THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; retail warehouse and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; assessments of comparable properties; correct main space rate to be applied to the subject property's assessment; allowance sought for quantum; appeal dismissed as the evidence showed that the existing valuation was not unreasonable.

RE: The Range Home and Leisure, Units 7 and 8 Avonmeads, Bristol BS2 0SP

APPEAL NO: CHG100570772

BETWEEN: CDS (Superstores International) Limited Appellant

and

Mr D Virk (Valuation Officer) Respondent

PANEL: Mr WJ Read (Presiding Senior Member)
Mrs A E Fielder (Senior Member)

CLERK: Mrs R James

REMOTE HEARING 2: Friday 7 October 2022

Followed by a reconvened hearing

REMOTE HEARING 5: Tuesday 15 November 2022

APPEARANCES: Mr D Hart of Hart Consultancy (on behalf of the Appellant)
Ms S Pascoe (Respondent's representative)

Summary of decision

1. Appeal dismissed; the appeal property's assessment remained unaltered at £365,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: The Range Home and Leisure, Units 7 and 8 Avonmeads, Bristol BS2 0SP (the appeal property), which was originally entered in the 2017 Rating List as retail warehouse and premises at £495,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 27 January 2021. The appeal to this Tribunal was made on 7 April 2022, following the VO's decision notice of 9 December 2021, in respect of the appeal property (hereditament). This is a compiled list appeal, so the material day is 1 April 2017. During the Challenge process the appeal property's assessment was reduced from £495,000 RV to £365,000 RV, with effect from 1 April 2017.

4. The subject property was a terraced retail warehouse and premises. It was located on Avonmeads Retail Park, which was about two miles to the east of Bristol city centre. Avonmeads Retail Park comprised nine retail units situated in a prominent location fronting Philips Causeway, a Showcase Cinema and Hollywood Bowl were located adjacent.

5. The appellant, CDS (Superstores International) Limited traded as The Range, which was a discount retailer that offered a range of domestic, leisure, DIY and gardening products.

6. The appellant took a 20 year lease on the appeal property with effect from 29 September 2004. The commencing rent was £519,740 per annum (pa) and there was an initial three months' rent-free period to allow time for fit out, plus a reverse premium of £25,000 was paid to the landlord. The lease provided for upward only rent reviews every five years; however, the rent had never increased and had remained at £519,740.

7. Mr Hart was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved, and if so, whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. Mr Hart confirmed that he was not instructed on a conditional fee basis.

9. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

10. The hearing of this appeal commenced on Friday 7 October 2022. However, throughout the course of that hearing, it became apparent that not all the relevant evidence had been uploaded to the Tribunal's database when Mr Hart had lodged the appeal. Ms Pascoe was in agreement that the panel did not have all the documents exchanged between the parties during the Challenge process. Mr Hart stated that the missing documents were pertinent to his case, and he considered that the appellant would be prejudiced without their inclusion.

11. After a short adjournment to consider the matter, the panel decided that the best course of action was to adjourn the hearing of this appeal to allow Mr Hart the opportunity to provide the relevant missing documentation. As such, the appeal was adjourned. The same panel reconvened on Tuesday 15 November 2022, by which time, Mr Hart had provided the documentation in question. Ms Pascoe had no objections to the inclusion of that evidence, therefore, it was forwarded to the panel members prior to the reconvened hearing. The

hearing of the appeal continued on 15 November 2022, when all the relevant documentation was considered.

Issues

12. There were two issues in dispute:

i) the correct main space rate to be applied to the appeal property's valuation; and
ii) whether or not a quantum allowance was warranted?

Evidence and submissions

13. The panel had been provided with a bundle of evidence, which comprised the Challenge submission, VO Decision notice and the representative's supporting evidence statement.

14. Having regard to the evidence he had presented, Mr Hart sought a reduced main space rate be applied to the appeal property's assessment from £180/m^2 to £140/m^2. The proposed rate of £140/m^2, reflected a lower main space rate of £156/m^2, plus a 10% quantum allowance to reflect the larger size of the premises. This resulted in his proposed assessment of £292,500 RV, with effect from 1 April 2017.

15. Referring to the VO's decision notice, Ms Pascoe considered that the current main space rate applied to the appeal property of £180/m^2 was not unreasonable. She also considered that a quantum allowance for the appeal property was unwarranted. Accordingly, she sought dismissal of the appeal.

Decision and reasons

16. 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 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

17. Firstly, the panel addressed the issue of the correct main space rate to be applied to the appeal property's assessment. The main space rate originally applied had been £250/m^2. However, within the VO's decision notice, a reduction to £180/m^2 had been applied, which resulted in the current assessment of £365,000 RV, with effect from 1 April 2017. Mr Hart sought a reduced main space rate of £140/m^2, which incorporated a rate of £156/m^2, with a 10% quantum allowance.

18. In addressing the correct main space rate, 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 Mr Hart. This case had established six propositions that 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 is 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 1967 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. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration of how that rent compared to the statutory definition of rateable value.

20. In this appeal, neither party had placed weight on the appeal property's rent, which had not increased since 2004.

21. As such, the panel went on to consider the rents set in relation to the comparable properties put forward by the parties. Mr Hart had referred to the following rents in relation to units at Avonmeads Retail Park:

i) Unit 6 (928.55 m^2) - occupied by B&M Bargains on 6½ year lease with effect from 25 March 2013 at a rent of £266,500 pa. There was a landlord incentive of £732,875 and 33 months' rent free. Mr Hart analysed this rent to £165.58/m^2.

Ms Pascoe stated that Unit 6 had been let to B&M Bargains when an overriding lease had been agreed (on the same terms as the original) between the landlord and the guarantor of the previous tenant Comet, who went into liquidation. The lease was then transferred to B&M Bargains and a reverse premium of 11 instalments of rent (£732,875) agreed with the guarantor. The Valuation Office Agency (VOA) held no details in relation to the reverse premium. They did not accept that the reverse premium was all incentive to be included in the rental analysis. Ms Pasco had analysed the rent with the full reverse premium to £161.16/m^2 and £287.01/m^2 without.

ii) Unit 4a Right (1,397.50 m^2) – occupied by Food Warehouse on a ten year lease from February 2016 (Ms Pascoe) or 21 December 2015 (Mr Hart). It was a stepped rent rising to £300,000 in years 4 and 5 and £315,000 or open market rent in years 6 to 10. Mr Hart had analysed this rent to £144.76/m^2 and Ms Pascoe to £187.81/m^2.

iii) Unit 5 (924.22 m^2) – occupied by Wilco on a ten year lease from 8 August 2016 at a rent of £229,310. Mr Hart stated that here was a 25 months' rent-free period and analysed the rent over five years to £156.33/m^2. Ms Pascoe stated that there was an 18 months' rent-free period, which she had analysed to £174.89/m^2 over five years and £203.63/m^2 over ten years.

22. Having regard to the above rental evidence, the panel was not persuaded that Mr Hart's proposed main space rate of £156/m^2 was justified. The panel noted that the three rents all required significant adjustment to bring them into line with the statutory definition of rateable value. The panel acknowledged that the rent in relation to Unit 6 had been set in March 2013 which was two years post AVD. There was also the unusual assignment from a guarantor. In relation to Unit 4a Right, there was discrepancy between the parties over the commence date of the lease. Furthermore, the rent was stepped and there was a vast discrepancy in the parties' analysis of that rent. In relation to Unit 5 the parties offered differing rent-free periods, both of which were substantial.

23. As the panel had placed less weight on the rental evidence presented, it went on to have regard to the fourth proposition outlined in *Lotus* v *Delta* and considered the assessments placed on comparable properties.

24. Ms Pascoe had provided the following settlement evidence in respect of units on Avonmeads Retail Park:

i) Unit 1 (1,112.81 m^2) agreed at £180/m^2.
ii) Unit 4a Right (1,397.5 m^2) agreed at £180/m^2.
iii) Unit 5 (924.22 m^2) agreed at £180/m^2.

25. Ms Pascoe also explained that the units 1, 2a, 2b, 3, 4a Left, 4a Right, 5, 6 and 7 ranged in size from 681.85 m^2 to 1,846.60 m^2 and the main space rate applied to all the units had been agreed at £250/m^2 for the 2010 Rating List.

26. The panel was more persuaded by the tonal evidence. Whilst the panel accepted that assessments should be considered afresh at each separate rating list, it found no reason why the appeal property should not be valued at the tone of £180/m^2 as agreed between the VOA and various rating representatives in relation to Units 1, 4a Right and 5.

27. Having determined that the current main space rate applied to the appeal property's assessment of £180/m^2 was not unreasonable, the panel went on to consider the second issue in relation to whether or not a quantum allowance was warranted.

28. In support of a 10% allowance for quantum, Mr Hart had referred to various allowances applied to retail warehouse and premises located on four other retail parks across the Bristol area. Those comparable properties had been granted quantum allowances in excess of 20%, which was in comparison to Mr Hart's suggested 10% for the appeal property.

29. In relation to allowances, the panel considered that each property should be considered on its own merits and just because a quantum allowance had been applied to retail units located on other retails parks in the Bristol area that did not automatically justify a quantum allowance for the appeal property.

30. On the issue of quantum, the panel agreed with Ms Pascoe that the comparable properties located on the four other retail parks which had been granted quantum allowances were

much larger than the other units on the same retail park. For example, the units located on Imperial Park that had been granted a quantum allowance were at least 3.83 times larger than the more regular sized units. Plus, the unit that had been granted a quantum allowance located on South Bristol Retail Park was 4.4 times larger than the regular sized units. The size differential with the appeal property and the more regular sized units at Avonmeads Retail Park was not as significant. Moreover, the panel noted that Unit 3 Avonmeads Retail Park measuring 1,837.50 m^2 was very similar in size to the appeal property and no quantum allowance had been applied to that unit. Accordingly, on the issue of quantum, the panel determined that an allowance was not justified.

31. Having regard to the above conclusions, the panel found that the current assessment of £365,000 RV, with effect from 1 April 2017 was not unreasonable. Accordingly, the appeal was dismissed.

Date: 12 December 2022
Appeal Number: CHG100570772

Rights 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.