VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 rating list; Challenges against Compiled List entries; Land used for storage and premises; accuracy of rateable value; rent passing on subject properties and comparable properties; found that weight of evidence supported a reduction in the assessment of subject properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed.

RE: (1) Unit 28, Weston Business Park, The Airport, Weston-Super-Mare, BS24 8RA
(2) Unit 29, Weston Business Park, The Airport, Weston-Super-Mare, BS24 8RA

APPEAL NUMBERS: (1) CHG100664691 (2) CHG100664697

BETWEEN: Moor Park North Somerset Ltd — Appellant

(Represented by Altus Group)

and

Dal S Virk — Respondent

(Valuation Officer)

PANEL: Mrs T Watson (Senior Member)
Mr S Hooberman

CLERK: James Massey

REMOTE HEARING: 28 April 2022

APPEARANCES: Mr A Moore of Altus Group - Advocate for the Appellant.
Mr S Walters of Altus Group - Expert Witness for the Appellant
Mr K Jones for the Valuation Officer.

Summary of decision

1. Appeals allowed. The panel confirmed the Rateable Value (RV) of Unit 28, Weston Business Park at £10,500 with effect from 1 April 2017 and Unit 29, Weston Business Park at £10,500 with effect from 1 April 2017.

Introduction

2. These were 2017 Rating List appeals. Unit 28, Weston Business Park, The Airport, Weston-Super-Mare, BS24 8RA ("Unit 28") had been entered in the 2017 Rating List as 'Land used for storage and premises' at a RV of £14,250 with effect from 29 July 2019. Unit 29, Weston Business Park, The Airport, Weston-Super-Mare, BS24 8RA ("Unit 29") had been entered in the 2017 Rating List as 'Land used for storage and premises' at a RV of £14,250 with effect from 29 July 2019. As these were compiled list appeals the material day was also 29 July 2019.

3. The challenge proposals were submitted by Altus Group on behalf of Moor Park North Somerset Ltd and were both received by the Valuation Officer (VO) on 19 March 2021. They had been made on the grounds that the RV shown in the rating list on 29 July 2019 was wrong and proposed a revised RV of £10,500 with effect from 29 July 2019 for both properties.

4. The VO issued challenge case decision notices on 13 May 2021 in respect of Unit 28 and on 17 May 2021 in respect of Unit 29. The VO's decision was to treat both the Appellant's challenges as not well-founded and proposed no change to the rating list.

5. The appeal hereditaments are located adjacent to each other on Locking Airport in Weston-Super-Mare. Unit 28 and Unit 29 consist of 2062 m^2 and 2034 m^2 respectively of rough surfaced, fenced land. They have both been valued on a valuation scheme applicable to 'Land used for storage in average industrial locations throughout North Somerset' (359484) on unadjusted rates (UAR) of £8.73 per m^2 and £8.85 per m^2 respectively. A 20% adjustment to reflect that they both comprise rough surfaced land resulted in an adopted value of £6.98 per m^2 for Unit 28 and £7.08 per m^2 for Unit 29.

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.

Issue

7. The issue between the parties concerned the RV of the appeal properties and, specifically, the rate per m^2 that should apply. Mr Moore, for the Appellant, sought a reduction to £10,500 RV for both units based on a UAR of £6.50 per m^2. Mr Jones, for the VO defended the current assessments of £14,500 RV, which were based on the existing UARs of £8.73 per m^2 for Unit 28 and £8.85 per m^2 for Unit 29.

8. All relevant factual information regarding the subject properties, including their areas, was not disputed by the parties.

Additional evidence

9. This appeal was previously listed to a hearing on 15 February 2022 which was postponed. Prior to that hearing the Appellant's representative referred to new evidence which had come to light regarding the terms of the leases for Unit 9 Westland Business Centre and Unit 12 Westland Business Centre. Copies of the leases were sent to the Respondent on 7 February 2022 which, according to the Appellant's representative, was the first day the new evidence came to light. The Respondent had informed the Tribunal on 10 February 2022

that he had no objection to the inclusion of this late evidence. Although this evidence had not been exchanged prior to the conclusion of the challenges, the panel considered that, in view of the fact that that the Respondent did not object to the inclusion of the new evidence and had had sufficient time to consider it and respond accordingly, the new evidence submitted by the Appellant on 7 February 2022 should be admitted.

10. On the day before the hearing, having considered the additional evidence provided by the Appellant, Mr Jones had provisionally agreed to settle these appeals at a UAR of £7.00 per m^2. Mr Jones had subsequently informed the Appellant that he had not been able to gain approval for the agreements and the matter would need to be determined by the Tribunal. Mr Moore requested that the email trail containing the discussions regarding this agreement be allowed as late evidence, as they contained Mr Jones' opinion, as expert witness for the Respondent, that a UAR of £7.00 per m^2 for the two units was reasonable. Mr Jones was of the opinion that, although not marked as such, his offer to settle was 'without prejudice' as it was in response to a 'without prejudice' offer to settle made by the Appellant. However, in the circumstances, Mr Jones said he did not object to the inclusion of the email trail as additional evidence.

11. The panel considered that this late evidence had only become available to the Appellant on the day before the hearing and could not have been submitted at an earlier date. As the Respondent's representative had no objections, the panel decided to allow the inclusion of the email trail between Mr Moore and Mr Jones as evidence. Mr Jones stated that he did not require any additional time to consider and respond to this new evidence, however the panel adjourned for a short period of time to read this new evidence.

Evidence and Submissions

12. Mr Walters appeared on behalf of the Appellant as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Walters' declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Walters 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.

13. Mr Moore, as advocate for the Appellant, stated that the land containing the two hereditaments under appeal had remained unoccupied for eight years, until it was let as two parcels in 2019. He considered that the best evidence were the rents passing on the subject properties and had provided copies of both leases with his challenge. He had analysed these rents at £6.04 per m^2 for Unit 28 and £7.07 per m^2 for Unit 29, from which he concluded that an UAR of £6.50 per m^2 was fair and reasonable for both Units.

14. Mr Walters did not consider that the comparable rents provided by the Respondent were representative of the rent achievable for the appeal properties at the AVD. He argued that the two subject properties were situated at the back of the estate, with access down a single-track lane or across other yards, and did not benefit from any power or water supplies. The closest of the Respondent's comparable properties, although in nearby Westland Business Centre, were located in the 'Junction 21 Enterprise Zone'. He stated that occupiers in the Enterprise Zone qualified for rates relief of up to £275,000 over five years, therefore reducing operating costs, and this would be reflected in rental values for properties situated within the zone. He considered that there was little demand for this type of hereditament in the Airport

location as demonstrated by the length of time taken to let the subject properties, which had been marketed at the same rent for eight years before eventually being let in 2019.

15. With regard to the Respondent's other comparable properties, located in Frome, Shepton Mallet and Taunton, Mr Walters argued that these were located between 30 and 40 miles from the appeal properties, and their rents were therefore not representative of those achievable in the subject properties' location.

16. Having investigated the letting of Unit 9A and Unit 9B Weston Business Centre, Mr Moore stated that the fact that they are occupied by the same occupier, Container Team, under identical terms, suggested that they were not under separate leases. He had subsequently come into possession of this single lease, which the panel had accepted as late evidence, and he had analysed the rent for the combined units to be £4.31 per m^2.

17. Mr Jones argued that little weight should be placed on the rents passing on the appeal hereditaments. Although new lettings, they were agreed over four years after the AVD and therefore did not represent rents achievable at this date. He did not consider that rates relief enjoyed by properties within the Enterprise Zone should be taken into account as there was no evidence to suggest that rents achieved outside the zone were lower. He therefore considered that the fact that the appeal properties are not in the Enterprise Zone does not mean that they cannot achieve the same rents as other similar properties within the scheme for 'Average location in Somerset'. They are situated in a location with very good transport links, just off the A371 and three miles from the M5 motorway.

18. In support of the current UARs for the appeal properties, the Respondent provided a schedule of comparable rental evidence details of rents for six similar assessments, which he considered to be effective close to the AVD. Whilst none of these were located at Locking Airport, three were situated on the Westland Business Centre, close to the airport, and were valued on the same valuation scheme as the subject properties. He had analysed the rents for Unit 9A and Unit 9B Westland Business Centre at £13.51 per m^2 and £11.47 per m^2 respectively, and that of Unit 12 Westland Business Centre at £8.38 per m^2. Unit 9A and Unit 9B Westland Business Centre at 4,810m^2 and 5,665m^2 respectively were much larger than the appeal properties, and this was reflected in their UAR of £6.00 per m^2. Unit 12 Westland Business Centre was similar in size to the appeal property and Mr Jones contended that its UAR of £7.73 supported that applied to the subject properties.

Decision and reasons

19. 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 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 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 1976 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.’

21. Mr Moore argued that the rent passing on the subject properties suggested that the current UAR at £8.73 per m^2 was not reasonable and supported a reduction to £6.50 per m^2. The subject properties had been marketed at rents analysing to £6.04 and £7.07 per m^2 since prior to the AVD which he considered illustrated the values had changed little over the four years after the AVD but, if anything, there was a growing market in which rents had increased after the AVD and therefore believed that this figure would have been lower at the AVD.

22. Mr Jones had rejected the rent on the subject property as unreliable, as it had been agreed more than four years after the AVD.

23. The panel are aware that, following the propositions set out above, the rent on the subject property should be a starting point. It noted that the rents had been agreed some time after the AVD. Whilst this presented difficulties in determining the rents passing on the subject properties at the AVD, the panel was satisfied that these transactions provided a starting point but consideration of a basket of rents was necessary to come to a conclusion regarding the correct rate to be applied to the appeal properties.

24. In support of the current assessment of the subject property at £8.73 per m^2, Mr Jones had provided details of assessments of three units on the Westland Business Centre which he had analysed at between £8.38 and £13.51 per m^2. He had also analysed the rents of three similar assessments in Frome, Shepton Mallet and Taunton at between £8.06 and £10.11 per m^2 and these had been assessed at an UAR of between £5.99 and £8.42 per m^2.

25. The panel was of the opinion that the three assessments in Frome, Shepton Mallet and Taunton were much further away from the appeal properties than the three assessments in Westland Business Centre and were in a different valuation scheme to the appeal properties, and therefore placed minimal weight on the rents and assessments of these properties. Mr Moore had provided a single lease, effective from 1 June 2014, covering Unit 9A and Unit 9B, and the panel accepted the analysis of this rent at £4.31 per m^2. The panel considered that this rent would reflect that this combined assessment was significantly larger than the appeal properties at 8,390m^2 and therefore suggested an element of quantum, which indicated that the rent for the subject properties would be higher.

26. The rent for Unit 12, Westland Business Centre had been agreed on 1 October 2016. This had been analysed by Mr Moore at £8.06 per m^2 and by Mr Jones at £8.38 per m^2. The UAR for Unit 12 was £7.73 per m^2 and it was similar in size to the appeal properties. Having considered the Appellant's submissions with regard to the condition of the appeal properties, their lack of services and poor access, and them not being located within the Enterprise Zone, the panel was of the opinion that rents agreed for the appeal properties at the AVD would reflect these disadvantages and would therefore be lower than that of Unit 12 for these reasons.

27. From the rents passing on the appeal properties and the basket of rental evidence provided by the parties the panel was satisfied that the current assessments of the subject properties were excessive, and that the UAR of £6.50 per m^2 sought by the Appellant was reasonable. The appeals are therefore allowed.

Order

28. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Unit 28, Weston Business Park, The Airport, Weston-Super-Mare, BS24 8RA to £10,500 with effect from 29 July 2019 and for Unit 29, Weston Business Park, The Airport, Weston-Super-Mare, BS24 8RA to £10,500 with effect from 29 July 2019, within two weeks of the date of this Order.

29. 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: 26 May 2022
Appeal number: CHG100664691 and CHG100664697