THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 rating list; Challenges against Compiled List entries; Warehouse and premises; accuracy of rateable value; rent passing on subject property and comparable properties; found that weight of evidence did not support a reduction in the assessment of subject properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.

RE: Unit C, Rolling Mill Road, Viking Industrial Park, Jarrow, NE32 3DP

APPEAL NUMBER: CHG100401708

BETWEEN:	UTS Engineering Ltd (Represented by Altus Group)	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

PANEL: Mr J Rockliff (Presiding Senior Member)
Ms L Hussein-Venn (Senior Member)

CLERK: James Massey
REMOTE HEARING: 17 June 2022

APPEARANCES: Mr G Herron of Altus Group - Advocate/Expert witness for the Appellant.
Mr A Hinman for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel confirmed the Rateable Value (RV) of Unit C, Rolling Mill Road, Viking Industrial Park, Jarrow, NE32 3DP (“the appeal hereditament”) at £75,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The appeal hereditament had been entered in the 2017 Rating List as ‘Warehouse and premises’ at a RV of £76,500 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 Altus Group on behalf of UTS Engineering Ltd and was received by the Valuation Officer (VO) on 18 September 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 £67,000 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 18 August 2021. The VO's decision was to treat appellant's challenge as not well-founded and proposed an alteration to the rating list to RV £75,000 with effect from 1 April 2017.

5. The appeal hereditament is located on Rolling Mill Road in the Viking Industrial Park in Jarrow, located five miles east of Newcastle upon Tyne, just south of the River Tyne. It is a detached warehouse unit of steel frame construction, built in the late 1990s on the site of a former steel works. When first built, it was within an enterprise zone which existed until 2007. It is currently valued at a main space rate of £41 per m^2 with a 2.5% adjustment for no central heating in the warehouse space and a 10% uplift for office space. During the challenge, the VO accepted the appellant's contention that the area under the mezzanine offices (117.45m^2) should be value at 70% of the main space rate due to restricted height. This reduced the area ITMS (in terms of main space) of the hereditament from 1873.56m^2 to 1839.29m^2 and resulted in a reduction in the RV to £75,000 in the VO's challenge decision.

6. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

7. The issue between the parties concerned the RV of the appeal hereditament, specifically, the rate per m^2 that should apply. Mr Herron, for the Appellant, sought a reduction to £67,000 RV based on a main space rate of £36.50 per m^2. Mr Hinman, for the VO, defended the revised assessment of £75,000 RV, which was based on the existing main space rate of £41.00 per m^2.

8. All relevant factual information regarding the subject and comparable properties, including their areas, was not disputed by the parties.

Evidence and Submissions

9. Mr Herron 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 Herron's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

10. Mr Herron 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 the client's case.

11. 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).

12. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

13. Mr Herron referred to the rent passing on the subject hereditament. This had been agreed on full repairs and insurance basis on a ten-year lease, with effect from 20 January 2014, with a five-year break clause. The rent was agreed at £81,500 per annum (pa), with six months' rent-free period and half rent from 20 July 2014 to 8 December 2015. He stated that the current rent passing after the first review is £97,000 pa with a further six-month rent-free period. He had analysed the rent to the first review to an equivalent annual rent of £65,878 pa which he had calculated equated to £35.83 per m^2.

14. Mr Herron also referred to the assessment of 2 Rolling Mill Road at £30.00 per m^2. He considered that rate applied to this smaller unit, with an area ITMS of 843.2m^2 supported a lower assessment of the subject hereditament, based primarily on the subject rent, at a main space rate of £36.50 per m^2.

15. Within the challenge decision, the VO had considered that the rent on the subject hereditament should be analysed over the full term of ten years of the lease. This resulted in an analysis of £42.15 per m2 which he considered supported the current assessment at £41.00 per m^2. Prior to the hearing, the VO representative had contacted the appellant and the tribunal to state that his opinion differed from that of the original caseworker in that the correct analysis of the subject rent was over five years to the first rent review, and that he considered the subject rent analysed to £35.83 per m^2. He considered however, that less weight should be given to the subject rent due to its agreement over a year before the AVD, and the considerable adjustments required to accord with the definition of a hypothetical rent.

16. Mr Hinman considered that the rents agreed on two similar sized warehouses on Rolling Mill Road, and an assessment agreed on a challenge on a larger warehouse on Rolling Mill Road demonstrated that the current assessment of £41.00 per m^2 is reasonable for the subject hereditament.

Decision and reasons

17. 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 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.

18. 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 1976 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.'

19. Mr Herron argued that the rent passing on the subject hereditament suggested that the current UAR at £41.00 per m^2 was not reasonable and supported a reduction to £36.50 per m^2. Mr Hinman had rejected the rent on the subject property as unreliable, as it had been agreed more than a year before the AVD and a large number of adjustments were required, in order for it conform to the statutory definition of RV.

20. The panel is aware that, following the propositions set out above, the rent on the subject property should be a starting point. It noted that the rent had been agreed some time before the AVD. Whilst this presented difficulties in determining the rent passing on the subject property at the AVD, the panel was satisfied that this transaction provided a starting point, but consideration of a basket of rents was necessary to come to a conclusion regarding the correct rate to be applied to the appeal property.

21. The panel also noted that the rent agreed for the appeal property on a review in January 2019 was £97,000 pa for a term of five years, with a six-month rent-free period. Although this was nearly four years after the AVD, in the panel's opinion it showed that rents increased between 2014 and 2019, which suggested that the rent on the subject property would have been higher at the AVD than that agreed in January 2014.

22. Mr Herron asserted that the assessment of Unit 2 Rolling Mill Road at £30.00 per m^2 supported a lower rate for the appeal property but the respondent did not consider this property to be comparable to the appeal property. It was around $1000m^2$ smaller ITMS, and as such was in a different scheme to the appeal property. The panel therefore considered that little weight could be placed on the assessment of Unit 2 Rolling Mill Road in determining the correct rate for the appeal property.

23. Of the comparable properties provided by both parties, the panel considered that Unit D Rolling Mill Road was the most comparable to the appeal property in terms of size, construction, age and location and the rent agreed and the rate applied provided the best indication of the correct value for the appeal property. The rent of £68,900 pa had been agreed for Unit D Rolling Mill Road on a lease renewal six months after the AVD. Although not a new letting, the panel considered that this represented a 'clean' rent as there were no adjustments required for rent free periods or other incentives. This rent had been analysed to £44.86 by the respondent and Unit D Rolling Mill Road was valued on a UAR of £44.00 per m^2. In applying similar weight to the analysed rents on Unit D and the subject property, the panel considered that the current UAR of £41.00 per m^2 applied to the subject property was not unreasonable.

24. A new letting for 1 Rolling Mill Road had been agreed on a five-year lease on 1 July 2017 at £50,000 pa with no rent-free periods or other incentives. This had been analysed, based on its area ITMS of $1149.64m^2$ at £43.49 per m^2. The UAR for this unit was £44.00 per m^2 and it was similar in age and construction, but somewhat smaller in size than the subject property with a lower eaves' height of 6.75m. Whilst the panel did not consider this property to be directly comparable to the subject property, it considered that its analysed rent and assessment showed that the current assessment for the subject property was not unreasonable.

25. Consequently, from the rent passing on the appeal property and the basket of rental evidence provided by the parties the panel was satisfied that the current assessment of the subject property was not excessive. The appeal is therefore dismissed.

Date: 13 July 2022
Appeal number: CHG100401708

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.