VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; warehouse and premises; accuracy of rateable value; analysis of rent on comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: 14 & 15 Saxon Way, Hayes, Middlesex UB7 0LW

APPEAL NUMBER: CHG100396891

BETWEEN:	LHR Global Logistics Ltd and	Appellant
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Miss U Haque (Senior Member)
Miss L Westwell

CLERK: Miss F Willson

REMOTE HEARING ON: 26 July 2021

APPEARANCES: Mr O Hamblin from Altus Group (on behalf of the Appellant)
Mr J Balogun (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The current entry in the Rating List is confirmed at £116,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 14 September 2020, in respect of 14 & 15 Saxon Way, Hayes, Middlesex UB7 0LW (the subject property). The challenge was in respect of the entry in the rating list at £122,000 RV effective from 1 April 2017. The appellant sought a revised assessment of £97,500 RV with effect from 1 April 2017.

3. After considering the merits of the challenge, the Valuation Officer determined that it was well founded. The RV was reduced to £116,000 and a decision notice to this effect was issued on 23 December 2020. The appellant made an appeal to this tribunal against the decision notice which was received on 30 March 2021, on the grounds that the RV was not reasonable.

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.

6. Mr Hamblin 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), Mr Hamblin stated that he was instructed under a conditional fee arrangement. He 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 his client's case.

7. 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.

8. The subject property is a warehouse and premises located on Saxon Way Trading Estate with good access to Heathrow Airport Cargo Terminal and the M4. It comprises of two units with an ITMS of 1,305.56m^2 and a passing rent of £146,160 per annum from 9 December 2019.

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

Issue

10. The issue between the parties is the RV of the subject property specifically the unadjusted rate to be applied.

Evidence and submissions

11. Mr Hamblin submitted a bundle of evidence which included details of the subject property and comparable properties, the issues in dispute and photographs.

12. With reference to his comparable properties and the subject property he asked the panel to determine a revised rateable value of £97,500 from 1 April 2017.

13. Mr Balogun referred the panel to the challenge application and decision.

14. In consideration of his comments on the comparable properties admitted in evidence by the appellant, Mr Balogun asked the panel to confirm the RV of £116,000 with effect from 1 April 2017.

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 to 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, paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

16. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

- Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

- 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 section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

- 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.

- 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 be properly be referred to as giving an indication of that opinion.

- In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

- In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

17. Mr Hamblin submitted to the panel the only issue now in dispute between the parties was the unadjusted rate of £90/m^2 which he argued was unreasonable and a rate of £75/m^2 should be applied giving an RV of £97,500. He referred the panel to the need to create a basket of evidence as laid out in *Lotus and Delta*. He therefore referred the panel to the other comparable properties located close to the appeal property.

18. Mr Hamblin's comparable properties were:

Address	RV	Area (m^2)	Rent	Effective Rent	UAR (m^2)	Analysed rent
14 & 15 Saxon Way (subject property)	£116,000	1,291.02	£146,160		£90	
7 Saxon Way	£105,000	1,092.77	Stepped rent	£87,551	£90	£74.58
13 Saxon Way	£72,000	767.08	Stepped rent	£63,692	£90	£79.12
4 Saxon Way	£66,500	724.59	Stepped rent	£51,371	£90	£67.59
Unit 3, Skyport Drive	£56,000	528.10	£52,729	£46,562	£90	£73.65

Mr Hamblin submitted that 7 Saxon Way was in is opinion the best evidence as it was the most comparable with the subject property. It had a new FRI lease dated 27 October 2014 which is only months prior to the AVD. It therefore fits the statutory definition of the RV. The rent devalues to £74.58/m^2 and therefore, in his opinion, it supports the subject property being reduced to £75/m^2. Further taking an average of all the rents the median rate is £77.09/m^2 showing that the basket of evidence reflects the rate of £75/m^2 for the subject property.

19. The panel noted that the comparable properties did appear to provide a tone for a property of the same type as the subject property in that locality. They were, however with the exception of 7 Saxon Way much smaller in size than the subject property and so they put limited weight on these comparable properties.

20. The RV for the subject property proposed by Mr Hamblin is £97,500:

Floor	Description	Area m²/unit	Price per m²/unit	Value
Ground	Warehouse	397.03	£73.13	£29,033
Ground	Office	58.06	£90	£5,225
First	Office	58.06	£90	£5,225
Ground	Warehouse	685.85	£73.13	£50,156
Ground	Office	46.01	£90	£4,141
First	Office	46.01	£90	£4,141
Sub Total		**1,291.02**		**£97,921**
19 Car park spaces			£265/space	£5,035
Sub total				£102,956
Adjustments divided or split			-5.00%	-£5,148
Total Value				**£97,808**
Say				**£97,500**

21. Mr Balogun drew the panel's attention to the following:

- 7 Saxon Way – the difference in size as 7 Saxon Way has a total significant area (TSA) of 967.64m² compared with the subject property being 1,291.02m².

- 13 Saxon Way- the lease is effective from 20 June 2014. He acknowledged that the rent is lower than the current rate applied however it is also much smaller than the subject property having a TSA of 767.08m² compared with 1,291.02m².

- 4 Saxon Way with a lease effective from 1 March 2014 and analyses to £67.76/m² which is lower than that on the subject property however it is again much smaller with a TSA of 683.94m² compared to 1,291.02m².

- Unit 3 Skyport Drive-this has a rent effective from 16 May 2014 analysing to £73.65/m² but again it is smaller than the subject property having a TSA of 528.10m² compared to 1,291.02m².

Mr Balogun submitted that none of Mr Hamblin's comparable properties were truly comparable as they were all significantly smaller and so he submitted they should be given little weight.

22. Mr Balogun drew the panel's attention to the following comparable properties and their rent:

- 14 & 15 Saxon Way the subject property is let from 9 December 2019 for a rent of £146,160 per annum. Although the rent is four years post AVD he submitted it demonstrated the RV of £116,000 is not unreasonable.

- 1 & 2 Saxon Way has an RV of £172,000 and has a ten year lease effective from 4 September 2015 with a five year rent review. I t is a stepped rent analysing to £90/m^2 and has a UAR of £85/m^2. It has a TSA of 1,879.84$m^2$and so is larger than the subject property at 1,291.02m^2 and so the rate of £90/m^2 is reasonable.

Mr Balogun confirmed that 1 & 2 Saxon Way was taken on two separate leases but as the tenant was taking on two units at the same time he could have paid lower rents to reflect this.

23. Mr Hamblin argued that when two properties are taken on separate leases their evidence is less reliable as the landlord would prefer to let the two units in one lease which would create certainty. The advantage would be for the tenant who can leave one of the units at a different time to the other giving greater flexibility and so the benefit would go to the tenant. He submitted that as a result of all these factors the panel should attach little to no weight on this comparable property.

24. The panel noted that the rent passing on the appeal property is the first type of evidence to be considered in accordance with *Lotus and Delta*. In the case of the subject property the rent passing from 1 April 2017 was £146,160 per annum. The panel did however acknowledge that the rent was four years post AVD and could not have been known or foreseen at the date of the AVD.

25. In the appeal before it, the panel held that it had not been provided with sufficient evidence to demonstrate that the rateable value was excessive. The panel confirmed the RV at £116,000 with effect from 1 April 2017 and the appeal is therefore dismissed

Date: 9 August 2021

Appeal number: CHG100396891