THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; workshop and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Units 9 and 11,43-61 Weston Lane, Birmingham B11 3RR

APPEAL NUMBER: CHG100668964

BETWEEN:	Evac & Chair International Ltd	Appellant
	and	
	Mr Dal S Virk (Valuation Officer)	Respondent

PANEL: Mr WJ Read (Presiding Senior Member)
Mrs NC Yang (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 31 October 2022

APPEARANCES: Mr K Batty (the representative for the appellant)
Mr F Hassan (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of the appeal property at £14,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal for Units 9 and 11,43-61 Weston Lane, Birmingham B11 3RR (subject property) which had been entered in the 2017 Rating List as 'workshop and

premises at a RV of £14,500 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The appeal arises from a challenge proposal made by Ken Batty Surveyors on behalf of Evac & Chair International Ltd in respect of the entry in the rating list at £14,500 with effect from 1 April 2017. The appellant sought a revised assessment of £11,800. 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 March 2021. The appellant made an appeal to this tribunal against the decision notice which was received on 24 February 2022, on the grounds that the existing RV was not reasonable.

4. Mr Batty 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 Batty stated that he was not instructed under a 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 his client's case.

5. The subject premises comprises an industrial workshop unit built around 1975 with unlined walls and an eaves height of 2.62 metres. There are ground floor workshops and first floor offices with a mezzanine floor supported with stanchions in Unit 9. It is located on Weston Lane and has shared access with other units on the same industrial estate.

6. Mr Batty attended the hearing by an audio only connection but confirmed that he was content that he could fully participate in the hearing by that method. The panel was satisfied that neither party had been disadvantaged by the audio only connection and that both panel members were able to hear Mr Batty's presentation in full.

7. 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 before 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

8. The issue between the parties is the RV of the appeal property specifically the main space price for the hereditament and any end allowances.

Evidence and Submissions

9. Mr Batty submitted a bundle of evidence which included photographs and details of the subject property, his revised RV calculation, copies of correspondence between the parties and the issues in dispute. He submitted that the appeal should be allowed and the RV on the subject property should be reduced to £11,800.

10. Mr Hassan referred the panel to the challenge application and decision. He submitted that the RV of £14,500 was reasonable and asked the panel to dismiss the appeal.

Decision and Reasons

11. 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.

12. 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.'

13. Mr Batty explained to the panel that the size of the subject property had not been agreed between the parties but in order for the case to proceed he would concede and agree the size put forward by the VO of 268.26m^2.

14. In support of the revised RV of the subject property at £11,800 Mr Batty had provided details of comparable properties to the subject property:

a. Unit 7, 111 Baltimore Road, Birmingham which is 843.40m^2 with a main space price of £24.00.
b. Clock Tower Place, Langdon Street, Birmingham is 802.16m^2 with a main space price of £24.00.

15. Mr Batty submitted that the issues that remained outstanding between the parties were:

- The UAR/ m^2 was too high and he submitted that it should be reduced to £23.15/m^2. He argued that the subject property had unlined walls was uninsulated and had a low headroom for an industrial building and this supported the UAR being reduced to £23.15/m^2.

- The first floor UAR should also be reduced to £15.84/m^2 from £16.25/m^2 as the usual rate for the first floor is that of 65% of the main space rate.

- The external storage area was of poor quality, and he submitted that 50% of the main space rate was more reasonable being £12.19/m^2.

- The workshop has stanchions throughout although he did concede that there were no stanchions in the office space. These caused the layout of the subject property to be severely limited to work round the stanchions. He referred the panel to the photograph showing the stanchions which also demonstrated in his opinion the problems with the layout caused by them. He submitted that an end allowance of 2.5% would be appropriate in the circumstances.

- The access to the subject property is shared and difficult for large vehicles. He referred the panel to a photograph which showed the access to the subject property was narrow. This was exacerbated if, as shown on the photograph, a car parked in the entrance large vehicles would not be able to access the subject property. He therefore submitted that an end allowance of 5% would be appropriate.

- The subject property consisted of two units used together and where they joined the area was an 'awkward' space leaving access between the two units 'difficult'. In connection with this he submitted an end allowance of 5% would be appropriate.

16. Mr Batty submitted that the above issues led to the proposed reduced RV. As his original revised RV was based on his own measurements and he had now conceded that he agreed the VO's measurements this would lead to a revised RV of £12,500.

17. When questioned by Mr Hassan on behalf of the VO, Mr Batty confirmed that he had produced no comparable properties to support the end allowances he submitted should be applied to the subject property.

18. The panel noted that Mr Batty had not produced any comparable properties and therefore it had nothing to compare the proposed allowances and the size of those proposed allowances with.

19. Mr Hassan stated that the passing rent on the subject property was £27,150 with effect from 1 March 2018. A rent review was conducted annually under the terms of the lease which commenced on 1 March 2008. Mr Hassan analysed the rent to £50/m^2 in 2018 and to

£45.48/m^2 in 2011. He submitted that these rents were some distance apart in time and represent rents on either side of the AVD. They are also both above the current UAR of £25. Under *Lotus and Delta* the rent on the subject property was the starting point when calculating an RV and especially when it is negotiated in the open market between unconnected parties close to the valuation date.

20. He drew the panel's attention to the comparable properties supporting the current tone with all the properties being in the same locality and the same scheme as the subject property:

Address	Description	Total area M^2	Effective date of rent	Rent	Adjusted rent	UAR
22-23 Atlas Estate	Warehouse and premises	659.75	1 April 15	£27,954	£38.49	£25
70 Birch Road	Workshop and premises	639.40	1 Mar 14	£21,500	£19,350	£25
Units A, B & C Workshop at 172 Stockfield Road	Workshop and premises	519.00	26 Jun 14	£19,250	£17,613	£25.53

21. The comparable properties were in Mr Hassan's opinion good comparators to the subject property as they were similar in size and supported a UAR of £25 for the subject property.

22. The panel was aware that in the case of *Lotus v Delta* the basket of evidence used in the valuing of a property included that of comparable evidence on similar units in the vicinity. The panel put weight on the comparable properties provided by the VO which provided strong evidence to support the UAR of £25 on the subject property.

23. Mr Hassan submitted that in relation to the appellant's two comparable properties Unit 7 is considerably larger than the subject property being 843.40m^2 and so an element of quantum would need to be taken into account and that would reduce the adjusted rent. In connection with Clock Tower Place, the passing rent on the property is £30,000 effective from 25 March 2013 which analyses at £35.36/m^2 which is above the UAR of £24. It is also, as with Unit 7, much larger than the subject property at 802.16m^2. This meant that in his opinion the panel should put little weight on either of the appellant's comparable properties.

24. The panel found that the comparable properties put forward by the appellant were different to the subject property as outlined by Mr Hassan and so gave them little weight.

25. Mr Hassan stated that the matters raised supporting the various end allowances would have been taken into account at the stage of negotiating the rent payable on the subject property. Therefore to add an end allowance for them would be to double count them. Further that the car parked in the entrance to the subject property was a matter that should be taken up with the manager of the site and not included in the RV. He therefore submitted that none of the end allowances were appropriate and asked the panel to dismiss them.

26. The panel determined that the matters raised by the appellant would indeed have been part of the negotiation and decision by the appellant when taking the subject property. They would have been grounds for a potential rent reduction to take them into account and so to give an end allowance would be duplicating their impact.

27. From the passing rent on the subject property and the basket of rental evidence provided by the respondent the panel was satisfied that the current assessment of the subject property at £25.00/m^2 was reasonable and the appellant had not provided any evidence of rents or assessments with end allowances to persuade the panel that it was excessive. The appeal is therefore dismissed.

Date: 28 November 2022

Appeal number: CHG100668964

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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.