THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; warehouse and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; assessments of comparable properties; correct unadjusted rate to be applied to the subject property's assessment; end allowance sought for contaminated land; appeal allowed in part as the evidence showed that the existing valuation was unreasonable.

Re: S&S Services Ltd, Sanderson Way, Tonbridge, Kent TN9 1QG

APPEAL NO: CHG100248898

BETWEEN:	Palletline London Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

BEFORE: Mrs A E Fielder (Senior Member) and Mr A Wheeler

CLERK: Mrs R James

REMOTE HEARING 1: Wednesday 16 March 2022

APPEARANCES: Mr P Rabbette of Paul Rabbette Ltd (on behalf of the Appellant)
Mr R Das (Respondent's representative)

Summary of decision

1. Appeal allowed in part; the appeal property's assessment was reduced to £138,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: S&S Services Ltd, Sanderson Way, Tonbridge, Kent TN9 1QG, which was entered in the 2017 Rating List as warehouse and premises at £149,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 12 May 2020. The appeal to this Tribunal was made on 22 October 2021, following the VO's Decision Notice of 30 June 2021, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The subject property was approximately 30 years old. It was a warehouse and premises of steel portal frame with a canopy and vehicle repair workshop. There were no offices on this site as they were located on the other side of the road in a different hereditament.

5. The subject property was located 1.1 miles to the east of Tonbridge town centre within an industrial estate. It was adjacent to Tonbridge's sewage treatment plant. The premises were built on a former landfill site and the building was vented to protect against a build-up of hazardous gasses.

6. The appeal property had an area of 2,757.09 m^2 with an eaves height of 4.5 m and was set in its own yard. An unadjusted rate (UAR) of £70/m^2 had been applied to the appeal property's assessment.

7. Mr Rabbette was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. Mr Rabbette explained that he was representing the appellant in this appeal on a conditional fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

9. The panel have accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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.

10. 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 the panel when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Preliminary Issue

11. On 7 March 2022, Mr Rabbette forwarded the Tribunal office additional evidence to that provided in his appeal submission. That evidence was an analysis of rental evidence from properties previously referred to in his submission and the VO Decision. Mr Rabbette explained that a joint inspection of the subject premises had taken place on 3 March 2022, which was when he had also had the opportunity to view the Forms of Return (FOR). Mr Rabbette had forwarded his rental analysis to Mr Das on 4 March 2022.

12. On 8 March 2022, Mr Das objected to the inclusion of the additional evidence. He explained that the inspection did not have to be carried out jointly, it had been requested by the VOA caseworker. Furthermore, Mr Rabbette had the right to inspect the FORs at the Challenge stage.

13. At the tribunal hearing, Mr Das reiterated his objection to the additional evidence repeating his reasoning. In response, Mr Rabbette explained that he had repeatedly asked the VOA to view the FORs, and as a compromise, he had agreed to view them at the joint inspection. Mr Rabbette referred to an email dated 13 October 2021, when he had requested to view the FORs.

14. Having heard from Mr Rabbette, Mr Das withdrew his objection to the inclusion of the additional evidence. Accordingly, the panel proceeded to hear the appeal having regard to all of the evidence presented.

Issues

15. There were two issues in dispute:

    i) the correct UAR to be applied to the subject property's valuation; and
    ii) whether or not an end allowance was warranted to reflect the premises being located on contaminated land?

Evidence and submissions

16. The panel had been provided with a bundle of evidence, which comprised the challenge submission, VO Decision notice and the representative's appeal submission. The panel had also been provided with a schedule of rental analysis provided by Mr Rabbette.

17. Mr Rabbette explained that there was a minor discrepancy in the parties' areas; however, he was willing to accept the VO's areas. Having regard to the comparable evidence presented, he sought a reduced UAR of £60/m^2. He further sought an end allowance of 10% to reflect the fact that the subject premises had been constructed on contaminated land. This resulted in his proposed assessment of £115,000 RV, with effect from 1 April 2017. Furthermore, whilst he acknowledged that the panel could not determine a transitional certificate value, he wished to point out that he would be requesting the VO issue a certificate at £115,000 RV.

18. Having regard to the rent on the appeal property, Mr Das contended that the current assessment of £149,000 RV was more than reasonable. He distinguished the subject property from those comparable properties cited on Orchard Business Centre, where their lower eaves height justified the lower UAR applied to their assessments. Having regard to the rental evidence presented, Mr Das contended that the current UAR of £70/m^2 applied to the subject property was not excessive. In respect of the end allowance, Mr Das contended that just because the subject premises was located on contaminated land, this did not automatically warrant an allowance. Accordingly, on the evidence presented, Mr Das sought dismissal of the appeal.

Decision and reasons

19. 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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

20. 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 both parties. This case had established six propositions that 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 is 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.’

21. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration to how that rent compared to the statutory definition of rateable value. There was a rent passing on the subject premises of £325,000 per annum, with effect from 15 May 2015. The rent covered both the appeal property, which had a current assessment of £149,000 RV, together with 400 Vale Road, which had an assessment of £153,000 RV; the total RV for both properties was £302,000.

22. Given the rent had been set very close to the AVD, Mr Das contended that it was good evidence to support the subject property’s existing assessment. Mr Das considered the subject rent to be the strongest and most reliable evidence available. However, Mr Rabbette had stated that the rent was not an open market transaction and was not on all fours with the definition of rateable value.

23. Having regard to the rent passing on the appeal property, the panel attached little weight to it. The panel noted that another hereditament was included within the lease and it accepted it required significant adjustment to accord with the statutory definition. The panel had also heard how it was not an open market transaction. Therefore, the panel went on to consider the third and four propositions outlined in the *Lotus & Delta* judgment and had regard to the rents and assessments placed on comparable properties in the locality.

24. The parties had provided rental and assessment details in relation to the following comparable properties:

i) Various assessments at Orchard Business Centre; many of which were now historic. Orchard Business Centre was immediately adjacent to the subject property. Whilst these units were somewhat smaller than the subject property, they were valued at a lower UAR. Five units measuring 762.76 m^2 to 1458.50 m^2 had all been valued at an UAR of £65/m^2. There was only one rent available on these units, which dated back to 2010.

ii) Commotion House, Morley Road, Tonbridge; which was a warehouse and premises with an area of 2,191.96 m^2. There was a rent passing on this property of £115,000 with effect from 17 June 2017, which Mr Rabbette had analysed to £55.83/m^2. This property had been valued at an UAR of £63/m^2. Within the VO Decision, it gave a 2016 rent of £138,000; Mr Rabbette had analysed that rent to £61/m^2.

iii) 207 Vale Road was a warehouse and premises that measured 1,758.30 m^2. It had a rent of £128,000 with effect from 1 May 2014, which the VO had analysed to £68/m^2 and Mr Rabbette had analysed to £69.46/m^2. This property had been valued at an UAR of £65/m^2.

iv) 209-211 Vale Road was a warehouse and premises that measured 3,200.59 m^2. It had a rent of £210,000 with effect from 1 November 2015, which the VO had analysed to £64/m^2 and Mr Rabbette had analysed to £60.99/m^2. This property had been valued at an UAR of £60/m^2.

25. The panel noted that the closest comparable properties in terms of location were those units at Orchard Business Centre. Whilst these units were similar in age, location and construction, they were significantly smaller than the appeal property and had lower eaves height. There was no useful rental evidence available on these units; with the one rent dating back to 2010. Having regard to the assessments placed on those units, which had all been valued at £65/m^2 regardless of their size, the panel found that £70/m^2 for the larger subject premises was excessive. However, the panel did appreciate that the subject premises had the added advantage of higher eaves height and being located within its own yard.

26. After having regard to the analysed rents and assessments placed on 207 Vale Road, 209-211 Vale Road and Commotion House, the panel concluded that a reduced UAT of £65/m^2 was reasonable. The panel was not convinced that a reduction in the UAR to £60/m^2 as requested by Mr Rabbette was supported by the evidence. The panel determined that an UAR of £65/m^2 more truly reflected the appeal property's size, location, construction, age and eaves height.

27. Having determined the correct UAR, the panel went on to address whether or not an end allowance was warranted for the subject premises having been constructed on contaminated land. Mr Rabbette proposed a 10% end allowance, in contrast to Mr Das, who contended that no allowance was warranted.

28. In support of his proposed 10% end allowance, Mr Rabbette had provided details of several properties whereby an end allowance for contaminated land had been granted. Those allowances ranged from 10% to 50%; as such his proposed 10% was at the lower end of the scale of those allowances already applied for in similar circumstances. Specifically,

Mr Rabbette referred to Units 1 & 2 Olympus Drive, Great Western Way, Tipton, which was a recent agreement between the VOA and Paul Rabbette Ltd for an end allowance at 10% for contaminated land. He also referred to a Lands Tribunal decision in relation to *Fusetron Ltd & JGW Coatings Ltd* v *Whitehouse (VO)* RA/256, 257, 269, 270/1996. In respect of contaminated land, the Lands Tribunal judgment stated:

> 'Thus I find that the only matter for which an end allowance in respect of contamination is justified is the risk of problems which might arise from evacuation which might be required in the installation of non rateable plant and machinery. I find that a 10% allowance is the most that can be justified on this account.
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> I have already found that the value of the first appeal hereditament excluding any possible allowance for contamination should be £9,230. A reduction of 10% produces a rateable value of £8,307 say £8,300.'

29. The panel considered each case should be considered on its own merits having regard to the disability suffered to the respective property, rather than apply a blanket allowance for each property with the associated disability. On the evidence presented, the panel was not convinced that an allowance for being located on contaminated land was warranted. Having regard to the photograph of the appeal property, the panel noted numerous vents in situ around the appeal property that protected against a build-up of hazardous gasses. Mr Rabbette explained that whilst there was currently no issue regarding the contaminated land, there could be in the future regarding the installation of non rateable plant and machinery.

30. The panel noted that the comparable properties provided were located throughout the country, no detail had been provided on how their disabilities compared to that of the subject property. Furthermore, the panel acknowledged that whilst the subject property was approximately 30 years old, such an allowance had not been granted in previous rating lists. When questioned on this issue, Mr Rabbette explained that the matter of contaminated land had only recently been brought to his attention. The panel further placed weight on the fact that no report had been provided on the severity of the issue of the contaminated land in the subject property's case.

31. Accordingly, the panel allowed the appeal in part as it considered that the current assessment was unreasonable. The panel determined that the UAR should be reduced to £65/m^2, which resulted in a revised assessment of £138,000 RV, with effect from 1 April 2017. A breakdown of the assessment has been shown below. The panel had applied the measurements put forward by the VO and accepted by Mr Rabbette.

Description	**Area m^2**	**UAR**	**Relativity**	**£/m^2**	**Value £**
Warehouse	1,745.60	£65/m^2	0.975	£63.38	£110,636
Office	6.30	£65/m^2	1.073	£69.75	£439
Canopy	623.00	£65/m^2	0.146	£9.49	£5,912
Workshop	247.80	£65/m^2	0.975	£63.38	£15,706
AUSF	41.37	£65/m^2	0.683	£44.40	£1,837
Mess/Staff room	12.38	£65/m^2	1.073	£69.75	£864
Works Office	13.44	£65/m^2	0.975	£63.38	£852
Internal Storage	67.20	£65/m^2	0.488	£31.72	£2,132
Total					£138,378
Say £138,000 RV, with effect from 1 April 2017					

Order

32. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £138,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

33. If the appeal was successful (either in part or full) 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: 1 April 2022
Appeal Number: CHG100248898