THE VALUATION TRIBUNAL FOR ENGLAND

2017 Non-domestic rating list appeal; Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Factory and premises; Price per m^2 in dispute; Appeal dismissed.

RE: East Factory Epwin Group, Alders Way, Paignton, Devon TQ4 7QL

APPEAL NUMBER: CHG100427112

BETWEEN:	Epwin Group Plc	Appellant
	and	
	The Valuation Officer	Respondent

PANEL: Mrs A Fielder (Senior Member) and Mr A Wheeler

CLERK: Mr A Johnson Tech IRRV

ON: 4 May 2022

APPEARANCES: Mr R Storr of Altus Group (representing the Appellant)
Mr L Butcher (representing the Valuation Officer)

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

DECISION AND STATEMENT OF REASONS

Summary of decision

1. This appeal was dismissed. The panel determined that the rateable value of East Factory Epwin Group, Alders Way, Paignton, Devon TQ4 7QL of £212,000 with effect from 1 April 2017 was not unreasonable.

Introduction

2. This is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that the panel considered all of the evidence presented before coming to its decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the subject property on the compiled date of 1 April 2017 was not reasonable. The appellant was seeking a revised rateable value of £152,000 which had been based upon an unadjusted rate of £25 per m^2 but, at appeal, this was revised to £182,000 at an unadjusted rate of £30 per m^2.

5. The representatives for both parties stated that they were appearing in a dual role of both advocate and expert witness, and that their first duty was to the Tribunal. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Storr declared that he was appointed on a conditional fee basis. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

Issue

6. The issue in dispute was the rateable value which had been ascribed to the subject property from 1 April 2017. The parties disagreed the price per m^2 to be applied. The appellant had disputed specific areas of the property, arguing that they were loading bays but this was withdrawn at the commencement of the hearing to simplify the dispute.

Decision and reasons

7. The panel considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process.

8. The panel followed the VTE's model procedure and Mr Storr presented the appellant's case first.

9. The subject property was a large industrial unit which had been built in 1980. It had been extended a number of times over the years and had an area of 7,496.3m^2. As a result, the site had become cramped and fragmented. He

argued that the current unadjusted rate of £35 per m^2 was unreasonable. The rent was agreed in October 2011 at £282,000 per annum and, according to Mr Storr, this was reviewed in 2014 without any change to the rent being made. Mr Storr added that this rent was between connected parties, a point which Mr Butcher said had not been substantiated.

10. Mr Butcher submitted that upon review of the rent, it was his professional opinion that Nissha had been under-valued and would be reviewed, to which Mr Storr accused the Valuation Officer of impugning the rating list. Turning to Suttons, Mr Butcher argued it was more modern and larger, it included an element of quantum and has less disadvantages.

11. Mr Butcher argued that the starting point for determining the rateable value for the subject property was the passing rent which, he highlighted was in excess of its rateable value.

12. Mr Butcher also questioned Mr Storr's evidence that this rent was between connected parties as no connection had been evidenced. In contrary, two FOR's which had been received by the Valuation Officer in June 2015 and July 2019 did not indicate any such connection. Attempts had been made to establish a connection which were unsuccessful and request had been made to Mr Storr during the challenge stage but this remained unclear.

13. 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 antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the appeal hereditament is 1 April 2017.

14. Having regard to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, the panel considered the rental evidence in respect of the subject property as their starting point. In doing so, it noted that whilst it had commence in 2009, it had been reviewed in 2014 and remained at £212,000 per annum. The panel also noted that it exceeded the adopted rateable value which made it strong evidence to show that no reduction in rateable value was warranted.

15. The panel decided that it could not place any weight upon Mr Storr's argument that the rent in respect of the subject property was between connected parties and therefore unreliable. No evidence was provided to substantiate this argument. Whilst it is of note that Mr Storr had requested an adjournment in order to obtain evidence to support his argument that the rent was connected, the panel refused to allow it. This was because the evidence was reasonably available to him (or obtainable) at the challenge stage and it should have been produced at that point in the process. The panel noted that the Valuation Officer had specifically sought evidence of a connection in the initial response to the challenge and within the decision notice. Producing it at

the appeal stage would constitute new evidence, contrary to regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and, in all likelihood, be excluded. What had been referred to in this appeal, contrary to Mr Storr's submissions, was two completed FOR's which had not made any reference to the rent being between connected parties and had stated that it was an open market rent.

16. The panel noted that the parties placed little or no reliance on any other rental evidence because of the lack of comparability of those properties.

17. Mr Storr referred the panel to other properties which, in his view, when compared to the subject property, demonstrated that a rateable value of £212,000 was not reasonable. When asked to highlight his main comparables he referred to two properties which, for the purpose of this decision notice, the panel will refer to 'Nissha' and 'Suttons', both of which had been valued at an unadjusted rate of £30 per m^2. Nissha had been built in 2018 and Suttons in 1997 and had been built to a high standard. Nissha had a total area of 6,077m^2 whilst Suttons was 8,711.92m^2.

18. The panel found that it was unable to place any significant weight upon the comparable properties put forward by Mr Storr. The panel fully understood his argument that the Valuation Officer was impugning the rating list in respect of Nissha however, it also fully understood the Valuation Officer's general duty to maintain an accurate rating list and the principle that correctness should not be sacrificed for the sake of uniformity (the parties will no doubt be aware of *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* [1932]). Whilst Sutton's was superior and more modern the panel found that it did not necessarily follow that they should have the same unadjusted rate. Whilst some adjustments had been made to Sutton's rateable value to reflect its disadvantages, significantly more allowances had been made to the subject property's valuation for various matters.

19. Turning to the other comparable assessment evidence put forward by Mr Storr, the panel noted that Poron Works was in a different location and the rest were significantly smaller than the subject property which, in the panel's view, made them less reliable for use when assessing the rateable value of the subject property.

20. When considering the basket of comparable evidence placed before it, the panel was not persuaded that a rateable value of £212,000 was unreasonable. Ultimately, there was evidence received by the Valuation Officer to show that the rent on the subject property was an open market rent and in the absence of evidence to show otherwise, it was reasonable to give this the most weight. Thus, the panel dismissed this appeal.

Date: 18 May 2022

Appeal Number: CHG100427112