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 tone of the subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Decision: Allowed in part.

RE: Wessex Packaging, Watercombe Park, Lynx Trading Estate, Yeovil, BA20 2HR

APPEAL NUMBER: CHG100663938

BETWEEN:	Blake Enterprises	Appellant
	(Represented by Alder King)	
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mr P Hickson (Senior Member)
Mr A Asante

REMOTE HEARING: 25 November 2022
CLERK: Mr James Massey
APPEARANCES: Mr A Morrish of Alder King for the appellant.
Ms S Pascoe for the Valuation Officer.

Summary of decision

1. Appeal allowed in part. The panel confirmed the Rateable Value (RV) of the appeal property at £131,000 with effect from 1 April 2017 and £133,000 with effect from 20 November 2020.

Introduction

2. This was a 2017 Rating List appeal. Wessex Packaging, Watercombe Park, Yeovil, BA20 2HR (the 'appeal property') had been entered in the 2017 Rating List as 'warehouse and premises' at an RV of £131,000 with effect from 1 April 2017. As a result of a check completed on the appeal property, the Valuation Officer (VO) had included a mezzanine floor in the appeal property's assessment from the date the check was completed. The RV of the appeal property was increased to £140,000 with effect from 20 November 2020.

3. The challenge proposal was submitted by Alder King on behalf of Blake Enterprises and was received by the Valuation Officer (VO) on 19 March 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed a revised RV of £96,500 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 18 August 2021 in respect of the appeal property. The VO's decision was to treat the appellant's challenge proposal as not well-founded and make no change to the rating list.

5. As this was a compiled list appeal the material day was 1 April 2017.

6. The appeal hereditament comprises a modern industrial unit of a steel portal frame construction on a split site with a total area of 2,133m^2 (including the mezzanine floor). It is located on Lynx Trading Estate, to the west of Yeovil off the A3088 and is held freehold by the appellant.

7. 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.

Issue

8. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Morrish, for the appellant, sought a reduction to £96,500 RV based on an unadjusted main space rate of £52.50 per m². He also sought an allowance of 5% on part of the appeal hereditament due to its irregular shape and a 5% allowance on the whole hereditament due to the split site.

9. Ms Pascoe, for the VO defended the assessment of £131,000 RV, which was based on an unadjusted main space rate of £69.00 per m². She accepted that a 2.5% allowance on part of the appeal hereditament due to its irregular shape and a 5% allowance on the whole hereditament due to the split site were applicable. However, she considered that the additional space of the mezzanine floor was in existence at the material day and application of these two allowances to the increased space would result in an increase in the RV of the subject hereditament to £133,000 and therefore the current RV was not unreasonable.

Evidence and Submissions

10. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; appellant's submission; photographs and location plans of the appeal property and comparable properties. With the agreement of the respondent the appellant had also submitted a schedule of each parties' analysis of the rents on both parties' comparable properties.

11. Mr Morrish appeared on behalf of the appellant in a dual role as advocate and as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he confirmed that he was instructed on a conditional 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. 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

Decision and Reasons

13. 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 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 property or the locality were to be taken as of 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.

14. 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 respondent. 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.'

15. The panel noted that the subject property is freehold and therefore there is no passing rent which could be used to determine its correct rateable value.

16. The panel went on to consider the rents of the comparable properties provided by both parties which the appellant had submitted in a schedule showing the difference in analysis carried out by the parties.

Address	(m^2) Total / *ITMS*	Rent & Date	VO Analysed Rent (£/m^2)	App Analysed Rent (£/m^2)	Unit Value (£/m^2)	RV (£)
Wessex Packaging, Watercombe Park, Lynx Trading Estate	2,133				69.00	131,000
Appellant's Comparables						
Toolstation Unit 1 Merlin Road, Lynx Trading Estate	644 *650*	£45,000 Jun-12	69.20	69.20	72.00	46,750
Euro Car Parts Unit 4, Gazelle Road, Lynx Trading Estate	1,035 *1,052*	£66,000 Jul-12	62.73	59.60	65.00	65,000
Ramp Industries 20, Garrett Road, Lynx Trading Estate	682 *608*	£36,500 Jul-14	59.47	55.47	65.00	42,000
Wincanton 26 Mead Avenue, Houndstone Business Park	6,497 *6,410*	£250,000 Aug-15	39.00		38.00	243,000
Nargal 23 Mead Avenue, Houndstone Business Park	5,283 *5,176*	£208,575 2016		£ 40.29	56.00	302,500
Yodel, 21 Sea King Road, Lynx Trading Estate	2,462 *2,494*	£136,900 Feb-17	£ 54.89	£ 54.89	68.00	169,000
Respondent's Comparables						
Yeovil College Unit 1 Seaton Mews	1,022 *1,122*	£82,297 Feb-13	73.96	73.96	72.00	80,500
Blake Envelopes, Clarence House, Watercombe Lane, Lynx Trading Estate	2,112 *2,599*	£144,750 May-13	68.54	55.69	61.75	160,000
Ramp Industries 1-3 Garrett Road, Lynx Trading Estate	2,067 *1,974*	£133,200 Nov-14	67.41	63.91	65.59	133,000

17. Mr Morrish considered that the adopted rate of £69.00 per m^2 was excessive when compared to the relevant rental evidence on comparable properties.

18. The panel noted that of the appellant's comparable properties, the only rents agreed within twelve months of the AVD were for 20 Garrett Road and 26 Mead Avenue, which at 682m^2 and 6497m^2 respectively were significantly different in size to the subject property and therefore the panel did not find them to be comparable and placed little weight on this evidence.

19. The rents on Unit 1 Merlin Road and Unit 4 Gazelle Road were agreed nearly three years prior to the AVD, however the panel considered that the analysis of these rents supported the unit rates applied to these two properties. It noted that Unit 4 Gazelle Road was older

than the subject property and did not consider that its agreed reduction from £72.00 to £65.00 per m^2 supported a reduction in the rate applied to the appeal property.

20. The panel also considered that the rents on 26 Mead Avenue and 23 Mead Avenue held little weight as these properties were considerably larger than the subject property and located on a different trading estate.

21. With regard to the respondent's comparable properties, the panel placed little weight on the analysis of the rents on Unit 1 Seaton Mews and Clarence House. Unit 1 Seaton Mews was a Workshop and Premises, and smaller than the subject property. Clarence House had a high office content, and the parties had provided differing analyses of its rent. The panel did consider however that the unadjusted rate of £68.61 per m^2 applied to Clarence House supported the current rate applied to the subject property.

22. The panel found that the most compelling comparable property was 1-3 Garrett Road. This was similar in size to the subject property and its rent had been agreed just over four months before the AVD on a new letting. The panel placed significant weight on the rent on this property, which the respondent had analysed to £67.51 per m^2.

23. Mr Morrish had also provided details of recent settlements in respect of similar properties in the locality.

- Blake Enterprises, Watercombe Lane (3,453m^2) - Basis reduced from £66.00 to £52.50
- Euro Car Parts Unit 4, Gazelle Road, Lynx Trading Estate (1,051m^2) - Basis reduced from £72.00 to £65.00
- RPE, Plot 4D Brympton Road, Lynx West Trading Estate (1,245m^2) - Basis reduced from £72.00 to £65.00
- Nationwide, 46 Sea King Road BA20 2NZ (1,582m^2) - Basis reduced from £71.00 to £65.00.

24. The panel noted that with one exception (Blake Enterprises), these properties were smaller than the subject property and their unadjusted rates had been agreed at a lower rate than that of the subject property. The respondent had referred to the three smaller properties being built in the 1980s and therefore older than the subject property which was built in 2001 and this factor would be reflected in their rents. Having considered this the panel found that it would be reasonable to expect older properties to be valued lower and therefore placed minimal weight on these three agreements in determining the correct rate to be applied to the subject property.

25. With regard to Blake Enterprises, Mr Morrish stated that this was the only other property apart from the subject property in the same valuation scheme, which was larger than 1000m^2 in size, and referred to its previous assessment at £66.00 per m^2, £3 per m^2 less than the subject property. He considered that there would have been an element of quantum for larger warehouses on the estate as its poor transport links would limit demand for larger warehouses. He accepted that the Blake Enterprises property, at 3,453m^2 was considerably larger than the appeal property but did not consider that the quantum element would result in the difference in value of £16.50 per m^2 which now existed between the two assessments. He suggested that a difference in value of £5 per m^2 would be more reasonable, proposing a rate of £57.50 per m^2 for the subject property.

26. However, the panel accepted Ms Pascoe's submission that Blake Enterprises was the largest property on the subject property's scheme and following a review it was considered that the rental evidence supported a reduction to £52.50 per m^2. Having examined the rental evidence on comparable properties similar in size to the subject property the panel did not consider that this evidence supported a reduction for quantum for the subject property.

27. Having considered the rental evidence and settlement evidence provided by the parties, the panel did not find that the current rate of £69.00 per m^2 applied to the subject property was excessive.

28. The panel noted that the appellant was seeking a 5% allowance in respect of building 2 of the subject property (447.28m^2) due to its irregular shape. The respondent contended that an adjustment of 2.5% was reasonable to allow for this disability. The panel noted that no comparable evidence had been provided by the appellant in support of a 5% adjustment and was satisfied that the adjustment of 2.5% proposed by the respondent was reasonable. The respondent had also accepted that an overall allowance of 5% was applicable for the fact that the subject property was a split unit.

29. The panel was satisfied that the area of the mezzanine floor (272.56m^2) was in existence at the material day on 1 April 2017. Whilst the respondent had been restricted to increasing the assessment of the subject property from 20 November 2020, the panel did not consider it could ignore this addition at the material day. Applying the adjustments of 2.5% and 5% to the assessment with the mezzanine floor in situ resulted in an increased RV of £133,000. The panel was aware that it is restricted from ordering a retrospective increase in RV and therefore considered that the current RV of £131,000 for the period 1 April 2017 to 19 November 2020 was not excessive. The respondent had increased the assessment of the subject property to RV £140,000 with effect from 20 November 2020, and applying the allowances above, the panel determined that this should be reduced to RV £133,000 with effect from 20 November 2020. The appeal is therefore allowed in part.

Order

30. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Wessex Packaging, Watercombe Park, Lynx Trading Estate, Yeovil, BA20 2HR to RV £133,000 with effect from 20 November 2020, within two weeks of the date of this order.

31. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date: 23 December 2022

Appeal number: CHG100663938

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.