THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Warehouse and premises; accuracy of rateable value; *found that weight of evidence did support a reduction in the assessment of the subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Allowed.*

RE: Unit 22 Heckford Street Business Centre, Heckford Street, London, E1W 3JL

APPEAL NUMBER: CHG100685383

BETWEEN: Express Plant Hire Limited Appellant
(Represented by Philip Sani Chartered Surveyors)

and

Andrew Ricketts Respondent
(Valuation Officer)

PANEL: Mrs A E Fielder (Senior Member)
Dr P A R Thomson
CLERK: Mr James Massey

REMOTE HEARING: 19 January 2023
APPEARANCES: Mr P Sani of Philip Sani Chartered Surveyors - Advocate/Expert witness for the appellant.
Mr C Cates for the Valuation Officer.

Summary of decision

1. Appeal allowed. The panel determined the Rateable Value (RV) of Unit 22 Heckford Street Business Centre, Heckford Street, London, E1W 3JL ("the subject property") at £32,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 Rating List as 'Warehouse and Premises' at an RV of £41,250 with effect from 1 April 2017. As this was a compiled list appeal the material day was 1 April 2017.

3. The challenge proposal was submitted by Philip Sani Chartered Surveyors on behalf of Express Plant Hire Limited and was received by the Valuation Officer (VO) on 20 April 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 £25,000 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 22 February 2022. The VO's decision was that the appellant's challenge was not well-founded but proposed a revised RV of £36,250.

5. The appeal hereditament was a light industrial unit in the Heckford Street Business Centre within the London Borough of Tower Hamlets. It was brick built in the 1980s with an eaves' height of approximately 3.75m and has no heating. Although it was originally 187.1m^2 in size, it emerged during the challenge process that a mezzanine floor had been installed covering 71.7m^2 of the ground floor. The area of the mezzanine floor was valued at 50% of the main space rate and the area under the mezzanine floor at 70% of the main space rate due to restricted height.

6. This decision notice is not intended to be, and does not purport to be, a contemporaneous or verbatim record of the proceedings.

Issue

7. The issue between the parties concerned the RV of the appeal hereditament, specifically, the rate per m² that should apply. Further to discussions during the challenge Mr Sani, for the appellant, sought a revised reduction to £32,000 RV based on a main space rate of £155.00 per m². Mr Cates, for the VO, defended the revised assessment of £36,250 RV, which was based on the existing main space rate of £180.00 per m².

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

Evidence and Submissions

9. Mr Sani 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 Sani's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

10. Mr Sani 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.

11. 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.

12. Mr Sani considered that the best evidence as to the correct RV was the lease on the subject property. The rent was agreed in February 2016 at £29,000 per annum (pa) for a three-year term. The rent was agreed 10 months after the AVD at a time which Mr Sani believed rents

were higher than at the AVD for industrial properties in London. Adjusting the rent for three car parking spaces at £300 each, he had analysed this rent at £150.20 per m^2 based on the shell unit without the mezzanine floor, which he considered supported a main space rate of £155 per m^2 for the subject property.

13. In support of the subject rent, Mr Sani referred to the assessment of 23 Heckford Street Business Centre which had been recently agreed at £138 per m^2. He argued that this property was larger than the subject property at 299.5 m^2, but identical in location, age and specification, and supported a reduction for the subject property.

14. Mr Cates stated that the rent on the subject property was for a shell unit, and like all of the other leases in Heckford Street Business Centre, did not reflect tenants' improvements. He considered that the rent agreed of £29,000 should be adjusted to reflect the capital cost of installing the mezzanine floor and the ongoing benefits of its use.

15. Mr Cates referred to a schedule of rental evidence on industrial properties which he considered illustrated that the current rate adopted for the subject was not excessive:

Address	Area (m^2)	Rent - Effective date	Analysed rent (£/m^2)	Unit rate(£/m^2)	Comments
Unit 22, Heckford Street Business Centre	187.09	£29,000 1/2/2016	£150.20	£180.00	Subject property – lease renewal
28-29, Heckford Street Business Centre	115.35	£26,500 1/5/2015	£219.33	£220.00	Merged with Unit 26 in March 2019
6-7, Heckford Street Business Centre	175.26	£30,500 1/1/2015	£178.38	£240.00	Lease includes 11-12 Heckford Street BC
18, Heckford Street Business Centre	76.23	£18,040 1/6/2015	£228.78	£200.00	Lease renewal – three years
Units 19-20 Heckford Street Business Centre	88.55	£15,776 1/5/2014	£178.03	£240.00	New lease (described as office)
Unit 21 Heckford Street Business Centre	42.83	£10,825 2/5/2015	£252.04	£240.00	Lease renewal (described as office)
Unit 23 Heckford Street Business Centre	299.54	£41,534 20/8/15	£138.11	£138.00	Appellant's comparable

Decision and reasons

16. 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 based upon 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 (the 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.

17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141, as referred to by the appellant. 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.'

18. The panel was aware that, following the propositions set out above, the rent on the subject property should be the starting point. This had been agreed on a lease renewal some eight months after the AVD. The panel was satisfied that the rent of £29,000 pa was on the shell unit without the mezzanine floor. This had been devalued to £150.20 per m^2 based on the area of the subject property without that addition. The appellant had subsequently valued the subject property using a proposed rate of £155 per m^2, with the area of the mezzanine floor included, to obtain his proposed RV of £32,000.

19. Mr Cates had argued that the rent on the shell unit should be adjusted to take account of the capital outlay for the mezzanine floor, however the panel was not persuaded that this was the correct approach as the value of the mezzanine floor had been added to the appellant's valuation already, and to adjust the rent upwards would amount to double counting.

20. The panel considered the analysed rent and unit rate agreed for Unit 23. It considered this unit to be most comparable to the subject property, although it was somewhat larger. It considered that this difference in size would suggest a higher rate would be appropriate for the subject property. The rent for Unit 23, agreed four months after the AVD, had analysed to £138.11 and its assessment had recently been agreed at £138 per m^2. The panel considered that an additional £17 per m^2 to account for quantum as proposed by the appellant was reasonable.

21. The respondent's key rental evidence was that of 6-7, Heckford Street Business Centre, which had been analysed to £178.38 per m^2. As this was only slightly smaller than the appeal property, the respondent considered that its rent, agreed three months before the AVD, supported a rate of £180 per m^2 for the subject property. The panel noted that whilst the lease for 6-7, Heckford Street Business Centre included 11-12 Heckford Street Business Centre, these properties were not contiguous and had separate entries in the rating list. The panel noted that the remainder of the properties submitted by the respondent as comparable were considerably smaller than the subject property and the panel considered they held little weight in determining that £180 per m^2 for the subject property was not excessive.

22. The panel noted that both parties had provided details of properties which were located in the same industrial area as the subject property which they considered were comparable. However, it placed most weight on the rents passing on the subject property and the adjacent property, Unit 23 which it considered demonstrated that the subject property's current RV of £36,250 was excessive and that the RV of £32,000 proposed by the appellant was fair and reasonable. The appeal is therefore allowed.

Order

23. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Unit 22 Heckford Street Business Centre, Heckford Street, London, E1W 3JL to £32,000 with effect from 1 April 2017, within two weeks of the date of this order.

24. 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: 9 February 2023
Appeal number: CHG100685383

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.