THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2017 rating list appeal; Local Government Finance Act 1988; Unadjusted rate per $m^2$ in dispute; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal dismissed.*

RE: Unit 25, 35 The Meadows, Chelmsford, Essex CM2 6FD

APPEAL NUMBER: CHG100617057

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| BETWEEN: | JG Foods Limited T/A Grapetree | Appellant |
| | and | |
| | Ms Dawn Bunyan (Valuation Officer) | Respondent |

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| PANEL: | Mr Ian Lonsdale | (Senior Member sitting alone) |
| CLERK: | Mr Duncan Adamson IRRV (Hons) | |
| REMOTE HEARING 3: | 28 February 2023 | |
| PARTIES PRESENT: | Mr Chris Strong of Altus | Appellant's representative |
| | Mr Lee Stevens | Respondent's representative |

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## Summary of decision

1. Appeal dismissed. I confirmed the Rateable Value (RV) of the appeal property as £44,500 with effect from 1 April 2017.

## Introduction

2. This appeal had been brought in respect of the following: the appellant was the business rates payer of the appeal property at Unit 25, 35 The Meadows, Chelmsford, Essex CM2 6FD. The RV of the property was £46,250 based on an unadjusted rate of £675/$m^2$.

3. The property was a ground floor retail unit, built in 1992 with full heating and partial air-conditioning and located in the Meadows Shopping Centre in Chelmsford town centre.

4. Through the Check, Challenge, Appeal (CCA) process the appellant proposed that the unadjusted rate be reduced in line with the appeal property's rental evidence and the rental

evidence of three other units within the centre to £475/$m^2$. This would reduce the RV to £32,750.

5. During the challenge process a settlement was made in respect of the unadjusted rate on Unit 10 on the same parade within the centre to reduce it to £650/$m^2$. The Valuation Officer (VO) subsequently reduced the unadjusted rate on the appeal property to £650/$m^2$ thereby reducing the RV to £44,500.

6. The appellant appealed against the RV of £44,500 but had acknowledged that the rate of £475/$m^2$ was too low for the appeal property and now contended that the rate be reduced to £580/$m^2$.

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

8. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two members of the Tribunal, including at least one Senior Member. However, paragraph 11 of those Arrangements also provide that a Senior Member may sit alone to avoid postponing the hearing where a second panel member gives notice of unavailability within one working day of the commencement of the hearing.

9. In respect of this hearing, the second panel member was unable to join the Hearing due to technical problems with his connection.

10. In accordance with Paragraph 11 of the Tribunal Business Arrangements, I am satisfied that I am authorised to hear and determine this appeal alone.

11. Mr Chris Strong appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. 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 the client's case.

12. I 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). I therefore considered the expert evidence and attached such weight to it as I saw fit.

**Issue**

13. The issue in dispute was the unadjusted rate per $m^2$ in the valuation of the appeal property.

**Evidence and submissions**

14. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the VO's challenge case decision notice, rental evidence and assessment summaries and the appellant's challenge submission.

15. Mr Strong advised that the rate he was seeking on behalf of the appellant was actually £590/$m^2$ and not £580/$m^2$ resulting in an RV of £40,500. There had been a typo in the submitted documents.

16. He stated that the appeal property was held under a lease from 2 September 2016 for a three year term with the option to break after year 1. The rent reserved under the lease was £75,000 per annum (pa) but this included a service charge and insurance with the landlord re-imbursing business rates upon payments to the local authority and so gave a net rent of £25,788.68.

17. The lease was renewed on 29 September 2018 for a ten year term with five yearly rent reviews at £42,500 pa with the tenant granted a 4.5 month rent-free period as an incentive for renewing the lease and this gave a net effective rent of £38,604.19.

18. He had also submitted a summary of rental evidence in respect of another ten properties within the centre giving their unadjusted rate and stated that none of them analysed at higher than £650/$m^2$. The properties most comparable to the appeal property were:

| Address | In Terms of Main Space (ITMS) $m^2$ | Interested party (IP) analysed UAR | UAR |
|---|---|---|---|
| Unit 25, 35, The Meadows * | 67.83 | | |
| Unit 29, 31, The Meadows | 140.12 | £573.34 | £650 |
| Unit 1-3, The Meadows | 112.32 | £1,099.53 | £1,300 |
| Unit 4, The Meadows | 49.9 | £630.38 | £650 |

*The appeal property

19. Of these, he submitted that Unit 4 was the closest in size to the appeal property and the best comparable.

20. The VO representative submitted that the properties in the centre that were on an unadjusted rate of £675/$m^2$ had been reduced to £650/$m^2$ in line with the settlement of Unit 10.

21. The rental agreements on Units 4, 28, 26 and 9 The Meadows were all close to the AVD at 3 months, 9 months, 9 months and 7 months respectively and were therefore better evidence for comparability than the two rents on the appeal property.

22. The analysed rent on Unit 4 was £646.29/$m^2$ which was very close to £650/$m^2$ and the appellant's representative had matched it to £630.38/$m^2$, still very close to the unadjusted rate.

23. For these reasons, he contended that the rate of £650/$m^2$ was fair and reasonable for the appeal property.

**Decision and reasons**

24. I referred to the Local Government Finance Act 1988. The term 'rateable value' being defined in paragraph 2(1), Schedule 6 to the Act:

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –"
>
> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
>
> b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
>
> c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

25. 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.

26. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

27. In reaching my decision, I also had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had established six propositions giving 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.

28. I found that the rental evidence submitted in respect of Units 4, 28, 26 and 9 The Meadows were very good evidence in support of the valuation of the appeal property. They were all within one year of the AVD and this was very much in accordance with the rating hypothesis.

29. That evidence was considerably better than the evidence in respect of the appeal property as that was 18 months and three and half years after the AVD.

30. I found that Unit 4 was the best comparator and noted that the rent had analysed at just below the unadjusted rate used by the VO and therefore found that it was good evidence and supported the adopted rate of £650/$m^2$ in the valuation of the appeal property. I also noted that the VO had reduced the rate to £650/$m^2$ for all other properties of a similar type in the centre.

31. Overall, I found that the appellant's case had not been proven. In cases of this nature the onus is on the appellant to prove that the valuation of the appeal property was excessive and offer evidence supporting such a contention. I found that such evidence had not been provided.

32. I therefore dismissed the appeal.

**Date:** 7 March 2023

**Appeal number:** CHG100617057

**Rights of appeal**

Any party who is aggrieved by the Tribunal's decision 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.