THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; accuracy of list RV in 2017 rating list; warehouse and premises; passing rent; comparable properties; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Appeals dismissed.*

Re: Unit B2, Gallagher Retail Park, Stoney Stanton Road, Coventry CV6 5QG

APPEAL NUMBERS: CHG100388582 & CHG100340369

BETWEEN:	Poundland Limited	Appellant
	And	
	Mr D Virk	Respondent
	(Valuation Officer)	
PANEL:	Miss E Antrobus (Presiding Senior Member)	
	Miss K Riddy, (Senior Member)	
CLERK:	Ms R Muller	
REMOTE HEARING 3:	1 July 2022	
PARTIES PRESENT:	Ms S Nicholls from Colliers International Property Consultants Limited representing the Appellant, Mr C Cowper representing the Respondent	

Summary of decision

1. The appeals were dismissed. The rateable value (RV) of the hereditament was confirmed at £142,000 with effect from 1 April 2017 and RV£145,000 with effect from 4 July 2019.

Introduction

2. These 2017 rating appeals had been brought in respect of the subject hereditament at Unit B2, Gallagher Retail Park, Stoney Stanton Road, Coventry CV6 5QG.

3. With regards to appeal number CHG100388582, this was a compiled list appeal where the assessment for the subject hereditament had been entered into the 2017 rating list at £172,000 RV with effect from 1 April 2017, therefore, the material day was 1 April 2017 but had been amended by the Valuation Officer (VO) during discussions to £142,000 with effect from 1 April 2017.

4. However, appeal number CHG100340369, had been submitted as the assessment had been amended to include air conditioning. This originally increased the RV of the subject hereditament to £174,000 RV with effect from 4 July 2019, but following the amendment as stated above, the RV to £145,000 with effect from 4 July 2019. The material day for this appeal was 4 July 2019.

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

6. The subject hereditament was a single storey warehouse which measured 716m² ITZA. It was situated in the out of town Gallagher retail park, approximately 2.5 miles from Coventry city centre adjacent to the A444. Other retail units adjacent to the subject hereditament on the retail park included Argos, TK Maxx and Pets at Home. It was currently valued on an unadjusted main space price of £200/m².

7. Ms Nicholls from Colliers appeared on behalf of the appellant as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), she stated that as an expert witness, she had a fixed fee basis, but as advocate, she was under a conditional fee basis. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's case.

8. The panel accepted this expert witness evidence on the above basis as the appeals were 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.

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

Preliminary matter

10. Mr Cowper, the respondent's representative, submitted new evidence before the panel which included a schedule of Challenge cases which had not been appealed against following the reductions in tone across the park and a schedule of Check cases which had not been challenged once the new unit rates had been applied.

11. Ms Nicholls, the appellant's representative had objected to this new evidence but stated that if the panel was to allow this new evidence to be included, she had provided comments for the panel to consider.

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

12. The panel adjourned to consider the new evidence.

17A Admission of new evidence on NDR appeal

(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if-

(a) that evidence-

(i) is provided by a party to the appeal;

(ii) relates to the ground on which the proposal was made; and

(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence.

(2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to--

(a) the new evidence; and

(b) the ground on which the proposal was made.

(3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal.

13. The panel was satisfied that the conditions of the new evidence provided fell under (1)(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations.

14. As such, the panel allowed the admission of the new evidence presented by Mr Cowper. Therefore, the panel also allowed the comments made by Ms Nicholls in relation to the new evidence presented by Mr Cowper.

Issue

15. The issue before the panel was to determine the correct unadjusted main space rate to be applied to the subject property's assessment.

Evidence and submissions

16. The evidence bundle submitted contained evidence from both parties, which included the grounds of the appeals; challenge decision; challenge evidence from the proposer and VO evidence at challenge.

17. Ms Nicholls argued that the RV was excessive when considering the rental evidence with regards to the subject hereditament which the lease had commenced on 7 January 2019 and she devalued to £205.61/m². However, she conceded that this rental figure was too far removed from the antecedent valuation date (AVD) of 1 April 2015 to be of any assistance. Originally, Ms Nicholls had requested a reduction in the adopted rate to £75/m², however, in the light of the new rental information that had been exchanged, she stated that a fair and reasonable unadjusted rate for the subject hereditament should be £100/m².

18. Thus, she proposed a revised assessment for the subject hereditament of £71,500 with effect from 1 April 2017 and £74,500 with effect from 4 July 2019 to reflect the addition of air conditioning within the hereditament and Ms Nicholls asked the panel to allow the appeals.

19. Mr Cowper stated that originally, Gallagher Retail Park had been split into three different values based upon size with the smaller units assessed at £240/m², the medium sized units assessed at £200/m² and the larger units assessed at £160/m².

20. However, after considering the rental evidence, the VO had decided to split the units of the retail park into four different values based upon size with certain units deviating from these levels due to location and / or specific issues.

21. Mr Cowper stated that the four sizes now used and the values applied were as follows:

Unit sizes (m²	Adopted values (£/m²)
0 - 500	220
500 – 1,000	200
1,000 – 1,500	175
1,500 and above	150

22. Once the units had been split into four different values, the subject hereditaments adopted value was reduced to £200/m², which had reduced its RV to £142,000 with effect from 1 April 2017 and to £145,000 with effect from 4 July 2019 to reflect the addition of air conditioning.

Decision and reasons

23. The panel referred to the Local Government Finance Act 1988. The term ‘rateable value’ being defined in paragraph 2(1), Schedule 6 to the Act:

> “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 tenancies began 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 tenancies began the hereditaments were 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 tenants undertake 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 hereditaments in a state to command the rents mentioned above.

24. 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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

25. In reaching its decision, the panel had regard to the Lands Tribunal judgment of Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141. This case had established six propositions giving 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.

26. As the rent on the subject hereditament commenced on 7 Jan 2019, the panel considered this to be too remote from the AVD date of 1 April 2015 and therefore, not the correct starting point. Even if the rent of the subject hereditament commenced closer to the AVD of 1 April 2015, the panel would not necessarily consider it appropriate to determine the subject hereditament's assessment based on this evidence in isolation, generally preferring to use the 'basket' of rents. However, the panel noted that the six month rent free period had been agreed, which Ms Nicholls stated brought the rent down to £157,500 which analysed to £205.61/m², which was more than the unadjusted rate the subject property had been placed in.

27. As the panel applied little weight to the rent for the appeal property, the panel then considered the other comparable evidence of units within the Gallagher retail park, Units C & D, Unit L, Unit H and Unit P, which was presented by Ms Nicholls. It was noted that the prices adopted in the assessment of her comparable properties ranged from £120/m² to £240/m².

28. Unit C & D's new lease had commenced on 19 September 2016 for a period of 15 years which had commanded a rental figure of £357,222 per annum. The lease had included a 21 month rent free period.

29. Unit L's lease had commenced on 4 August 2015 for a period of 10 years which had commanded a rental figure of £120,072 per annum. The lease had included a two year half rent period, plus three months rent free and a £240,000 capital contribution.

30. Unit H's new lease had commenced on 1 October 2015 for a period of 10 years which had commanded a figure of £250,000 per annum. The lease had three years half rent, plus a capital contribution of £60,000. It also had a stepped rent taken to first review.

31. Unit P's lease was a lease renewal which had commenced on 16 September 2014 for a period of 15 years which had commanded a rental figure of £300,000. This lease had half rent for the first four years. Ms Nicholls originally argued that this property was the best comparable to consider, as it had been a new lease. However, during formal discussions, as the lease was found to be a lease renewal, she placed less weight on the details of this rental evidence.

32. The panel turned its attention to the evidence provided by Mr Cowper and the details of the revised values adopted on Gallagher Retail Park.

33. Mr Cowper stated that the only exceptions to the revised values were units L, L1, P and N. He informed the panel that Units L and L1 were located in the worse location of the retail park as they were isolated from the rest of the units, therefore, the values adopted for those two units was unit L at £120/m² and unit L1 at £180/m². This decision was made with reference to rental evidence and location disadvantage.

34. In addition, Mr Cowper also stated that units P and N were stepped back from the other neighbouring units and away from pedestrian and traffic flow. Therefore, the adopted value for unit P was £140/m² and for unit N £180/m².

35. Mr Cowper contended that he had arrived at his opinion of value at the Gallagher Retail Park after careful consideration of all available rental evidence, which covers all of the units within the retail park except for unit J1.

36. Based on the above, as the subject hereditament was 716m² in size, the adopted value was £200/m². Mr Cowper requested that the panel accept the revised adopted value of £200/m² for the subject property and confirm the revised RV of £142,000 with effect from 1 April 2017 and £145,000 with effect from 4 July 2019 to reflect the addition of air conditioning within the hereditament.

37. It was clear to the panel that the VO had decided to adopt a different value with regards to the hereditaments size and location within the retail park after reviewing the rental evidence available. This suggested that the previous adopted rate of £240/m² was excessive with regards to the subject hereditament. However, it then considered Ms Nicolls argument that the value should be reduced further.

38. The panel noted that all of the rents would require adjustments made when analysis had taken place. The more adjustments required, made the rental evidence unreliable and it did not assist the panel to determine whether the subject hereditaments adopted value was too high. The panel therefore had to consider the tone of the list within the local area.

39. Ms Nicholls also referred to evidence on Arena Central Park, Vantage Park and Airport Retail Park. The current adopted value for the units on Arena Central Park was £225/m², Vantage Park was £90/m² and Airport Retail Park was £175/m². The panel noted that the effective dates for the hereditaments ranged from 2017 to 2019 and that Arena Central Park had been noted as a premium park for retail warehouse units.

40. Ms Nicholls stated within her submission that the vacancies at Gallagher Retail Park was in part due to occupiers leaving to relocate to the Arena Central Park. She considered that the Arena Central Park, which was a newer park was a more desirable location, although values adopted had been lower than those at the Gallagher Retail Park. It seemed that a uniform value had been applied to all units in Arena Central Park between the sizes of 546m² and 1,882m².

41. Ms Nicholls had also argued that Airport Retail Park, which was also a newer park, where units ranged in size from 786m² to 1,428m² also had a uniform value adopted at £175/m². Given the above, she was of the opinion that the value adopted for the subject hereditament was excessive, given its location and age.

42. However, Ms Nicholls also argued that the most significant comparable property was unit 1, Vantage Park. This hereditament was circa 1,000m² in size and assessed at £90/m².

43. The panel noted that no rental evidence had been provided with regards to the units located on Airport Retail Park, Arena Retail Park or Vantage Park. Therefore, limited weight could be placed on the adopted rates shown as no further details had been provided to show the reasons for the values being lower than those at the Gallagher Retail Park.

44. The new evidence provided by Mr Cowper concerned a schedule of challenge cases which had not been appealed against following the reductions in the tone across Gallagher Retail Park. It also included a schedule of checks that had not been carried through to the challenge stage once the new unit rates had been applied.

45. Ms Nicholls stated that since the schedule had been submitted, it could now be out of date. Challenges may well have been submitted since. However, even if no challenges had yet been lodged, the panel was aware that there was still time for occupiers of the units to lodge a challenge against the revised reductions.

46. Having considered both parties arguments, the panel was not satisfied that there have been enough comparable assessments which have been agreed or determined or are unchallenged to establish a pattern of values or tone. Given the above, the panel applied less weight to Mr Cowper's argument that a tone of the list has been established for the units in Gallagher Retail Park.

47. The panel concluded that Ms Nicholls had not provided any substantial evidence to prove that the current adopted rate of the subject hereditament was excessive.

48. The panel noted that the parties disagreed over how they analysed the rents of some of the units. Mr Cowper stated that he analysed rents to the end of the lease, whereas Ms Nicholls analysed rents to the first rent review for each of the units.

49. Given all of the above, the panel was disappointed that there was very little convincing evidence to support either parties' arguments as the rents were either too far removed from the AVD or different figures had been provided with regards to rental analysis. The panel found this to be of little assistance.

50. Mr Cowper had operated a four tier system once analysing the rental evidence of the units of Gallagher Retail Park. The panel noted the size of the hereditament at 710.94m². The units between 500m² and 1,000m² all had an adopted value of £200/m². As there had been insufficient evidence to show this to be incorrect for units of this size, the panel confirmed the subject hereditaments main space price at £200/m² and dismissed the appeals.

Date: 26 July 2022

Appeal numbers: CHG100388582 & CHG100340369

Right of appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.