THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; The Valuation for the hereditament is not reasonable; Rental evidence; Base rate £m^2; Tone and comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal allowed.

Re: Enotria House, 23 Cumberland Avenue, London NW10 7RX (the appeal property).

APPEAL NUMBER: CHG100181750

BETWEEN:	Enotria Winecellars Ltd	Appellant
	and	
	The Valuation Officer	Respondent

PANEL:	Miss Alison Griffiths	(Chair)
	Mrs Fiona Duggan	(Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 2:	13 September 2021	
PARTIES PRESENT:	Mr Oliver Hamblin of Altus	Appellant's representative (Advocate and Expert Witness)
	Mr Mark Williams	Respondent's representative

Summary of decision

1. The appeal was allowed. The current unadjusted rate was reduced from £107 per metre square (pms) to £87.50 pms giving a rateable value reduction from £1,070,000 to £875,000 with effect from 2 March 2018.

Introduction

2. The appeal was brought in respect of Enotria Winecellars Ltd located at 23 Cumberland Avenue, London. This is a large, modern, steel portal framed distribution warehouse built in 2009 with a total area of 9712.35m^2 of mainly warehouse but with 1st and 2nd floor ancillary offices and a 200m^2 canopy. It is situated in the Royal Park area of North West London with good access to the city.

3. The challenge submission date was 25 March 2020 with the challenge being completed on 21 January 2021.

4. The appellant had initially sought a reduction of the rateable value from £1,070,000 to £800,000 based on a rate of £80 pms, however, this was revised during the check, challenge, appeal process to £875,000 rateable value based on a rate of £87.50 pms.

5. The respondent contended that the current rateable value assessment was reasonable based on the evidence and information available.

6. Initially, the appellant had requested that the canopy be valued at 15% of the base rate rather than 25%. Both parties have since agreed that the canopy is no longer a part of this check, challenge, appeal process.

7. 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.

8. 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.

9. Mr Oliver Hamblin appeared on behalf of the appellant in a dual role as advocate and as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. 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 or not the evidence supported the client's cases.

10. 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). The panel therefore considered the expert evidence and attached such weight to it as they saw fit.

11. 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 me before coming to my decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

12. The rateable value of the appeal property based on an unadjusted rate per metre square.

Evidence and submissions

13. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; lease agreements and summaries; appellant's challenge submission; photographs and location plans of the appeal property and comparable assessments and email exchanges between the parties.

14. The appeal property was let on a new fifteen year lease agreement on a full repairs and insurance basis from 30 May 2014 with a 7 months' rent free period. The original Form of Return (FOR) shows a reverse premium paid of £1.75m.

15. The appellant submitted that the appeal property should be valued in accordance with Valuation Scheme 432561 in which the value pms ranges from £75 to £130 depending on the size and location, the most commonly adopted value being £85 pms. The current rate was £107 pms.

16. Further, he offered one property for comparable purposes, that of Unit 1 Ockham Drive, Greenford, Middlesex.

17. The respondent stated that when the rent is analysed including the reverse premium paid and the rent free period, the result is £85 pms which is close to what the appellant had requested. However, the appellant's analysed rent came out at £126 pms. He stated that the rent appears to require considerable adjustment to be of use in the valuation and is therefore not definitive in giving a reasonable idea of the rateable value of the appeal property.

18. He also submitted that the rent analysis of Unit 1 Ockham Drive, used by the appellant as justification for his appeal, was also not a useful tool as it appears to be a review from an assigned lease.

19. In his opinion, other similar properties showing analysed rents above £100 pms are more useful in determining the rateable value of the appeal property.

Decision and reasons

20. The main issue in dispute was the rateable value of the appeal property arising from the UAR pms.

21. The term 'rateable value' is 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 –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> 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".

22. 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 (SI 2014 No. 2841).

23. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

24. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment 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.

25. The panel noted that the agreed net rent of the appeal property was £883,063 per annum and found that, in line with the authoritative Lotus and Delta v Culverwell judgment, this was a useful starting point in its valuation.

26. However, other properties rents and rateable values should also be considered within the basket of evidence for its valuation.

27. The panel was presented with a schedule of comparable properties, the most relevant parts of which are shown below:

	Address	Area	RV	Date of rent	UAR pms	Analysed rent
	Enotria House, 23, Cumberland Avenue (the appeal property)	9,712.35	£1,070,000	30/4/14	£107	£87.78
2	Unit 1, Ockham Drive, Greenford	9,237	£720,000	6/8/15	£85	£84.17
3	Ex Cearns and Brown, Premier Park Road	10,993.1	£985,000	1/10/13	£95	£118.55
4	H & M Hennes Ltd, East Lane	20,791.5	£1,620,000	1/11/14	£94	£104.32
5	Unit 5 Origin Business Park	5915.74	£665,000	1/8/16	£105	£58.73
6	Prop House, Abbey Road	8753.44	£990,000	1/7/17	£103.50	£126.95
7	Trans Euro Worldwide Movers Laxcon Close	12,768.3	£1,100,000	1/2/16	£85	£152.91

28. The panel found that Unit 1, Ockham Drive, almost the same size as the appeal property and with a new rental lease agreement only four months after the AVD, was very good supporting evidence for the valuation of the appeal property. The rateable value was reduced at challenge based on the subject rent and this now gave a UAR of £85 pms.

29. The panel also found that the actual rent and the analysed rent of Unit 1, Ockham Drive were of similar values to those of Enotria House and so further supported a lower UAR for the appeal property.

30. In the cases of properties 3,4,6 and 7 the panel noted that they had been occupied by the same company for a long time, in one case since 1973. This indicates, in line with the Lotus judgment, that the recent rental agreements, being renewals, are not as useful as the three newer lettings of Enotria House and items 2 and 5. These three properties are also the lowest in terms of their analysed rent. The panel also noted that Enotria House was let with a reverse premium as an incentive to Enotria Winecellars to take on the property and there was a similar arrangement with Unit 1, Ockham Drive.

31. Taking into account all of these factors the panel found that Enotria House should be valued with a UAR similar to Unit 1, Ockham Drive and Trans Euro Worldwide Movers.

32. In appeals of this nature the burden of proof rests on the appellant to prove his case. The panel concluded that the appellant’s representative had produced sufficient evidence to justify such a reduction.

33. The panel therefore found that a UAR of £87.50 was more appropriate for the appeal property, giving a rateable value of £875,000, and allowed the appeal.

Order

34. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of Enotria House, 23 Cumberland Avenue, London NW10 7RX to £875,000 with effect from 2 March 2018.

35. 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: 11 October 2021

Appeal number: CHG100181750