THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and Premises; accuracy of rateable value; rent passing on comparable properties; found that weight of evidence did not support a reduction in the assessments of subject properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Decision: Appeals Dismissed.

RE:	(1) 953 Yeovil Road, Slough, Berkshire SL1 4GJ (2) 934 Yeovil Road, Slough, Berkshire SL1 4NH	
APPEAL NUMBERS:	(1) CHG100692388 (2) CHG100631618	
BETWEEN:	(1) Designer Contracts Limited (2) Berkeley installations (Represented by Altus Group PLC)	Appellants
And	Dawn Bunyan (Valuation Officer)	Respondent
PANEL:	Mrs M Cole (Presiding Senior Member) Miss L Sharkey (Senior Member)	

REMOTE HEARING: 2 February 2023
CLERK: Mr James Massey
APPEARANCES: Mr A Hair of Altus Group PLC for the appellants.
Mr J Turner for the Valuation Officer.

Summary of decision

1. Appeals dismissed. The panel confirmed the Rateable Value (RV) of 953 Yeovil Road, Slough, Berkshire SL1 4GJ at £66,500 and of 934 Yeovil Road, Slough, Berkshire SL1 4NH at £37,750 both with effect from 1 April 2017.

Introduction

2. These were 2017 Rating List appeals. The subject properties had been entered in the 2017 Rating List as ‘warehouse and premises’ at RV £66,500 (953 Yeovil Road) and £37,750 (934

Yeovil Road) with effect from 1 April 2017. As these were compiled list appeals the material day was also 1 April 2017.

3. Challenge proposals were submitted by Altus Group PLC on behalf of the appellants. The proposal for Designer Contracts Limited was received by the Valuation Officer (VO) on 11 May 2021 and that for Berkeley Installations on 25 February 2021. They had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed revised entries of RV £46,750 for 953 Yeovil Road and RV £26,000 for 934 Yeovil Road, both with effect from 1 April 2017.

4. The VO issued challenge case decision notices on 22 June 2022 and 12 May 2022 in respect of the subject properties. The VO's decision was to treat the appellants' challenges as not well-founded, and that the current rating list entries were reasonable.

5. The subject properties comprise industrial warehouse units on Yeovil Road in the Slough Trading Estate. 953 Yeovil Road is of brick construction and was built in 1994. It is partially heated and has an area of 519.79m^2 with and eaves height of 6.09 metres. 934 Yeovil Road was built in 2009 and has an area of 260.34m^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 it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Preliminary Issue

7. Mr Hair requested that the panel disallow the use of the rental information for three comparable properties scheduled in the Valuation Officer's Regulation 17 Notice in respect of the appeal for 953 Yeovil Road. He considered that he had been denied the right to verify the information contained in the original forms of return (FOR) documents or any other version. He had made a request to view the documents in an email to the respondent on 13 June 2022 but had not received a response to this request when the final challenge decision notice was issued on 22 June 2022. This matter was also highlighted in the supporting evidence statement for this appeal which was sent to the Tribunal and the respondent on 14 July 2022. In this statement the appellant sought the exclusion of the respondent's comparable evidence under Regulation 17 (paragraphs 3 and 4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

8. Mr Hair referred to the inclusion of the three comparable properties as evidence as an ambush by the VO, as the appellant had not had the opportunity to examine the information held by the VO and respond accordingly. In support of the exclusion to the respondent's comparable properties, Mr Hair referred to *BPP Holdings Ltd v Revenue and Customs Commissioners* [2016], in particular the statement;

"There is a very clear prejudice to the appellant in not knowing HMRC's case. Litigation is not to be conducted by ambush. The appellant has the right to be put in a position so that it can properly prepare its case. It needs to know HMRC's case not only before it gets to the hearing but before it prepares its witness statements and really before it prepares its documents."

9. In response, Mr Turner accepted that the appellant had included the following statement at the conclusion of his email of 13 June 2022: *"Reviewing the comparables put forward by the Valuation Office, I will need to inspect the FORs here to comment further on these"*. He stated that this statement had either been overlooked by the caseworker or had not been construed as a formal request to view the documents. In either case, he did not consider the respondent's overlooking of the request constituted a refusal to allow their inspection. Even though the challenge decision notice was issued on 22 June 2022 he considered that the appellant had the opportunity to make a formal request to view the information after this date but had not done so.

10. The panel adjourned briefly to consider the submissions of both parties. It found that the appellant's statement in the email of 13 June 2022 was a request to view the FORs albeit vague. However, the appellant had gone ahead and lodged an appeal very shortly after having received the challenge decision notice, without chasing the request to view the FORs or submitting a further clear formal request to view the information. The panel did not consider that the issue of the challenge decision prevented the appellant from subsequently making a request to inspect the FORs. Neither did it consider that the appellant had been 'ambushed' by the comparable properties submitted by the respondent in the challenge as he had been aware of these since the VO's initial response to the challenge. The inclusion of the respondent's three rental comparisons in respect of the appeal for 953 Yeovil Road was therefore allowed.

Issue

11. The issue between the parties concerned the RV of the subject properties and, specifically, the rates per m² that should apply. Further to discussions during challenge, Mr Hare sought;

- a reduction to £54,500 RV for 953 Yeovil Road based on an unadjusted main space rate of £105.00 per m²
- a reduction to £29,750 RV for 934 Yeovil Road based on an unadjusted main space rate of £115.00 per m².

Mr Turner, for the VO defended the current assessments which were based on unadjusted main space rates of £128.72 per m² and £145.00 per m^2 respectively.

12. All relevant factual information regarding the subject property, including its area, and the relativities used in their respective valuations were not disputed by the parties.

Evidence and Submissions

13. Mr Hair 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 Hair declared that he was instructed under a conditional fee arrangement.

14. Mr Hair 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 the evidence supported the client's case.

15. 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).

16. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

17. Mr Turner's statement of truth included a statement that he was not instructed under any 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 respondent's case.

18. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notices; appellant's submissions; their respective valuations and details of the subject properties and comparable properties.

Decision and Reasons

19. The appeal hereditaments 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 properties 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.

20. 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 parties 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 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.'

953 Yeovil Road

21. Mr Hair considered that the unadjusted rate applied to 953 Yeovil Road was excessive. He stated that the appeal property has been occupied by the appellant since 17 November 2011, and a rent of £68,961 per annum (pa) was agreed on a review on 17 November 2016. Taking into account an eight-month rent free period as an incentive for not breaking the lease, he had analysed this rent at £111.46 per m^2. Given the growth in rents between the AVD and 17 November 2016, Mr Hair considered this would have been lower at the AVD and provided strong indication that the current rate was excessive.

22. Mr Hair also referred to the following comparable rents, which he considered also demonstrated that the current rate applied was excessive:

Address	Scheme	RV	ITMS (m^2)	Rent	Adj rent *(VO adj)*	Analysed *(VO analysed)*	UAR
953 Yeovil Road, Slough, SL1 4JG	416529	£66,500	519.79	£68,961 17/11/2016	£57,935 *£57,935*	£111.46 *£111.46*	£128.72
934 Yeovil Road, Slough, SL1 4JG	416529	£37,750	260.34 *165*	£25,071 30/06/2015	£25,071 *£24,164*	£96.30 *£146.45*	£145.00
938 Yeovil Road, Slough, SL1 4NH	416529		374.48	£55,342 27/06/2014	£40,000 *£46,766*	£106.81 *£125.00*	£130.00
28 Buckingham Ave, Slough, SL1 4QA	297156	£64,000	426.81	£62,322 26/09/2014	£47,376	£111.00	£150.00

23. Mr Turner argued that little weight should be placed on the rent for the subject property, having been agreed 17 months after the AVD, with an eight-month rent-free period for not actioning the break clause. He considered that it required too many adjustments to reflect the hypothetical rent at the AVD.

24. With regard to the rent agreed on 934 Yeovil Road, this was the other property under appeal. Mr Turner considered that the tenant's improvements, carried out in 2010 should be factored into the analysis of the rent. He had carried out an analysis of this rent at £146.45 per m^2 based on the ITMS area of $165m^2$ prior to the alterations, which he considered reflected the shell unit on which the rent had been agreed. Mr Hair stated that the improvements on 934 Yeovil Road had been carried out by the previous tenant and that the lease had been agreed 'outside the act' which allowed the landlord to include tenant's

improvements in the demise. He therefore considered that his analysis of the subject rent at £96.30 per m^2 was correct and the larger subject property, with quantum applied, should not be valued in excess of this figure.

25. Mr Hair's analysis of the rent on 938 Yeovil Road at £106.81 per m^2 was carried out over the first two years of the term for which the rent agreed was £40,000 pa. The rent for the remaining years was £55,342 pa. He stated that this was a nine-year term with break options at two and five years and therefore the rent applicable for the 'term certain' was £40,000 pa. Mr Turner had carried out an analysis of the rent for 938 Yeovil Road at £125 per m^2 over a five-year term as he disagreed that it should be analysed to the first break option, particularly as it had been agreed on a stepped basis.

26. With regard to 28 Buckingham Avenue, Mr Hair considered this to be a superior building in a more prominent position, and that its analysed rent of £111 per m^2 indicated that the rate adopted on the larger subject was excessive. Mr Turner contended that the subject property was of similar if not superior quality to 28 Buckingham Avenue, that it was further from the subject property than any of the other comparable properties cited and in a different valuation scheme and he gave little weight to its rent.

27. Mr Turner referred to the following comparable properties in support of the current rate of £130 per m^2 for the subject property and similar properties in the locality around 500m^2 in size.

Address	Scheme	RV	ITMS (m^2)	Rent	Adj rent	Analysed (£/m^2)	UAR (£/m^2)
802, Oxford Avenue, Slough, SL1 4LN	416529	£57,500	417.52	£62,675 21/04/2015	£60,481	£136.31	£130.00
803, Oxford Avenue, Slough, SL1 4LN	416529	£55,000	420.43	£62,000 08/09/2015	£59,484	£140.30	£130.00
554, Ipswich Road, Slough, SL1 4EP	416529	£57,500	588.47	£59,501 29/09/2015	£57,418	£139.14	£130.00
955 Yeovil Road, Slough, SL1 4NH	416529	£65,500	609.9				£110.00

28. Mr Turner considered that three comparable properties were similar in size and location to the subject property and their rents had all been agreed within six months of the AVD. He stated 803 Oxford Avenue was very similar in size to 802 Oxford Avenue, and its rent review agreed five months later corroborated the rent on 802 Oxford Avenue. He also stated that the analysis of the rent agreed on 554 Ipswich Road on a new letting in September 2015 supported the rate of £130. He also considered that the tone applied to the 955 Yeovil Road, of £110 per m^2 had been challenged but not appealed, which he considered indicated that it had been accepted and did not indicate that the current rate for the subject property was excessive.

29. Mr Hair had not commented on the respondent's three rental comparables in his submission, as he stated he had not been allowed to inspect the FORs. He did not agree that the tone of 955 Yeovil Road was accepted as there are many reasons for not appealing a challenge decision, only one of which is acceptance of the tone.

30. Having considered the parties evidence, the panel found the respondent's comparables to be more persuasive as they had been agreed closer to the AVD, were all valued under the same scheme as the subject property and the terms of the leases required minimal adjustment to reflect their hypothetical rent at the AVD. It found that the rent for 802 Oxford Avenue had been agreed just three weeks after the AVD and supported the assessment of the larger subject property at £128.72 per m^2. The analysed rent on 554 Ipswich Road showed some growth after the AVD, and also that quantum was a minor factor between 420m^2 and 588m^2 and the panel was satisfied that this also supported the current rate applied to the subject property.

934 Yeovil Road

31. Mr Hair considered that the best evidence was the rent agreed on the subject property on 30 June 2015, which he had analysed at £96.30 per m^2. He had also referred to his rental analysis of two further properties which he considered demonstrated that the current rate of £145 per m^2 applied to the subject property was excessive:

Address	Scheme	RV	ITMS (m^2)	Rent	Adj rent *(VO adj)*	Analysed *(VO analysed)*	UAR
934 Yeovil Road, Slough, SL1 4JG	416529	£37,750	260.34 *165.00*	£25,071 30/06/2015	£25,071 *£24,164*	£96.30 *£146.45*	£145.00
934 Yeovil Road, Slough, SL1 4JG	416529	£37,750	260.34	£29,024 30/06/2020		£111.48	£145.00
938 Yeovil Road, Slough, SL1 4NH	416529	£48,500	374.48	£55,342 27/06/2014	£40,000 *£46,766*	£106.81 *£125.00*	£130.00
28 Buckingham Avenue, Slough, SL1 4QA	297156	£64,000	426.81	£62,322 26/09/2014	£47,376	£111.00	£150.00

32. Mr Turner considered that the tenant's improvements on the subject property, carried out in 2010 should be factored into the analysis of the rent. He had carried out an analysis of this rent at £146.45 per m^2 based on the ITMS area of 165m^2 prior to the alterations, which he considered reflected the shell unit on which the rent had been agreed. Mr Hair stated that the improvements on 934 Yeovil Road had been carried out by the previous tenant and that the lease had been agreed 'outside the act' which allowed the landlord to include tenant's improvements in the demise. He therefore considered that his analysis of the subject rent at £96.30 per m^2 was correct and supported a reduced rate of £115 per m^2.

33. The panel noted that Mr Hair had not made any reference to the lease agreed on the subject property being done so 'outside the act' in his challenge or appeal submission. Mr Turner had commented that he considered it unusual for a landlord to charge for tenant's improvements even if they had the right to do so. The panel noted that the additional space created by the tenant's improvement on the subject property was significant and made a marked difference to the rental analysis relied on by both parties.

34. The panel found that 938 Yeovil Road and 28 Buckingham Avenue were both significantly larger than the subject property and 28 Buckingham Avenue was in a different valuation scheme. It therefore placed little weight on these two properties in determining whether the current rate applied to the subject property was excessive.

35. In support of the current rate of £145 per m^2 applied to the subject property, Mr Turner had referred to rents agreed on three similar properties in the locality which he considered comparable to the subject property.

Address	Scheme	RV	ITMS (m^2)	Rent	Adj	Analysed	UAR
944, Yeovil Road, Slough, SL1 4NH	416529	£32,250	259.43	£51,163 20/08/2015	£48,605	£173.89	£139.92
A, 269, Argyll Avenue, Slough, SL1 4HE	416529	£31,250	221.3	£32,806 01/10/2014	£32,806	£152.04	£145.00
270, Argyll Avenue, Slough, SL1 4HA	416529	£31,250	222.28	£32,800 01/09/2014	£32,800	£151.35	£145.00

36. The panel found that the closest in size to the subject property, 944 Yeovil Road had been analysed at £173.89 by the respondent. Mr Hair did not disagree with this analysis, but considered that this rent, based on a basket of evidence, was an outlier.

37. Mr Hair had referred to the lettings on 269A and 270 Argyll Road being to the same tenant, who was already in occupation of other properties on the same estate. He stated that the landlord of these properties was the same and they were therefore not clean, open market transactions. The panel did not conclude that this factor would tarnish the rents agreed on these two properties and considered that they were representative of rents achievable on the open market at the time. Having examined these two rents and taking into consideration the rental analysis on 944 Yeovil Road, the panel was of the opinion that they demonstrated that slightly smaller units in the locality were achieving rents in excess of £145 per m^2 around the AVD and therefore that this rate was not excessive for the subject property. The panel also considered that the basket of rental evidence provided by the respondent supported his analysis of the rent passing on the subject property.

38. From the baskets of rents on the comparable properties provided by the respondent, the panel was satisfied that the current assessments of the subject properties were reasonable, and the appellant had not provided any evidence of rents or assessments to persuade the panel that they were excessive. The appeals were therefore dismissed.

Date: 1 March 2023

Appeal number: CHG100692388 and CHG100631618

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.