THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; retail warehouse and premises; tone of value of main space; quantum allowance; appeal allowed in-part.

RE: Unit 1, Street Retail Park, Gravenchon Way, Street, Somerset BA16 0GX ("the subject hereditament")

APPEAL NUMBER: CHG100630813

BETWEEN: TJ Morris Ltd — Appellants

and

Valuation Officer — Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 8 February 2023

PANEL: Mr M Heslop-Mullens (Senior Member)
Dr P Thomson

CLERK: Mr S Fletcher

APPEARANCES: Mr A Allan, The Beattie Partnership (Appellants' representative)
Ms K Downing (Respondent's representative)

DECISION and STATEMENT OF REASONS

Summary of decision

1. Appeal allowed in-part. The panel determined the rateable value (RV) of the subject hereditament to be £238,000 with effect from 1 October 2017.

Introduction

2. The appeal process began with a challenge made by the appellant on 24 February 2021 in respect of the Valuation Officer's (VO) list entry of the subject hereditament at £257,500 RV with effect from 1 October 2017. The

appellants proposed a revised assessment of £214,250 RV from that date based on a reduced main space rate of £110.00 per unit m^2 accounting for an allowance for quantum.

3. As part of the challenge process, the respondent inspected the subject hereditament on 14 April 2022. The respondent updated their survey data following the inspection due to changes identified to the air-conditioned area, hard surfaced land to the rear of the property and the addition of an external storage unit and CCTV security camera system. The appellants agreed with the revised survey data identified from the inspection.

4. Consequently, the respondent increased the RV of the subject hereditament to £265,000 using a main space rate of £135.00 per m^2. The appellants proposed a revised RV of £228,000 using a main space rate of £115.00 per m^2. The respondent issued a challenge case decision notice on 26 May 2022, which stated that on the basis of the evidence available, the existing rating list entry of £265,000 RV was considered reasonable, and no adjustment would be made. The appellants appealed that decision to this Tribunal on 26 July 2022 on the grounds that the valuation for the hereditament was not reasonable.

5. The subject hereditament was a retail warehouse and premises occupied by the appellants. It was a new entry to the valuation list with effect from 1 October 2017. It is located on a small retail park in Street, Somerset on the A39, ten miles from the M5 corridor.

6. The appellants' representative 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), the representative confirmed 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 the client's case.

7. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

8. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

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

Issue

10. The issue for the panel to determine was the correct rateable value to be attributed to the subject hereditament in the 2017 rating list. The issue in dispute concerned the tone of value for the main space only. All relativities and areas were agreed by both parties prior to the hearing.

Evidence and submissions

11. Skeleton arguments and factual evidence for both the appellant and respondent were subsumed into a combined evidence bundle. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's challenge submission, the respondent's challenge decision notice, photographs and plans of the subject hereditament and assessment evidence of comparable hereditaments.

12. The respondent supplied the following judgment of the Lands Tribunal:

Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141

13. The respondent had revised the list entry of the subject hereditament with effect from 1 October 2017 given amendments to its survey data after inspection. It considered the tone of value for the main space of £135.00 per m^2 as reasonable and referred to a comparable retail warehouse and premises to support that contention. Their assessment was as follows:

Component Parts of Property				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Ground Floor Sales	1867.80	135.00	252,153
Ground	External Storage	21.56	33.75	728
Additional features of the property included in the valuation				
	Air Conditioning System	1685.60	4.00	6,742
	Hard surfaced, fenced land	618.66	11.00	6,805
	Plant and Machinery			158
			Valuation sub-total	266,586
			Say RV	265,000

14. The appellants had proposed a revised RV based on a reduced tone of value for the main space of £115.00 per m^2, which gave an allowance for quantum based on the subject rent and the rent of its neighbouring hereditament. Their assessment calculated a RV of £228,000.

Decision and reasons

15. 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 be let from year to year on a number of assumptions. Those assumptions are

listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

16. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

17. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 1 October 2017.

18. It is a well-established rating principle that the starting point in the determination of a property's RV should be the rent passing on the subject property itself as held in *Lotus and Delta*. When presented, rents on similar properties were also to be considered. The property was held by way of a fifteen-year lease, subject to five-year rent reviews, at a rent of £250,000 per annum with effect from 17 July 2017.

19. The respondent had adjusted the rent to reflect a six-month rent-free period, ignoring three months for fit out, and analysed the main space at £119.15m^2 per unit. However, it argued that the rent was effective from two years past the AVD and therefore held little weight of what the rent would have achieved on that date. It had applied a main space rate of £135 per m^2.

20. The appellants stated that there were three units including the subject hereditament on the retail park. The other two units were occupied by Pets at Home and Iceland Foods. The appellants did not refer to Iceland Foods as they considered its retail to involve food which in their opinion could distort rents. Pets at Home was also held by way of fifteen-year lease, subject to five-year rent reviews with effect from 1 October 2017. Its rent was £93,000 per annum. The size of the subject hereditament was 1867.80m^2 and the size of Pets at Home was 557m^2. The appellants argued that the disparity in the sizes of the properties and their relative rents demonstrated an allowance for quantum of 17%.

21. The appellants applied a 17% reduction to the VO's main space rate of £135 per m^2 and increased that figure by 2.4% resulting in a rate of £114.69 per m^2. It was rounded to £115 per m^2 which was their proposed figure. The rate was adjusted to account for a general change to retail park rents between the AVD and the lease start date, information the appellant had derived from CoStar.

22. The VO had relied on comparable rental evidence of B & Q, Wirral Park, Street Road, Glastonbury, also a retail warehouse and premises, to support the main space rate at the subject hereditament of 135m^2. It considered the comparable hereditament to be similar in size to the subject and had analysed its rent to £123.45 per m^2. They determined the higher rate of 135 per m^2 at the subject hereditament to be reasonable given its modernity when

compared to B & Q which was constructed in 1994, and its location in a retail park where it considered there was an absence of competition in nearby areas. It was also argued that it was located in close proximity to a retail village which would result in increased footfall. The effective date for rent agreed at B & Q was 25 March 2016. The respondent argued it was more reliable than the rent on the subject hereditament and Pets at Home as it was closer to the AVD.

23. The appellants contended that B & Q was not a reliable comparable property as it was located over two miles away in an area which benefitted from a more diverse commercial market. Its rent agreed in March 2016 was a lease renewal in comparison to the subject hereditament and Pets at Home which were new leases. They did not consider the age difference between B & Q and the subject hereditament to be of significance as they considered it to still be relatively modern being built in 1994.

24. The respondent did not consider that the appellant had provided sufficient evidence to reduce the RV of the subject hereditament. They considered the appellants' case to be heavily reliant on rents agreed two years after the AVD, in which they considered that the market had declined and did not give reliable indications of 2015 values. They considered the main space rate on the subject hereditament to be reasonable when compared to the rental evidence of B & Q which was an older retail warehouse with a rent agreed closer to the AVD.

25. The appellants' representative contended that it was standard practice for a property, which was three times larger than its neighbour, to receive an allowance in the market for quantum. He argued that he had supplied evidence of two rents agreed on the same day which demonstrated a quantum allowance. The appellants' representative accepted that there had been many differences in rental analysis and calculations from both the appellants and the respondent during the process, and to account for any margin of error he considered a main space value of £120 per m^2 as reasonable.

26. In consideration of the evidence presented, the panel found that there was clear evidence of a quantum allowance between the rents of the subject hereditament and Pets at Home. The panel considered that the respondent had not sufficiently addressed the issue of quantum as part of the appeal and had instead relied solely on rental evidence of what they determined as a comparable premises located over two miles away from the subject hereditament. The panel accepted that B & Q was similar in nature to the subject hereditament, however it found it to be located in Glastonbury which it perceived as a destination town and therefore a more desirable area.

27. The panel identified a differential between the rents of the subject hereditament and Pets at Home when considering their sizes which it concluded quantum was a factor. It found this evidence to carry most weight when determining the outcome of the appeal. The panel accepted that the rents were agreed over two years post the AVD, however, the panel

determined it reasonable that the differential in rents would also have existed had they been agreed at that time.

28. Having regard to the evidence, the panel was persuaded by the appellants' representative's arguments and determined a main space rate of £120.00 per $m^2$was fair and reasonable, reflecting an allowance for quantum. Consequently, the revised assessment for the list entry from 1 October 2017 was deemed as £238,000 RV.

29. In view of the foregoing, the appeal was allowed in-part.

Order

30. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £238,000 with effect from 1 October 2017. The respondent must comply with this order within two weeks of its making.

31. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date: 28 February 2023

Appeal number: CHG100630813

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.

NB. The original decision notice issued on 27 February 2023 was amended due to clerical error on 1 March 2023 in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. £237,000 was corrected to £238,000 in line 4 of paragraph 30.