THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and Premises; accuracy of rateable value; rent passing on subject property and comparable properties; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Decision: Dismissed.

RE: Imperial House,1 Bentalls, Basildon, Essex, SS14 3BS

APPEAL NUMBER: CHG100198458

BETWEEN:	Merson Signs Ltd T/A ASG (Represented by Altus Group)	Appellant
	and Joanne Moore (Valuation Officer)	Respondent

PANEL: Ms E Antrobus (Senior Member)
Mrs C Parkes

REMOTE HEARING: 9 June 2021
CLERK: James Massey
APPEARANCES: Mr M Clayton of Altus Group for the Appellant.
Mr H Watson for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £248,000 with effect from 1 April 2017.

Introduction

2. 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.

3. 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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. This was a 2017 Rating List appeal. Imperial House,1 Bentalls, Basildon, Essex, SS14 3BS (the 'appeal property') had been entered in the 2017 Rating List as 'factory and premises' at a RV of £248,000 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

5. The challenge proposal was submitted by Altus Group on behalf of Merson Signs Ltd T/A ASG and was received by the Valuation Officer (VO) on 29 April 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 £213,000 with effect from 1 April 2017.

6. The VO issued a challenge case decision notice on 23 November 2020 in respect of the appeal property. The VO's decision was to treat the Appellant's challenge as not well-founded and proposed no change to the rating list.

7. The appeal hereditament is located on a well-established industrial estate (Bentalls) in Basildon. It is a 1988 built industrial unit consisting of ground and mezzanine floors with a total floor area of 3,992.72m^2 (3,865.75m2 ITMS).

8. Mr Clayton 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), he declared in open tribunal that he was instructed under a conditional fee arrangement.

9. Mr Clayton 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.

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 it saw fit.

11. 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

12. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Clayton, for the Appellant, sought a reduction to £213,000

RV based on an unadjusted main space rate of £43.50 per m². Mr Watson, for the VO defended the assessment of £248,000 RV, which was based on the existing unadjusted main space rate of £52.50 per m².

13. All relevant factual information regarding the subject property, including its area, was not disputed by the parties.

Additional evidence

14. This appeal was previously listed to a hearing on 16 April 2021. At that hearing the Respondent's representative referred to new information which had come to light regarding the terms of the subject property lease, which he believed to be a result of a sales-and-leaseback transaction. The panel, at that hearing, agreed to adjourn the appeal in order for Mr Watson to share the information he had regarding the lease with Mr Clayton, who would make enquiries with his client and report back to the tribunal. The appeal would then be listed to a new hearing to be heard afresh. As part of this process, Mr Clayton informed the Tribunal that he had verified the information provided to him by Mr Watson with his client. On this basis the panel determined that the additional information regarding the sale-and-leaseback had been agreed by the parties and its admission should be allowed.

Decision and reasons

15. 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.

16. 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 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.'

17. Mr Clayton argued that the rent passing on the subject property itself suggested that the current assessment at £52.50 per m^2 was not reasonable and supported a reduction to £43.50 per m^2. The subject property had been let on a new ten-year lease from 28 April 2017 on a stepped rent rising from £197,592 per annum (pa) to £236,141 pa in the tenth year. He stated that this stepped rent analysed to £213,672 pa, which, having stripped out additional items and car parking, devalues to £43.48 per m^2. He argued that there was a growing market in which rents had increased after the AVD and therefore believed that this figure would have been lower at the AVD.

18. Mr Watson had rejected the rent on the subject property as unreliable as it had been agreed more than two years after the AVD. He also considered that due to the sale-and-leaseback transaction, the letting did not constitute either a new or an open market letting, and the adjustment of stepped rents were often unreliable and open to varying interpretation. He therefore contended that little weight should be placed on the subject rent in determining the hypothetical rent for the subject property at the AVD as it did not fit the second test in Lotus and Delta.

19. 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 it had been verified that the subject lease was agreed as part of a sale-and-leaseback transaction but further information regarding the arrangements for this had not been provided, nor had a copy of the lease. Whilst this presented difficulties in determining the effect of the transaction on the terms agreed, the panel was satisfied that such a transaction would indicate that the rent was not agreed between unconnected parties nor was it an open market rent. It therefore found that little reliance could be placed on the passing rent of the subject property.

20. In support of the current assessment of the subject property at £53.50 per m^2, Mr Watson had provided details of assessments of five units on industrial estates in Basildon which he considered to be comparable to the subject property.

- 1 Falcon Park, Crompton Close, Basildon – new letting £8,000 pa with effect from 31 October 2014 which, based on its area of 114.9 m^2 ITMS, analysed at £67.01 per m^2.

- 7/8 Hovefields Court, Hovefields Avenue, Basildon - new letting £68,750 pa with effect from 1 May 2015, which, based on its area of 1050.07 m^2 ITMS, analysed at £52.50 per m^2.

- Warehouse at Bowden Terminal, Luckyn Lane, Basildon - new letting £132,738 pa with effect from 1 July 2015, which, based on its area of 2150.3 m^2 ITMS, analysed at £53.86 per m^2.

- Amari Plastics, Paycocke Road, Basildon – lease renewal £198,000 pa with effect from 24 June 2015 which, based on its area of 3324.66 m^2 ITMS, analysed at £57.11 per m^2.

- Unit DC2, Prologis Park, Basildon - new letting £397,147 pa with effect from 1 November 2016 which, based on its area of 4914.70 m^2 ITMS, analysed at £64.10 per m^2.

21. The panel considered that the range of analysed rents for similar properties in Basildon was supportive of their current assessments of between £47.50 and £65.00 per m^2.

22. The subject property is assessed on the scheme for industrial/storage units on Pipps Hill Industrial Area, Basildon, purpose-built from 1985-2010 and Mr Clayton argued that apart from 1 Falcon Park, which is substantially smaller than the subject property, the Respondent's comparable properties had been assessed on different schemes, and he therefore did not consider that they were comparable.

23. The panel was not persuaded that a hypothetical tenant would limit himself to a property within a particular scheme and considered that the properties in the various schemes were similar enough in character, age and location to be considered by a hypothetical tenant alongside a property within the same scheme as the subject property.

24. Mr Clayton also argued that none of the Respondent's comparable properties were located on the same estate as the subject property and described three of them as being located 2.3 to 3.5 miles away on the other side of Basildon. Having considered the map provided by Mr Clayton, the panel noted that all of the properties were situated to the north of Basildon, just south of the A127 trunk road and it was satisfied that the location of the Respondent's comparable properties was sufficiently similar to that of the subject property for them to be comparable to it.

25. From the basket of rental evidence provided by the Respondent the panel was satisfied that the current assessment of the subject property at £52.50 per m^2 was reasonable and Mr Clayton had not provided any evidence of rents or assessments to persuade the panel that it was excessive. The appeal is therefore dismissed.

Date: 5 July 2021

Appeal number: CHG100198458