VALUATION TRIBUNAL FOR ENGLAND

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

RE: 11 Welton Road, Wirral CH62 3PN

APPEAL NUMBER: CHG100464485

BETWEEN:	CDS (Superstores International) Ltd	Appellant
	And	
	Ms A Hitchings (Valuation Officer)	Respondent

PANEL: Mrs MJ Cole (Presiding Senior Member)
Mr AN Backway (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 5 September 2022

APPEARANCES: Mr D Hart from Harts Consultancy (on behalf of the appellant)
Mr C Skerratt (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the current entry in the Rating List for 11 Welton Road, Wirral CH62 3PN (the subject property) with effect from 5 November 2018.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 20 November 2021, in respect of the subject property. The challenge was in respect of the entry in the rating list at £750,000 RV effective from 5 November 2018. The appellant sought a revised assessment of £465,000 RV. After considering the merits of the challenge, the Valuation Officer determined that it was not well founded and issued a decision notice to this effect on 23 November 2021. The appellant's representative made an appeal to this Tribunal which was received on 23 March 2022.

3. The subject property is a retail warehouse with a ground floor used for sales which was substantially refurbished in 2015 and a mezzanine floor used for sales and storage. It is fully heated with only partial air conditioning and it is located on a retail park with similar properties in Bromborough. The subject property is 6,050.59m^2. The appellant holds a sublease which commenced in July 2015 at a rent of £511,635 per annum with a rent free period of eleven months.

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

5. Mr Hart 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 Hart's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Hart 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.

Issue

6. The issue between the parties is the correct RV of the subject property with effect from 5 November 2018.

Evidence and submissions

7. Mr Hart submitted a bundle of evidence which included details of the subject property, the issues in dispute, details of comparable properties and a calculation of his revised RV.

8. With reference to his comparable properties and the rent on the subject property he asked the panel to confirm a RV of £465,000 from 5 November 2018.

9. Mr Skerratt referred the panel to the challenge application and decision notice.

10. In consideration of his comparable properties Mr Skerratt asked the panel to confirm the RV of £750,000 with effect from 5 November 2018.

Decision and reasons

11. The subject 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 1988 Act)). 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 the1988 Act, in relation to both the physical nature of the property and its mode or category of use.

12. 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 point.

- 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 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 subject 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.

13. Mr Hart explained that the appellant had taken on a sublease of the subject property from Tesco in July 2015 when the property became surplus to requirements. He submitted that the sublease was conducted at arm's length under the prevailing market conditions and therefore fitted within the hypothetical rating assessment for non-domestic rates.

14. The sublease included an eleven months rent free period but in Mr Hart's opinion it was the "cleaner" or most relevant transaction and therefore should be included in the basket of evidence as outlined in the *Lotus and Delta* case. The rent passing on the subject property analyses to £107.25/m^2 from July 2015 and this, he submitted, supported the rate of £110/m^2.

15. The panel was aware that in the case of *Lotus and Delta*, which was binding on this Tribunal, the rent on the subject property was the starting point. However, the weight to be attached was dependent on how close to the AVD it was set and if it was in respect of a new letting in the open market

16. Mr Hart did however concede under questioning that the appellant paid the rent on the sublease to Tesco and he believed that they in turn paid the landlord the full rent according to the headlease. The level of rent for the sublease was therefore not dependent on the rent payable under the headlease.

17. On the basis that the rent payable under the sublease was not determined by the headlease rent the panel put little weight on the rent payable on the sublease.

18. He confirmed that the subject property was not substantially refurbished in 2015 as the VO maintained as the appellant had already changed the floor coverings and décor to fit in with the company trading style.

19. The panel noted that the subject property was not refurbished, but it is an assumption when setting a rateable value that the subject property is in a reasonable state of repair in accordance with its use. The panel therefore put little weight on this evidence.

20. Mr Hart's comparable properties were:

    - Dunelm, Welton Road, Wirral CH62 3PN a similar property to the subject property of 2,049.55m^2. and has a rent at January 2015 just two months before the AVD of £330,000 per annum or £161.07/m^2. The lease did however have a one year rent free period and the landlord gave a capital contribution of £150,000 to the tenant as an incentive. Mr Hart argued that this is a standard inducement to a tenant to occupy and should not affect the analysed rent.

    - Currys & PC World Megastore Welton Road, Wirral CH62 3PN is also in the vicinity of the subject property and measures 2,186.42m^2. It has a rent from January 2011 of £500,000 per annum being £273.72/m^2 which analyses to £228.68/m^2.

21. Mr Hart submitted that the rental values have fallen between the lease to Currys in 2011 at a rent equivalent to £244.78/m^2 and the letting to Dunelm four years later and three months before the AVD at £127/m^2. On this basis Mr Hart argued that the Currys rent was not relevant as it was set in a much stronger market than that at the AVD. At the time of the AVD the rental figures in the market had fallen. The analysed rent for Dunelm which is smaller at £127/m^2 would suggest a level of £110/m^2 for the subject property was correct.

22. The panel noted that the rental figures did seem to demonstrate a fall in rental values towards the AVD. However the Dunelm rent would need to be adjusted to take into account the incentive of eleven months rent free and a capital payment of £150,000 before it could be compared to the subject property.

23. Mr Skerratt submitted that the rent on the subject property was not determined in an open market. At the time of the sublease, Tescos was in severe financial crisis and was forced to close or release forty three of their stores and the appellant took subleases on some of them. As such, he submitted that the rent agreed on the subject property was negotiated as part of a larger arrangement for the appellant to take on Tesco stores including that at Runcorn. This meant that they would have been able to negotiate a lower rent than that in the open market.

24. He therefore submitted that the best evidence for rent on the subject property was the rent on the headlease not the sublease. A rent review in 2012 on the head lease agreed an analysed rent of £284.5/m^2. The analysed rent from the sublease is therefore significantly less at £107.25/m^2. This supported the use of an analysed rent of £200/m^2.

25. Mr Skerratt drew the panel's attention to the other smaller units on the same retail estate. The rent on those units ranged from £209/m^2 to £418/m^2 with the vast majority being circa £300/m^2 and nearly all around the AVD. Even allowing for the quantum factor due to the difference in size the difference between £300/m^2 and £110/m^2 would be an extreme gap.

26. The panel noted the difference between the analysed rent on the smaller units compared to the analysed rent on the subject property based on the sublease and found the difference too great to be persuasive. The panel put weight on this argument.

27. On balance, the panel was more persuaded by the evidence provided by the Valuation Officer and confirmed the analysed rent of £200/m^2. The panel therefore found that it had been provided with sufficient evidence to support the RV for the subject property at £750,000 with effect from 5 November 2018 and dismissed the appeal.

Date: 16 September 2022

Appeal number: CHG100464485