THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Factory and premises; accuracy of rateable value; found that weight of evidence did support a reduction in the assessment of the subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed.

RE: Akhter House, Perry Road, Harlow, Essex CM18 7PN

APPEAL NUMBER: CHG100569329

BETWEEN:	Akhter Computers Ltd (Represented by Altus Group)	Appellant
	and	
	Jo Moore (Valuation Officer)	Respondent

PANEL: Mr J M Imperato (Senior Member)
Mr P Phelps

CLERK: Mr James Massey
REMOTE HEARING: 22 September 2022

APPEARANCES: Mr M Clayton of Altus Group - Advocate/Expert witness for the Appellant.
Mr L Stevens for the Valuation Officer.

Summary of decision

1. Appeal allowed. The panel determined the Rateable Value (RV) of Akhter House, Perry Road, Harlow, Essex, CM18 7PN (“the subject property”) at £118,000 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 ‘Factory and premises’ at an RV of £151,000 with effect from 1 April 2017. As this was a compiled list appeal the material day was 1 April 2017.

3. The challenge proposal was submitted by Altus Group on behalf of Akhter Computers Ltd and was received by the Valuation Officer (VO) on 26 January 2021. 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 £118,000 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 28 January 2022. The VO’s decision was to treat the appellant’s challenge as not well-founded.

5. The appeal hereditament was located on Perry Road, off Southern Way in Harlow and was constructed in 1971 but, having suffered fire damage, was removed from the rating list on 11 November 2020. It’s total area of 3,155.53m^2 comprised a ground floor warehouse and ancillary first floor space and was valued at a main space rate of £45 per m^2.

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 the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked..

Preliminary issue

7. On the day before the hearing, Mr Clayton had sent an email to the respondent and the Tribunal containing the detailed valuations of his comparable properties. He stated that this information had been erroneously excluded from his supporting evidence statement. It did not constitute new evidence but provided details of the valuations of the five comparable properties referred to in the challenge and he asked that its inclusion be allowed at the hearing. As Mr Stevens agreed that this did not constitute new evidence and had no objection to its inclusion, the panel decided that its inclusion should be allowed.

Issue

8. The issue between the parties concerned the RV of the appeal hereditament, specifically, the rate per m^2 that should apply. Mr Clayton, for the appellant, sought a reduction to £118,000 RV based on a main space rate of £35.00 per m^2. Mr Stevens, for the VO, defended the revised assessment of £151,000 RV, which was based on the existing main space rate of £45.00 per m^2.

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

Evidence and Submissions

10. Mr Clayton 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 Clayton declared at the hearing that he was instructed under a conditional fee arrangement.

11. Mr Clayton 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.

12. 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.

13. Mr Stevens appeared on behalf of the respondent as both Advocate and expert witness and in his declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Stevens declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and his report complies with this as well as the requirements of his professional body regardless of whether or not the evidence supported the VO's case.

14. Mr Clayton explained that the subject property is currently valued under scheme 355206 which relates to industrial/storage units at Perry Road & Pegrams Road, Harlow which were constructed from 1950 to 1979. He believed that the subject property also reflected the attributes of properties in scheme 354232 which relates to industrial/storage units in Central Road, West Road, South Road (including South Place, but not Oakwood Estate), East Road and Edinburgh Way (including Edinburgh Place) and Templefields industrial area, Harlow, constructed in the post-war period up to 1979.

15. Mr Clayton considered that properties in scheme 354232 were better located in established industrial areas with strong transport links and infrastructure, whereas the subject property is located on a relatively small industrial area in a mainly residential part of Harlow. He referred to the assessments of what he considered to be comparable hereditaments in scheme 354232, which had recently been agreed at £35.00 per m^2:

- European Watercare, Regals House, South Road, Harlow CM20 2BD (3643.37m^2)
- 1-2 South Road, Harlow CM20 2AR (3203.32m^2) (now known as 16 Oakwood Estate)
- Building 62 West Road, Harlow CM20 2BG (3665.21m^2)
- Lyden House, South Road, Harlow CM20 2BG (5120.56m^2)
- Kenrich (Quality) House, Elizabeth Way, Harlow CM19 5TL (3924.67m^2)

16. Mr Stevens considered that the comparable properties cited by the appellant were older than the subject property and were not suitable as a guide to its value. He referred to a schedule of rental evidence on industrial properties which he considered illustrated that the current rate adopted for the subject was not excessive:

Address	Area (m^2)	Effective date	Rent	Effective rent	Analysed rent (£/m^2)	Unit rate(£/m^2)
Faber & Faber, 16 Burnt Mill, Elizabeth Way CM20 2HS	3789.93	1 April 2014	£149,112	£149,112	£41.23	£36.50
1-2 South Road CM20 2BD	3203.32	23 June 2013	£119,392	£109,243	£36.34	£36.50

Unit E, Riverway CM20 2SN	3759.70	20 July 2011	£95,000	£161.683	£55.59	£52.50
Luminescence Int'l, The Fairway CM18 6LY	4024.64	1 February 2018	£164,800	£174,237	£55.00	£45.00
Unit G2, Riverway CM20 2DZ	3251.10	1 July 2016	£252,800	£242,543	£69.07	£60.00

17. Mr Stevens explained that Harlow was a 'new town' planned and constructed after the Second world war. There were a number of designated industrial areas which had been included in the plans for the new town which, in the main, still existed today and the subject property was located within one of these. He considered that the location of the subject property was similar to those of his comparable properties and that their rents and assessments indicated that the current RV for the subject property reflected its age and location.

Decision and reasons

18. 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.

19. 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.'

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 neither party had cited a rent on the appeal property and so turned to the comparable properties they had each provided.

21. Mr Stevens had provided details of rents agreed on five properties which he considered to be comparable to the appeal property and their respective assessments. With regard to the two properties on River Way, Mr Clayton had referred to the fact that this was an Enterprise Zone, with associated reliefs and grants which add a premium to rental levels achieved. Mr Stevens considered that the Enterprise Zone designation only benefits properties which meet specific criteria and it would therefore not be a more desirable location than the subject location. Examining the rents achieved on the two properties in River Way, the panel noted that these were higher than those properties located on other estates which, it considered, indicated that there was some benefit to companies relocating to River Way which would be reflected in the rents agreed. It therefore did not consider these two properties to be of any assistance in determining the correct RV for the subject property.

22. Mr Stevens had also referred to the rents agreed on Faber & Faber, 16 Burnt Mill, and Luminescence Int'l, The Fairway which had been agreed on 1 April 2014 and 1 February 2018 respectively. Having analysed their rents, he considered that they supported their current assessments at £36.50 and £45.00 per m^2 which, in turn, supported the current assessment of the subject property. Although Mr Clayton had referred to the rent on both of these properties having been agreed between connected parties and therefore not open market rents, Mr Stevens stated that some weight should be placed on these rents as the connected parties had a fiduciary duty to agree rents as if there was no connection.

23. The panel was satisfied that the rent agreed on these two properties reflected open market values, however, it determined that the rent agreed on Luminescence Int'l was too distant from the AVD to be of any assistance. However, it considered that the rent agreed on Faber and Faber, one year before the AVD did indicate that the current assessment of the appeal property at £45.00 per m^2 was excessive.

24. The only other comparable property submitted by Mr Stevens was 1-2 South Road, which he stated was older than the subject property. Its rent, agreed on 23 June 2013 was analysed by the respondent to £36.34 per m^2, which Mr Stevens contended supported its assessment at £36.50 per m^2. Mr Clayton pointed out that the RV had been amended for 1-2 South Road, along with its address, following an agreement and it was now assessed at £35.00 per m^2.

25. The panel noted that neither party had provided comparable properties which were located in the same industrial area as the subject property, or which had been assessed under the same scheme (355206) as the subject property. All of Mr Clayton's comparable properties were within scheme 354232 and, apart from Kenrich (Quality) House, were located within

the Templefields industrial area. Mr Stevens considered that these properties were not comparable to the subject property as they were older and in different locations within Harlow. Mr Clayton asserted that his comparable properties were better located than the subject property in terms of transport links and local infrastructure and were similar in age to the subject property.

26. Whilst the panel did consider that Mr Clayton's comparable properties were older than the subject property, no information was provided by the respondent as to how much older they were or to what extent, if any, such age difference would affect their relative rental potential. The panel did not consider that there was an appreciable difference in value between the location of the subject property and those in Templefields and decided that the most weight should be given to the agreed assessments on this estate submitted by the appellant. They had all been agreed at a main space rate of £35.00 per m^2 and, having taken all of the evidence presented into account, the panel considered that this was appropriate for the subject property.

27. The panel therefore considered that the current RV of £151,000 was excessive and that the RV of £118,000 proposed by the appellant was fair and reasonable. The appeal is therefore allowed.

Order

28. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Akhter House, Perry Road, Harlow, Essex CM18 7PN to £118,000 with effect from 1 April 2017, within two weeks of the date of this order.

29. 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: 19 October 2022
Appeal number: CHG100569329

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.