ for Zone A.

*Unit four*
Rent of £8,950 per annum from May 2017 on a stepped basis of £8,000 for year one, £9,000 for year two and £10,000 for year three. Mr Riley had analysed this to £165 per $m^2$ and to £141.36 by Mr Iqbal.

17. Mr Iqbal questioned the veracity of this evidence given that the rent in respect of unit one was agreed more than three years after the AVD; the rent agreed in respect of unit two was stepped and, as a renewal, it was not an open market transaction; the rent in respect of unit three was initially agreed on the basis of a licence and the lease which followed included a stepped rent which required significant adjustment, and the rent in respect of unit four was stepped.

18. The Valuation Officer had, within his written submission, relied upon the rent of a property known as AT Mays, Osnabruck Square, Albert Street, Derby, DE1 2DS which was located across the road from the appeal unit. This had been analysed to £209.47 per $m^2$ with an adopted Zone A of £250 per $m^2$. During the hearing, Mr Iqbal acknowledged that the agreed rent had been agreed in February 2017 and was remote from the AVD.

19. Mr Iqbal referred the Panel to settlements in respect of Unit 6 Albert Street which, in terms of Zone A, had been reduced to £335 per $m^2$ and 20 Albert Street which had been reduced to £250 per $m^2$. These represented reductions of 11% and 33% respectively.

20. The Panel's attention was drawn to properties on Morledge, for which a Zone A price of £185 per $m^2$ had been adopted. It was Mr Iqbal's proposition that, as the appeal unit was situated between Morledge and the two properties referred to above in paragraph 19, that the rateable value of the appeal unit should be between the two and so £200 per $m^2$ Zone A was reasonable.

21. Mr Riley responded by arguing that properties on Morledge were not directly comparable because they were better positioned within the locality and provided a destination area for food and entertainment. Mr Riley added that Unit 6 Albert Street and 20 Albert Street were relatively modern purpose built retail units whilst the units in the Corn Exchange were much older and had been created by converting parts of a Grade II listed building.

22. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that 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 based upon three assumptions. These assumptions are:

(a) that the tenancy begins on the day by reference to which the determination is to be made;

(b) 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) 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.

23. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the appeal hereditament is 1 April 2017.

24. The Panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case set out the six propositions to have regard to when considering the weighting of evidence and expert opinion. These are:

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 … 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 differing types of evidence depending on the one hand 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.

25. Having regard to *Lotus & Delta*, the Panel considered the rental evidence in respect of the appeal unit as a starting point. In doing so, the Panel noted that it commenced in July 2018, over three years after the AVD. In the circumstances, the Panel did not find this to be determinative. While the Panel noted the rent devalued to £124 per $m^2$ for Zone A, the date of the rent meant that the Panel had to have regard to the rental evidence of other properties within the locality which had been provided by the parties.

26. In doing so, the Panel placed most weight upon the rental evidence relating to the units within the Corn Exchange which, including the appeal property, had been analysed at £124 per $m^2$ to £165 per $m^2$. Whilst these rents were not perfect, given their distance from the AVD and the necessary adjustments, they nonetheless indicated a pattern of values such that a hypothetical tenant fresh to the scene would not have made a rental offer of £200 per $m^2$. The Panel considered the rents on the Corn Exchange shops to be the most relevant evidence and found that it showed consistently lower values than £200 per $m^2$.

27. The Panel placed less weight upon the Valuation Officer's comparable properties because they were more modern purpose built retail units which, the Panel found, would command a higher rent than the Corn Exchange units which had been created by converting parts of a Grade II listed building.

28. After fully considering the evidence presented by the parties, the Panel determined that it was reasonable for the appeal unit to have achieved a rental value, in terms of Zone A, below those of the Valuation Officer's comparables (which were more modern and purpose built). The Panel decided that the rental evidence was showing that £140$m^2$ was reasonable, particularly as the rent on Unit 2 was within six months of the AVD as devalued to that amount. Further, the Valuation Officer's own rental analysis on Unit 4 came close to that amount. Taking account of the agreed allowances of 5% for masking and 5% for merged units, the rateable value is £16,500 as set out below:

| | Area $m^2$ | £ per $m^2$ | Value £ |
|---|---|---|---|
| Ground floor - Retail Zone A | 72.4 | 140.00 | 10,136 |
| Ground floor - Retail Zone B | 77.7 | 70.00 | 5,439 |
| Ground floor - Retail Zone C | 58.2 | 35.00 | 2,037 |
| Basement - internal storage | 40.3 | 10.00 | 403 |
| Basement - internal storage | 28.9 | 10.00 | 289 |
| Basement - staff toilets | 0.00 | 0.00 | 0 |
| Basement - staff toilets | 0.00 | 0.00 | 0 |
| | **277.5** | **Total:** | **18,304** |
| Merged units - 5% | | | 881 |
| Masked areas - 5% | | | 881 |
| | | | 16,542 |
| | | RV say: | **£16,500** |

## Order

29. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Valuation Officer to alter the valuation list within two weeks of the date of this order to show the entry in the rating list for the appeal hereditament to £16,500 rateable value with effect from 1 April 2017.

## Refund of appeal fee

30. The appellant is entitled to a refund of the appeal fee in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

**Date:** 22 February 2022

**Appeal Numbers**: CHG100180387