THE VALUATION TRIBUNAL FOR ENGLAND

*Summary of Decision: non-domestic rates; 2017 rating list appeals; factory and premises; warehouse and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; rental evidence; appeals allowed as the evidence showed that the existing valuations were unreasonable.*

Re: Buildings 397 and 399 Bournemouth Airport, Christchurch BH23 6AT

APPEAL NOS: CHG100680238 (Appeal 1) and CHG100655827 (Appeal 2)

| | | |
|---|---|---|
| BETWEEN: | Rigby Group | Appellant |
| | and | |
| | Mr D Virk (Valuation Officer) | Respondent |

BEFORE: Mr K Sutch (Senior Member) and Mr A Wheeler

CLERK: Mrs R James

REMOTE HEARING 1: Wednesday 10 November 2021

APPEARANCES: Mr J Slater of Dunlop Heywood (on behalf of the Appellant)
Mr T Keen (Respondent's representative)

---

**Summary of decision**

1. Building 397 Bournemouth Airport, Christchurch – appeal allowed; £38,750 Rateable Value (RV), effective from 1 August 2019 (Appeal 1).

2. Building 399 Bournemouth Airport, Christchurch – appeal allowed; £44,250 RV, effective from 1 April 2017 (Appeal 2).

**Introduction**

3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of

Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

5. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The panel was satisfied that the parties were able to fully participate in the hearing.

6. Mr Slater was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and, if so, whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

7. Mr Slater explained that Dunlop Heywood was representing the appellant in this appeal on a performance related basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

8. The panel has accepted this expert witness evidence on the above basis as the appeals are not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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.

9. These appeals have been brought in respect of the following:

   i) Building 397 Bournemouth Airport, Christchurch; warehouse and premises - £69,500 RV, effective from 1 August 2019 (Appeal 1).

   ii) Building 399 Bournemouth Airport, Christchurch; factory and premises – £66,000 RV, effective from 1 April 2017 (Appeal 2).

10. In respect of (Appeal 1), the appellant’s Challenge to the Valuation Officer (VO) was made on 31 March 2021. The appeal to this Tribunal was made on 17 June 2021, following the VO’s Decision Notice of 28 May 2021, in respect of the appeal property (hereditament).

11. In respect of (Appeal 2), the appellant’s Challenge to the VO was made on 15 March 2021. The appeal to this Tribunal was made on 17 June 2021 following the VO’s Decision Notice of 28 May 2021 in respect of the appeal property (hereditament). This is a compiled list appeal and the material date is 1 April 2017.

12. The panel decided to consolidate the hearing of the two appeals.

13. The subject properties had been constructed in the 1950s. They were ark buildings, known as blister hangers. A blister hanger was an arched, portable aircraft hanger. A blister

hanger did not require a foundation slab and could be anchored to the ground with iron stakes. Many blister hangers had been manufactured for military use in World War 2.

14. The subject premises contained a great deal of asbestos. The useable floor space was limited due to the shape of the buildings. They were located landside at Bournemouth Airport.

15. Building 397 had an area in terms of main space (ITMS) of 1,029.9 $m^2$ and was currently valued at an unadjusted rate (UAR) of £65/$m^2$. Building 397 also had a land element measuring 681 $m^2$ valued at £6/$m^2$. Building 399 measured 1,305.0 $m^2$ ITMS and was currently valued at an UAR of £57.50/$m^2$.

16. A preliminary issue was raised. The clerk highlighted that the Valuation Officer wished to provide a copy of a previous Valuation Tribunal decision in relation to Building 105E Aviation Business Park, Bournemouth Int. Airport, East Parley BH23 6NW (Appeal number CHG100113974, dated 9 August 2021). The appellant's representative also wished to provide a copy of a lease in respect of Building 397A, Aviation Business Park Bournemouth Airport, dated 19 December 2019. Neither party raised any objections to the inclusion of the additional evidence. Accordingly, as no objections had been raised, the panel proceeded to hear the appeals having regard to all of the evidence presented.

17. 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 by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

**Issue**

18. The correct UAR to be applied to the appeal properties' assessments.

**Evidence and submissions**

19. The panel had been provided with a bundle of evidence, which comprised the challenge submission and VO's Decision notice, copies of various leases in respect of the subject properties, photographs and details in relation to the subject properties and of those properties cited for comparable purposes, location plans and rental schedules.

20. Mr Slater referred to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] and contended that the correct starting point was the rent passing on the appeal property. He provided rental details in relation to the subject properties that had been set between 2 July 2013 and 1 October 2019 and had devalued those rents to between £26/$m^2$ and £37/$m^2$.

21. He also provided rents in respect of Buildings 430 and 435 that had been set between 14 December 2012 and 14 December 2015, which devalued to £34/$m^2$ and £38/$m^2$.

22. Mr Slater contended that the comparable properties put forward by Mr Keen were of a superior quality to the subject properties. Having regard to the evidence he had provided, Mr Slater sought reduced UARs for both subject properties at £34/$m^2$. This equated to £38,750 RV, with effect from 1 August 2019 for Building 397 (Appeal 1) and £44,250 RV, with effect from 1 April 2017 for Building 399 (Appeal 2).

23. Mr Keen explained that there had been previous checks in relation to both subject properties and the respective Valuation Office Decisions had not been challenged. Building 399 had originally been valued at a UAR of £60/$m^2$, which had been reduced to £57.50/$m^2$. Building 397 was valued at the slightly higher UAR of £65/$m^2$. He referred to the rents provided by Mr Slater and contended that they had all been contracted out of the Landlord and Tenant Act 1954. Furthermore, some of the leases contained restrictive covenants. Mr Keen also referred to the previous Valuation Tribunal decision in relation to Building 105E Bournemouth Airport, in which a UAR of £57.50/$m^2$ was confirmed. That property was in the same valuation scheme as the subject properties. Mr Keen contended that it had not been proven that the current assessments were unreasonable. Accordingly, he sought dismissal of the appeals.

**Decision and reasons**

24. The subject 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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015; the Antecedent Valuation Date (AVD).

25. In these appeals, the panel had to consider the appropriate UAR for the subject properties. Mr Keen was defending the current rates applied of £65/$m^2$ for Building 397 and £57.50/$m^2$ for Building 399. Whereas Mr Slater sought a reduced UAR for both buildings of £34/$m^2$.

26. In support of their respective cases, both parties had referred to comparable properties. The panel paid close attention to those properties and found the ones presented by Mr Slater to be more persuasive, being more comparable in terms of construction and design. Both of the subject properties were blister hangers that were arched in shape. Due to the arched shape of the subject properties, there was a lot of unusable space. The panel found Buildings 435 and 430 to be the best comparisons, as they too were arched blister hangers.

27. The panel found that the buildings referred to by Mr Keen were not of the same arched shape as the subject properties and, as such, would have had more useable space and been able to command a higher rent. Those properties benefitted from higher eaves, some had roller shutter doors, one was airside as opposed to the subject properties that were located landside of the airport and others were newer builds. Furthermore, it found some of the buildings such as Building 603 were of a much superior finish both internally and externally to the subject premises.

28. The panel also placed less weight on Building 105E, which had been the subject of the previous Valuation Tribunal decision. Building 105E was not of the same shape and design as the subject properties and would not have suffered from the same disabilities.

29. Accordingly, in arriving at its decision, the panel had regard to the rents and assessments placed on the subject properties, together with Buildings 430 and 435.

30. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976]. 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 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 clearly be more difficult to reject the evidence of the actual rent.'

31. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the subject properties. Several rents had been provided on the subject properties. However, before arriving at its decision, the panel preferred to have regard to the whole basket of rents of similar properties, rather than taking the rents on the subject properties in isolation.

32. Mr Slater had provided the panel with the following schedule of rents:

| Building | ITMS $m^2$ | Rent Date | Analysed Rent |
|---|---|---|---|
| 435 | 1,037.8 | 14 December 2012 | £38 |
| 399 | 1,305.0 | 2 July 2013 | £36 |
| 397 | 1,020.9 | 1 March 2014 | £35 |
| 430 | 1,117.2 | 7 April 2015 | £34 |
| 399 | 1,305.0 | 3 July 2015 | £34 |
| 435 | 1,037.8 | 14 December 2015 | £38 |
| 399 | 1,305.0 | 15 February 2016 | £34 |
| 397 | 1,020.9 | 1 March 2017 | £37 |
| 399 | 1,305.0 | 1 October 2019 | £26 |

33. The panel found the above schedule to be good evidence, being rents set on the actual subject properties and almost identical properties. Whilst Mr Keen had devalued the subject rents to a higher value, this had not been fully explained and the panel placed more weight on the analysis provided by Mr Slater.

34. The panel attached less weight to the later rents set from 2016 onwards as they had been completed too far removed from the AVD to be of particular assistance in this appeal. After having regard to the above schedule, the panel considered that the current UARs applied to the subject properties of £65/$m^2$ and £57.50/$m^2$ respectively, were excessive and

unsupported. The panel placed particular weight on those rents that had completed in 2014 and 2015, which suggested to the panel that the UAR of £34/m$^2$, as proposed by Mr Slater, to be reasonable and in line with rents achieved on identical properties within the same locality that had been valued in accordance with the same valuation scheme.

35. Mr Keen had placed caution on the rents as the leases contained restrictive covenants and they had opted out of the Landlord and Tenant Act 1954. However, the panel found that the comparable properties put forward by both parties were all located within Bournemouth Airport and it was assumed that they would have all contained the same restrictive covenants regarding the sensitivity of operations at the airport. The panel found that the leases were for periods of at least one year and did not interfere with the statutory definition of rateable value.

36. After considering the basket of rental evidence and taking the stand back and look approach, the panel found that the UAR of £34/m$^2$, as proposed by Mr Slater, more adequately reflected all the characteristics of the subject properties and their location, including the poor construction and arched shape. On the evidence presented, the panel found no reason to apply differing UARs to the subject properties, with the properties being reasonably similar in size.

37. Therefore, the appeals were allowed and the panel determined the following assessments:

    i) Building 397 Bournemouth Airport, Christchurch – £38,750 RV, effective from 1 August 2019 (Appeal 1).

    ii) Building 399 Bournemouth Airport, Christchurch – £44,250 RV, effective from 1 April 2017 (Appeal 2).

**Order**

38. As a consequence of the above decision, the Valuation Officer is ordered to reduce the respective 2017 Rating List entries to £38,750, with effect from 1 August 2019 (Appeal 1) and £44,250 RV, with effect from 1 April 2017 (Appeal 2), within two weeks of the date of this Order.

**Refund of fees**

39. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal’s decision. The refund will take around six weeks to process.

**Appeal Numbers:** CHG100680238 and CHG100655827
**Date:** 6 December 2021