THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: Unit 2, Prologis Park, Arenson Way, Houghton Regis, Dunstable, Bedfordshire LU5 4RZ

APPEAL NUMBER: CHG100595772

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| BETWEEN: | 4PX Express UK Co Ltd | Appellant |
| | and | |
| | Ms D Bunyan<br>(Valuation Officer) | Respondent |

PANEL: Mr D Greensmith (Senior Member)
Ms J Morton (Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 30 March 2023

APPEARANCES: Mr T Slimming from Altus Group (on behalf of the appellant)
Mr P Thorne (on behalf of the Valuation Officer).

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**Summary of decision**

1. Appeal dismissed. The panel confirmed the rateable value (RV) of Unit 2, Prologis Park, Arenson Way, Houghton Regis, Dunstable, Bedfordshire LU5 4RZ (subject property) at £1,610,000 with effect from 1 April 2017.

**Introduction**

2. This was a 2017 rating list appeal in respect of the subject property which arises from a challenge made by the appellant's representative on 8 February 2021. The challenge was in

respect of the entry in the rating list at £1,620,000 RV as ‘warehouse and premises’ effective from 1 April 2017. This was a compiled list entry, the material date for this appeal was therefore 1 April 2017. The appellant sought a revised assessment of £1,490,000 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was well founded but did not agree with the tone suggested by the appellant’s agent of £60/$m^2$ and the RV was reduced to £1,610,000 based on a tone of £65/$m^2$. A decision notice to this effect was issued on 12 May 2022. The appellant still contended the RV of £1,610,000 was not reasonable.

3. Mr Slimming 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 Slimming stated that he was instructed under a conditional fee arrangement. He 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 his client’s case.

4. 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.

5. The subject property comprises a large distribution warehouse of steel portal frame dating from 2007. The property had a total area of 28,439.67$m^2$ and an eaves height of 12.69m. The subject property is located on Prologis Park with nearby occupiers including Superdrug and Amazon. It is approximately 2.9 miles away from junction 11A of the M1 and around 5.6 miles from the centre of Luton.

6. This hearing was held remotely via Microsoft Teams.

7. This document is not and does not purport to be a full verbatim record of proceedings.

**Issue**

8. The issue in dispute was the unadjusted rate of the subject property which the VO submitted was not unreasonable at £65/$m^2$. The appellant’s agent submitted that a reasonable unadjusted rate was £60/$m^2$.

**Evidence and Submissions**

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties’ skeleton arguments, expert witness statements and photographs of the subject property and other warehouses in its immediate locality.

10. The appellant’s representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £1,490,000 based on an unadjusted rate of £60/$m^2$.

11. In consideration of the comparable properties admitted in evidence, Mr Thorne requested that the tribunal dismiss the appeal and confirm the RV of £1,610,000 with effect from 1 April 2017.

**Decision and Reasons**

12. 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 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) to the Act, in relation to both the physical nature of the property and its mode or category of use.

13. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, 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 VO. 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.'

14. The RV on the subject property is disputed by the appellant on the basis that it is not in line with comparable properties in the locality, particularly considering the difference in the physical attributes between the subject property and the comparable properties. Mr Slimming referred the panel to Unit 1, Panattoni Park which is a brand new distribution

warehouse in a premier industrial location and had the same unadjusted rate of £65/m$^2$ as applied to the subject property. He submitted that the subject property is thirteen years older and significantly further away from the M1 in a much less desirable location to Unit 1. The subject property is located in the middle of Woodside Industrial Estate amongst a number of smaller warehouses and office and factory units. In order to get to the M1 vehicles have to navigate through the town of Dunstable which causes delays especially at rush hour.

15. Mr Slimming then drew the panel's attention to Unit E, Chiltern Park which was built in 1992 and was valued at £55/m$^2$ and was a large distribution warehouse on the same industrial estate as the subject property. He submitted that the poor location of Unit E led to it having a lower unadjusted rate but this supported that the subject property should be somewhere in between the two rates at £60/m$^2$.

16. The panel was aware that the tone evidence would all be weighed in the basket of evidence required to calculate an RV for the subject property.

17. Mr Slimming submitted that there appeared to be no differential between large industrial units built in the 2000's and those built in 2010/2020. He referred the panel to warehouses in Milton Keynes which he explained did have a differential. He confirmed that Milton Keynes was approximately two junctions on the M1 away from the subject property. He referred to the comparable properties Culina Logistics Unit A and MK 180 Chippenham Drive. The latter having been heavily refurbished and had an unadjusted rate of £55/m$^2$ and the former which was built in 2001 having an unadjusted rate of £50/m$^2$. This difference he submitted reflected the extensive refurbishment of MK 180.

18. Mr Thorne submitted that there was no differential in Milton Keynes based on the age of the industrial units. He explained that all second generation warehouses were valued at an unadjusted rate of £55/m$^2$. The only difference between the rates was in respect of the difference in distance between a unit and the M1. He stated that there was no such scheme where industrial units were valued at different rates based on the age of the unit if they were second generation units.

19. Mr Thorne explained that the comparable properties relied on by the VO were the other units on the same industrial park as the subject property. The properties were all assessed with an unadjusted rate of £60/m$^2$. This he submitted was supported by the analysed rent on the units which in the case of the subject property was £72.20/m$^2$ one year and four months post AVD. On Unit E, Chiltern Park the rent analysed to £76.02/m$^2$ and on Unit 1 Prologis Park analysed to £86.26/$^2$. All of these supported the rate of £65/m$^2$.

20. In connection with Unit 1, Panattoni Park the unit had been built since the AVD and when determining the correct unadjusted rate it was assessed as the same as the other units on the same industrial park. He explained that there had been a new ring road around Dunstable to the M1 which was completed shortly after the AVD and so would have been anticipated by any prospective tenant. Traffic no longer had to go through Dunstable but could use the two lane ring road to access the M1.

21. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that they had failed to discharge that burden. The panel found that it had not been provided with any evidence to suggest that the subject property should have an unadjusted rate of £60/m$^2$. The panel rejected Mr Slimming's suggestion that the unadjusted rate in Milton Keynes took into account the age of the unit. The comparable properties relied

upon by the VO were all on the same industrial estate and supported the unadjusted rate of £65/$m^2$ for the subject property.

22. The appeal is therefore dismissed.

**Date:** 17 April 2023

**Appeal number:** CHG100595772

**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.