THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *Factory and premises; main space price; appeal allowed.*

RE: Units 7 – 11, Pier Road, Feltham, Middlesex TW14 0TW

APPEAL NUMBER: CHG100271091

BETWEEN:	Geoff Neal Litho Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mrs A Fielder (Senior Member)
Mr F Rogers

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 25 January 2022

APPEARANCES: Mr A Hair from Altus Group (Appellant's representative);
Miss C Williams (Valuation Officer's representative)

Summary of decision

1. Appeal allowed. The panel concluded that the main space price should be reduced to £68/m^2. The resultant rateable value (RV) was £128,000.

Introduction

2. This appeal had been brought in respect of the following: Units 7 – 11, Pier Road, Feltham, Middlesex TW14 0TW which was entered in the 2017 rating list as 'Factory and premises' at RV £131,000 effective from 1 April 2017 based on an unadjusted main space price of £70/m^2, although the adjusted main space price was 5% less at £66.50. Mr Hair was seeking an RV of £122,000 based on an unadjusted main space price of £65/m^2. A 5% allowance for fragmentation and a 10% allowance for the low eaves height had also been granted.

3. The appeal property is a workshop and ancillary office block built in 1965 and is of brickwork construction, located three miles off the M4 and Heathrow cargo terminal. It has an area of $1,785.41m^2$ based on an unadjusted rate of £70/m^2. The VO included an allowance for fragmentation and there was an uplift for air conditioning. It had an eaves height of 4.8 metres. The assessment also included 23 car parking spaces.

4. 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.

5. 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 position.

6. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Hair made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

8. The appeal to this Tribunal was made on 23 March 2021 following the Valuation Officer's Decision Notice of 3 March 2021 in respect of the appeal property.

9. The appeal was previously before a lay panel on 26 July 2021. At that hearing the VO had recently settled the appeals for X2 Units 7 and 8, Hatton Cross Centre and wanted to ensure that the revised assessments were available to the panel.

10. The panel therefore adjourned the appeal and issued directions on 28 September 2021 to allow Mr Hair to comment on this new evidence.

11. Mr Hair had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Hairs' declaration of truth included a statement that he understood and accepted that his duty is 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.

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

12. The panel 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).

13. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it having been overlooked.

Issues

14. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

15. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, external photographs of the appeal property and details and photographs of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice and extracts of a number of judgments such as *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA.

19. Mr Hair was originally seeking an unadjusted main space price of £60/m^2 with a resultant RV of £113,000 however, at the hearing, he was seeking an unadjusted main space price of £65/m^2 with a resultant RV of £122,000.

20. The appeal property was held freehold and therefore there was no rent for the appeal property.

21. However, to support the main space price of £65/m^2 Mr Hair provided the following comparable assessments:

Property	Size	Analysed rent	Unadjusted main space price	Rateable value
X2, Unit 8, Hatton Cross Centre, Eastern Perimeter Road, TW6 2GE	3055.46m^2	£69.39/m^2	£95/m^2	£307,500
X2, Unit 7, Hatton Cross Centre, Eastern Perimeter Road, TW6 2GE	2479.93m^2	£54.14/m^2	£95/m^2	£250,000
Unit 4, Nexus Close, Feltham TW14 0AF	876.76m^2	£85.69/m^2	£100/m^2	£95,500

19. X2, Units 7 and 8 Hatton Cross Centre were located on the outskirts of Heathrow Airport curtilage, close to the cargo terminal with close links to the M4 motorway and underground station. Built in 2009 with modern facilities and eaves height of 6 metres Mr Hair argued that an older property in a poorer location would be worth significantly less.

20. In response to the new evidence provided by the VO, although it had kept the unadjusted main space price for X2, Units 7 and 8 Hatton Cross Centre at £95/m^2 the VO reflected the disabilities by adjusting the main space price down to £65/m^2, thereby keeping the tone of the list at £95/m^2. Mr Hair disagreed with this approach, however, as he argued that an older building with disabilities such as a lower eaves height would be worth less than these comparable properties.

21. Based on the VO's comparable properties, he argued that there was a lack of growth and a falling rental market as the rents had not increased. As the tone in the 2010 rating list was £67.50/m^2 this suggested that the unadjusted main space price for the appeal property should be slightly less at £65/m^2 and based on this he was seeking a rateable value of £122,000. Mr Hair asked the panel to allow the appeal.

22. Miss Williams was representing the VOA as advocate and expert witness.

23. The VO had resisted the challenge as the appeal property had been valued within scheme number 355727, which ranged in value from £70/m^2 to £110/m^2. In response to the appellant's comparable properties, X2, Units 7 and 8, Hatton Cross Centre, Eastern Perimeter Road, these were in a different scheme ranging in value from £85/m^2 to £100/m^2. Furthermore, the rent for Unit 8 was on a stepped basis and the FOR suggested that a fit out was carried out prior to occupation and it was unclear how that had been reflected in the rent. Unit 7 was also on a stepped basis and a large capital sum of £102,000 had been paid for the lease.

24. However, Miss Williams did not consider these units to be comparable as they were built in 2009 and were therefore not comparable to the appeal property.

25. In response to Mr Hair's argument that the VO had reduced the RV of these via an allowance rather than reducing the main space price, Miss Williams explained that these units were on the first floor and therefore the allowance was to reflect the disabilities associated with that and that the main space price for the ground floor units remained at £95/m^2.

26. To support her argument that the unadjusted main space price of £70/m^2 was correct, she provided the following comparable properties:

Property	Size	Analysed rent	Unadjusted main space price	Rateable value
Units 7–11, Pier Road (Appeal property)	1785.41m^2		£70/m^2	£130,000
D1 Tamian Way	1665.73m^2	£49.09/m^2	£70/m^2	£130,000
Atlas House	3203.22m^2	£72.17/m^2	£70/m^2	£250,000
7 Steyning Way	2116.76m^2	£68.00/m^2	£70/m^2	£98,500

D2 Tamian Way	1359.41m^2	£91.04/m^2	£70/m^2	£93,000
C1 Pier Road	719.20m^2	£88.66/m^2	£80/m^2	£57,500
Unit 2 Pier Road	2027.60m^2	£86.06/m^2	£70/m^2	£144,000

27. The VO contended that 7 Steyning Way was a new lease commencing in February 2015 which was close to the AVD, it was the same construction and eaves height restrictions, but was 500m^2 smaller than the appeal property. However, the rent had analysed to £68.00/m^2. D2 Tamian Way was of similar construction, however, it was a rent renewal in July 2015 with a nil increase which was not a reliable indicator of the rental value as a new tenant coming fresh to the scene. It was also 500m^2 smaller than the appeal property.

28. C1 Pier Road was similar in size and eaves height to the appeal property but the lease commenced in Feb 2017, nearly two years after the AVD and was 1,000m^2 smaller in size. For Unit 2 Pier Road, the lease commenced in January 2016 but there was a ten month rent free period and the property had recently undergone refurbishment and modernisation.

29. Miss Williams accepted that for D1 Tamian Way, the lease was between connected parties and so was not an arms length transaction and Atlas house, with an area of 3,203m^2 , nearly twice the size of the appeal property, and so suggested that the panel apply less weight to these comparable properties.

30. Given all of the above, Miss Williams contended that the basket of rents supported the current unadjusted rate for the appeal property of £70/m^2 and the RV of £131,000 was reasonable. She asked the panel to dismiss the appeal.

Decision and reasons

31. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

32. There is another important date for rating appeals and that is known as the 'material day.' This is the date on which the physical factors have to be taken into account. In this appeal the material day was 1 April 2017.

33. The term 'rateable value' is defined in 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 –

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

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; and

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".

34. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

35. As the appellant company owned the appeal property, there was no rental evidence. and so the panel first considered Mr Hair's comparable properties.

36. It applied less weight to X2, Units 7 and 8 Hatton Cross Centre, as these properties were not comparable in terms of age, size and location.

37. Unit 4, Nexus Close, Feltham was built in 2014 and was in a different VO scheme and therefore the panel also applied less weight to this unit due to its age and location. Furthermore, the main space price of £85.69/m^2 did not support the appellant's argument.

38. Turning to the VO's comparable properties, the panel applied less weight to C1 Pier Road as that property was substantially smaller than the appeal property. It noted that the other comparable properties were similar in age to the appeal property although 1 Tamian Way, D2 Tamian Way and Atlas House were lease renewals and therefore less weight was given to this rental evidence.

39. The panel noted that Unit 2 Pier Road had an extensive fit out and had been removed from the valuation list for the duration of the fit out. The panel also applied less weight to this property as it would have been refurbished to modern standards and was therefore not a 'like for like' comparable.

40. The panel noted that 8 Steyning Way was nearly 500m^2 larger than the appeal property and the VO had analysed the rent at £68/m^2. The unadjusted main space price for this property was £70/m^2 which was in line with scheme

number 355727 with the values ranging from £70/m^2 to £110/m^2 albeit at the bottom end of this range.

41. The panel was aware that a larger property would benefit from a quantum allowance although there was no evidence presented to the panel to show that this would be reflected in the size difference between 8 Steyning Way and the appeal property.

42. Whilst the panel was aware that it should not deviate from the VO's scheme unless the evidence was convincing it noted that the lease commenced on February 2015 which was very close to the AVD. Although Mr Hair suggested that a four year lease would attract a premium, one of the rating hypotheses is that the property should be a year to year letting and therefore the lease was close to this hypothesis.

43. The panel therefore applied most weight to the rent for this property as it was close in size to the appeal property and the rent was close to the AVD. Furthermore, as it was on a four year lease the panel concluded that this was compelling and justified the panel varying from the VO's scheme.

44. The panel concluded that the unadjusted main space price should be valued at £68/m^2 in line with the VO's analysed rent of 8 Steyning Way and allowed the appeal. The valuation is set out below:

Floor	Description	Area m^2	£ per m^2	Value
Ground	Workshop	61.93	54.91	3,400.58
First	Office	75.93	85.27	6,474.55
Second	Office	75.93	73.64	5,591.49
Ground	Workshop	410.77	64.60	26,535.74
Ground	Office	134.33	85.27	11,454.32
First	Office	134.33	85.27	11,454.32
Ground	Workshop	726.25	64.60	46,915.75
Ground	Internal storage	83.04	58.14	4,827.95
First	Office	82.90	70.35	5,832.02
			Sub total	122,486.72
Car parking				5865.00
			Total	128,351.72
		Rateable value say		128,000.00

Order

45. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £128,000 with effect from 1 April 2017.

46. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

47. As the grounds of the appeal have been made out, 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: 7 February 2022

Appeal number: CHG100271091