THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Retail Warehouse and Premises; accuracy of rateable value; rent passing on comparable properties; found that weight of evidence supports a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Decision: Allowed in part

RE: West Midlands Farmers Association Ltd, Mortimer Road, Hereford, HR4 9SP

APPEAL NUMBER: CHG100352934

BETWEEN:	County Building Supplies Ltd	Appellant
	(Represented by Rabbette Chartered Surveyors)	
	and Dal S Virk (Valuation Officer)	Respondent

PANEL: Mrs M Cole (Senior Member)
Ms L Sharkey

REMOTE HEARING: 2 February 2023
CLERK: Mr J Massey
APPEARANCES: Ms L Rabbette of Rabbette Chartered Surveyors for the appellant.
Mr T Chakadini for the Valuation Officer.

Summary of decision

1. Appeal allowed in part. The panel confirmed the Rateable Value (RV) of West Midlands Farmers Association Ltd, Mortimer Road, Hereford, HR4 9SP (the 'subject property') at £75,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 Rating List as 'warehouse and premises' at a RV of £131,000 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The challenge proposal was submitted by Rabbette Chartered Surveyors on behalf of County Building Supplies Ltd and was received by the Valuation Officer (VO) on 29 July 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 £42,000 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 19 August 2021 in respect of the subject property. The VO's decision was to treat the appellant's challenge as not well-founded, but that the current rating list entry was not reasonable and proposed that it should be reduced to £86,000.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 7 July 2022.

6. As Ms Rabbette appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with her 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).

7. It was established that Ms Rabbette's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, Ms Rabbette declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that 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 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.

9. The subject property comprises a detached 1990s building of steel portal frame construction, clad in a mixture of brick, concrete block and steel profile sheeting. It is situated on Mortimer Road in the Widemarsh area of Hereford, approximately one mile north of the city centre.

10. This tribunal decision document is not and does not purport to be a verbatim record of the proceedings.

Issue

11. The issue between the parties concerned the rate per m² that should apply. Ms Rabbette, for the appellant, sought a reduction to £42,000 RV based on an unadjusted main space rate of £34.92 per m². Mr Chakadini, for the VO defended the amended assessment of £86,000 RV, which was based on an unadjusted main space rate of £85.00 per m².

12. All relevant factual information regarding the subject property, including its total area of 1,101.42m^2 (1,054.2m^2 ITMS), and the relativities used in their respective valuations were not disputed by the parties.

Evidence and Submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the appellant's challenge submission, the VO's initial response to the challenge, further evidence exchanges and the VO's challenge decision notice. The admission of late evidence submitted by the respondent was authorised by a senior member prior to the hearing. Therefore, additional information from a form of return (FOR) for Screwfix Ltd, Mortimer Road, Hereford, HR4 9SP was also included in the evidence to be considered by the panel.

14. In support of her proposed main space rate of £34.92 per m^2, Ms Rabette referred to rental evidence derived from comparable properties within the locality. She disputed the relevance of the rental evidence submitted by the VO based on the physical attributes of the subject property and its location. She argued that whilst part of the subject property was of retail quality, around 70% of it was of more industrial quality and was predominantly used for storage. Because of this she considered that the subject property should be valued as an industrial warehouse with an uplift for retail areas.

15. On behalf of the Valuation Officer, Mr Chakadini cited the rents of comparable retail warehouses in support of a main space price of £85 per m^2. He disputed the relevance of the appellant's comparable properties which were industrial units which he did not consider to be comparable. He considered that notwithstanding the use of part of the subject property as storage, the fabric of the building was similar throughout, and another occupant could use it for retail with minimal works. He referred to the current rent on the subject property, agreed in April 2019 which he had analysed at £98.37 per m^2 which he considered was in keeping with retail warehouses in the locality, and not industrial showrooms.

Decision and Reasons

16. The subject property 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.

17. 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.'

18. The panel had regard to the rent passing on the subject property. It was let on a new 20 year lease to the appellant company on 11 April 2019, on a stepped rent rising from £99,900 pa for the first five years, £102,397 pa for the next five years, £104,957 for another five years, and £107,581 for the final five years. Ms Rabette considered this rent to be too far removed from the AVD to be of any assistance. The respondent had devalued this rent to £98.37 per m^2 and considered that it supported the revised assessment of the subject property at £85 per m^2.

19. The panel did not consider this rent to be helpful in determining the correct rate for the subject property as it had been agreed four years after the AVD. However, it did indicate that 'vacant and to let' the subject property was a retail warehouse and that the rate of £34.92 per m^2 sought by the appellant was too low.

20. Ms Rabbette had referred to the rents passing of four units which she considered to be comparable to the subject property and demonstrated that the rate applied to the subject property was excessive:

The Range, Three Elms Road, Hereford, HR4 9PU

This is a superior retail warehouse with a total area of 3,362 m^2 (2764.72m^2 ITMS) and a fifteen-year lease was agreed on 13 March 2013 on a headline rent of £212,393, with a 25 month rent free period, which the appellant had analysed to £42.08 per m^2. She considered that this property was more prominently located than the subject property and its assessment at £65 per m^2 demonstrated that £85 per m^2 was excessive for the subject property.

Tile Giant, 448 Holmer Road, Hereford, HR4 9RS

This is a prominently located retail warehouse in a terrace of similar properties on Holmer Road. It was let on a ten year lease on 1 April 2011 for £36,500 pa, with a nil increase on review on 1 April 2016. Based on its size of 627.71m2 (ITMS) she had analysed the rent at £58.15 per m^2 in comparison with its current assessment at £70 per m^2.

Screwfix, Mortimer Road, Hereford, HR4 9SP

This is a retail warehouse of 615.13m^2 (ITMS) located adjacent to the subject property. Ms Rabbette stated that it had let on a lease renewal effective from 3 December 2013 at £52,000 pa with a 12 month rent free period. She had analysed this rent to be £65.60 per m^2 although she was aware that the respondent had analysed it to be £79.01 per m^2 as it was assuming that the first twelve months were at half rent rather than rent free. Bearing in mind the larger size of the subject property and its lower prominence, she considered that the subject property should be assessed at a lower rate than the £85 per m^2 applied to this property.

Magnet Kitchens, 4 Harrow Road, Hereford HR4 0EH

This is a warehouse and premises built in the late 1980s. It has an area of 1261m^2 (ITMS) and is similar in size and construction to the subject property albeit located 1.5 miles away. Its rent had been agreed on an upwards only review on 29 September 2014 at £50,000 pa which Ms Rabbette had analysed at £39.63 per m^2. It is valued at £33.52 per m^2 with an uplift for the retail area which makes up around 30% of its size.

21. Ms Rabette had also referred to the assessments of industrial properties, which had been invariably entered in the rating list as showroom and premises, and she considered these to be more comparable to the subject property.

Ron Smith Garden Machinery Centre, Rockfield Road, Hereford – is a modern purpose-built workshop and showroom in an industrial area but more prominent than the subject property. The workshop has been valued at £35.32 per m^2 with an uplift for the sales area.

13, Harrow Road, Hereford, HR4 0EH - comprises a 1970s built warehouse very similar in size to the subject assessed at £34.92 per m^2 with an uplift for the showroom which makes up around 10% of its area.

The Snowdon Building, Barrs Court Road, Hereford, HR1 1EG - is a showroom and premises built between 2000 and 2010. It has a total area of 274.44 m^2 and is much smaller and more modern than the subject property, but has been valued at £46.75 per m^2 with an uplift for the retail area which makes up around 40% of its size.

10, Plough Lane, Hereford, HR4 0ED - is a showroom and premises built in the early 2000s. It has a total area of 753.25 m^2 and is smaller and more modern than the subject property but has been valued at £37.25 per m^2 with an uplift for the retail area which makes up around 20% of its size.

Sharp and Fisher Ltd, Barton Yard, Hereford, HR4 0AZ - is a showroom and premises built in the 1970s. It has a total area of 2032.91m^2 and is larger and older than the subject property. It has been valued at £25.00 per m^2 with an uplift for the retail area which makes up around 5% of its size.

Bays 9 & 13, Sweetmans Yard, Plough Lane, Hereford, HR4 0EE - is a showroom and premises built in the late 1960s. It has a total area of 617.57m^2 and is smaller and older than the subject property. It has been valued at £25.00 per m^2 with an uplift for the retail area which makes up around 40% of its size.

Unit 1 50 Holmer Road and Unit 3 54 Holmer Road, Hereford, HR4 9RS are retail warehouses occupied by Toolstation and Topps Tiles. They were built in the early 2000s and are located in a prominent retail area. Both are valued at £80 per m^2 and the appellant considered that this demonstrated that £85 per m^2 for the older and less prominent subject property was excessive.

22. In support of the current assessment of the subject property at £85.00 per m^2, Mr Chakadini had provided details of rents of a number of retail warehouses in Hereford and surrounding towns which he considered to be comparable to the subject property.

Address	Area (m^2)	ITMS (m^2)	Rent & date	Adjusted rent	Analysed rent (£/m^2)	UAR	Remarks
Unit A Hereford Retail Park, Newtown Road, Hereford, HR4 9LN	1591.04	1591.04	£205,500 29 Sep 15	£250,085	£157.18	£150	Rent Review
Unit C Hereford Retail Park, Newtown Road, Hereford, HR4 9LN	712.73	712.73	£128,000 29 Sep 15	£128,000	£179.59	£155	Rent Review
Unit 4, Spur Retail Park, Holmer Road, Hereford, HR4 9SB	1040.17	1040.17	£150,967 29 Sep 15	£150,967	£145.16	£145	Rent Review
Unit A2, Brook Retail Park, Commercial Road, Hereford, HR1 1BL	506.14	506.14	£79,178 15 Jan 14	£52,280	£103.25	£110	New letting
Unit B, Brook Retail Park, Commercial Road, Hereford, HR1 1BL	1177.50	1123.50	£156,000 24 Sep 13	£156,000	£138.85	£100	Rent Review
Unit C, Brook Retail Park, Commercial Road, Hereford, HR1 1BL	444.01	444.01	£50,000 25 Aug 15	£38,712	£87.19	£110	New letting
Homebase, New Mills Ind Est, Ledbury, HR8 2SR	2803.80	2096.00	£237,595 25 Mar 14	£237,595	£109.77	£95	Rent Review
Focus DIY Ltd, Over Ross, Ross-on-Wye, HR9 7QJ	3394.95	2831.01	£280,000 1 Aug 13	£280,000	£98.90	£95	New letting
32 Holmer Road, Hereford, HR4 9DU	1873.23	1873.23	£210,000 1 Apr 16	£210,000	£112.11	£110	Rent Review
34 Holmer Road, Hereford, HR4 9DU	678.51	678.51	£120,518 11 Feb 16	£120,518	£174.16	£135	Lease renewal
36 Holmer Road, Hereford, HR4 9DU	1102.50	1102.50	£168,000 1 Feb 13	£168,000	£152.38	£120	New letting
Unit A, Holmer Retail Park, Holmer Road, Hereford, HR4 9UP	1396.95	1396.95	£180,000 11 Nov 13	£145,295	£104.01	£110	New letting
Screwfix Ltd, Mortimer Road, Hereford, HR4 9SP	615.13	615.13	£52,000 3 Dec 13	£52,000	£84.53	£85	New letting
B & Q PLC, Mill Street, Leominster, HR6 8EF	1575.53	1575.53	£248,250 25 Mar 15	£229,127	£145.43	£100	Rent Review
101 Widemarsh Street, Hereford, HR4 9HA	4421.54	3669.52	£533,005 14 Mar 13	£533,005	£149.32	£145	Rent Review

23. The panel noted that the majority of the properties referred to by the appellant were considered by the respondent to be industrial properties and had been valued accordingly. It noted that the subject property, whilst it had an element of storage, was mostly fitted out for retail, in a similar manner to a retail warehouse. The appellant confirmed that it had planning for retail use (A1) and as such operates as a retailer open to the general public, and the respondent stated its assessment as a retail warehouse had been agreed with the agents for the occupiers in the previous two rating lists. On this basis the panel was satisfied that the subject property, vacant and to let, would be considered to be a retail warehouse by the hypothetical landlord and tenant when negotiating its rent, and the panel considered this was supported by the subject rent.

24. Both parties had provided significant detail regarding the relative advantages and disadvantages of their comparable properties in terms of their locations and other attributes in showing that the current rate applied to the subject property was either reasonable or excessive.

25. Having considered the submissions, the panel noted that both parties had referred to Screwfix, Mortimer Road. This was adjacent to the subject property and in the same mode of use, albeit around half its size. The panel was of the opinion that this was the most useful comparable property provided by the parties given the arguments put forward regarding location. The respondent had originally devalued the rent on Screwfix to £84.53 per m^2 but having investigated the form of return and made enquiries with the agent for that property, determined that the first 12 months were at 50% rent. The respondent had revised his analysis of this rent to £79.30 per m^2 but still considered it supported the assessment of Screwfix at £85 per m^2 due to the growth in rents between 3 December 2013 and the AVD.

26. Ms Rabette had analysed the rent on Screwfix at £65.60 per m^2 on the basis that the lease had been agreed with a twelve-month rent-free period. However, the panel was satisfied, from the additional details of the lease for Screwfix submitted by the respondent and allowed as late evidence, that the rent for the first twelve months was in fact 50% and determined that the respondent's analysis at £79.30 per m^2 was correct.

27. Ms Rabette had argued that the subject property was larger than Screwfix, and less prominently located on the same estate and would therefore attract a lower rent. The panel considered that the difference in prominence in what was essentially the same location would have a minimal effect on the relative rental values of the subject property and Screwfix.

28. With regard to the effect of quantum, the panel noted that this was demonstrated in the rental values and the assessed values of 32, 34 and 36 Holmer Road and also Unit A2, Unit B and Unit C, Brook Retail Park. It considered that the differential in these values demonstrated that it would be reasonable to expect that the rent achieved on the subject property would be £10 per m^2 lower than on Screwfix due to the difference in their sizes. Taking into account an element of rental growth between 3 December 2013 and the AVD, the panel concluded that a rate of £75 per m^2 was fair and reasonable for the subject property.

29. Having considered both parties' evidence the panel concluded that the rate of £85 per m^2 adopted by the respondent was excessive and that £75 per m^2 was fair and reasonable. The panel therefore determined the RV for the subject property to be £75,929, rounded to £75,500. The appeal is therefore allowed in part.

Order

30. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for West Midlands Farmers Association Ltd, Mortimer Road, Hereford, HR4 9SP to £75,500 with effect from 1 April 2017, within two weeks of the date of this order

31. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date: 1 March 2023

Appeal number: CHG100352934

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.