THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; retail 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 Beckton Retail Park, Alpine Way,London E6 6LA

APPEAL NUMBER: CHG100633442

BETWEEN:	Fresh Bazar Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr DJ Hayes (Senior Member)
Mrs A Taylor (Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 17 March 2023

APPEARANCES: Mr C Cates (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of Unit 2 Beckton Retail Park, Alpine Way,London,E6 6LA (subject property) at £168,000 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 26 February 2021. The challenge was

in respect of the entry in the rating list at £168,000 RV as 'retail warehouse and premises' effective from 1 April 2017. This was a compiled list entry, the material day for this appeal was therefore 1 April 2017. The appellant sought a revised assessment of £154,000 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 11 May 2022. The appellant made an appeal to this Tribunal on 24 August 2022, on the grounds that the RV of £168,000 was not reasonable.

3. Neither the appellant nor the appellant's representatives were present at the hearing. They had provided a written submission prior to the hearing and requested that the matter be dealt with in their absence in accordance with the Regulation 29 of the Procedure Regulations. Mr Cates had no objection to the appeal being heard in the absence of the appellants or the appellant's agents. The panel found that it was in the interests of justice to hear the appeal in their absence.

4. Mr Cates appeared before the panel as Advocate only. He accepted that his first duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the Valuation Officers (VOA) case. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC) 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 in England).

5. The subject premises comprises a retail warehouse situated on Beckton Retail Park, Alpine Way in London E6. It has a steel frame construction with part brick/blockwork and part steel clad elevations. It is on one of four retail parks in Newham and is located in an industrial area.

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 before the panel was the correct tone to be applied to the subject property. The appellant sought a reduced entry of £154,000 RV based on a tone of value of £110/m². On behalf of the respondent, Mr Cates defended the VO's existing assessment of £168,000 based on a tone of value of £120/m².

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 retail warehosues 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 £154,000.

11. In consideration of the comparable properties admitted in evidence, Mr Cates asked the tribunal to confirm the RV of £168,000 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 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 subject property is held on a lease which commenced on 22 November 2017 for a term of five years with a rent free period of six months. From 22 February 2018 the rent was agreed at £101,400 per annum, from 22 August 2019 it increased to £202,800 per annum and from 29 September 2022 it was agreed at £234,000 per annum. The VO analysed the rent based on the information provided by the occupier to £138.88/m^2 as they had not

included the information about the rental steps. The VO had also analysed the rent from the information provided by the agent concerning the rental steps at £120.93/m^2. The agent explained that this was based on a rent thirty months after the AVD and there would have been some expected growth between 1 April 2015 and the date of the lease being 1 October 2017 and so the adopted tone of £120/m^2 was excessive.

15. The agent placed weight on the following comparable property being Unit 3 Beckton Retail Park valued on an ITMS of 921.6m^2 at £120/m^2 which was reduced from £160/m^2 on challenge. The appellant's agent argued that the subject property with an ITMS of 1,401.9m^2 and therefore larger than Unit 3 should have a lower tone due to quantum. Following that reduction Units 1, 2, 3A and 8 Beckton Park were also reduced to £120/m^2. Further Units 4 A2, 4 A3 had an ITMS of 2,377.47m^2 and 3,611.40m^2 respectively were valued at a rate of £100/m^2 which was lower due to quantum. The agent stated that this supported a rate of £110/m^2 for the subject property which was smaller than these units.

16. The panel was aware that in the case of *Lotus and Delta* the basket of evidence used in the valuing of a property included that of the rent on comparable properties in the vicinity of the subject property. The tone £120/m^2 applied to both Unit 3 and the subject property was persuasive. The other larger comparable properties were significantly larger than either Unit 3 or the subject property and the panel put therefore put little weight on them as comparators.

17. The agent stated that Unit 3 saw a decrease of 32% between the 2010 compiled list value and the 2017 list. Similarly Unit 8 with and ITMS of 931.90m^2 had an adopted tone in the 2010 list of £192.50/m^2 and there was a decrease of 32% between the lists. Part unit 4 with and ITMS of 591.53m^2 had a decrease of 27.3% between the two lists. He submitted that on the subject property a decrease of 32% would be £158.76/m^2 minus 32% being £107.95/m^2 say £110/m^2 and that this should be the adopted tone for the subject property.

18. The panel noted that each new rating list was de novo. The tone reflects the factual and value significant features of a property on the AVD for that list. There is no link between values in one list and the next and the panel therefore put little weight on this evidence.

19. Mr Cates submitted that following from the reduction in tone to £120/m^2 in neighbouring units he did not see any reason to reduce the subject property's rate any further. In his opinion the tone had now been set at £120/m^2. The rental evidence on the subject property as included in the form of return (FOR) was too far away from the AVD to be relevant and in any event the stepped rents reflected the expectation of growth in the area.

20. The panel found that it had not been provided with any evidence to suggest that the subject property should have a lower tone that the neighbouring properties. The panel further found that a tone had been established for units of a similar size to the subject property on the retail park of £120/m^2 which had been applied to the subject property.

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 attached more weight to the basket of evidence provided by the VO and was satisfied that the current assessment of the subject property at a RV of £168,000 was reasonable. The panel determined that a tone had been established and the appellant had not provided any evidence to persuade the panel that the subject property should have a lower tone applied to it. The appeal is therefore dismissed.

Date: 13 April 2023

Appeal number: CHG100633442

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.