THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; retail warehouse and premises; accuracy of rateable value; rent passing on comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Decision: Dismissed

RE: SCS Ltd, Unit A1, Mallard Way, Silverlink Retail Park, Wallsend NE28 9ND

APPEAL NUMBER: CHG100691154

BETWEEN:	A Share & Sons Ltd t/a SCS	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mr A Aggrey (Senior Member)
Mr A Asante

REMOTE HEARING: 27 February 2023

CLERK: Ms J Routledge

APPEARANCES: Ms M Oates of Lambert Smith Hampton (on behalf of the appellant)
Mr O Ridley (on behalf of the respondent)

Summary of decision

1. Appeal dismissed. The panel confirmed the Rateable Value (RV) of SCS Ltd, Unit A1, Mallard Way, Silverlink Retail Park, Wallsend NE28 9ND (the 'subject property') at £292,500 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 'retail warehouse and premises' at a RV of £292,500 with effect from 1 April 2017 (reduced initially to £277,000 by a 5% end allowance until 1 April 2019). As this was a compiled list appeal the material day was also 1 April 2017.

3. The challenge proposal was submitted by Lambert Smith Hampton on behalf of SCS Ltd and was received by the Valuation Officer (VO) on 10 May 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 £220,000 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 31 March 2022 in respect of the subject property. The VO's decision was to treat the appellant's challenge as not well-founded, but that the current rating list entry was reasonable.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 27 July 2022.

6. As Ms Oates appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with her 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. It was established that Ms Oates's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, Ms Oates declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she would comply with this as well as the requirements of her professional body regardless of whether or not the evidence supported the client's case.

8. 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.

9. The subject property is a retail warehouse dating from early 1990. The property is measured as 699.4m^2 comprises a ground floor sales area with a mezzanine sales area and it also benefits from air conditioning both added by

the tenant. It is situated on a large retail park off the A19 road between Newcastle and North Shields.

10. This tribunal decision document is not and does not purport to be a verbatim record of the proceedings.

Issue

11. The issue between the parties concerned the rate per m² that should apply. Ms Oates, for the appellant, sought a reduction to £220,000 RV based on an unadjusted main space rate of £300 per m². Mr Ridley, for the VO defended the assessment of £292,500 RV based on an unadjusted main space rate of £390 per m².

12. All relevant factual information regarding the subject property, including its total area of 699.4 m^2 (ITMS) was agreed as was an end allowance of 5% for the period 1 April 2017 to 1 April 2019 due to the effect of roadworks.

Evidence and Submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the appellant's challenge submission, the VO's initial response to the challenge, further evidence exchanges and the VO's challenge decision notice.

14. In support of her proposed main space rate of £300 per m^2, Ms Oates referred to rental evidence derived from comparable properties within the Silverlink Point retail park. She disputed the relevance of the rental evidence submitted by the VO and argued that the rentals in Silverlink Point were more indicative of the rental values at AVD.

15. On behalf of the Valuation Officer, Mr Ridley referred to the current rent on the subject property, agreed in November 2011 which he had analysed at £390 per m^2 which he considered was in keeping with similar sized retail warehouses specifically within the Silverlink Retail Park site. He disputed the relevance of the appellant's comparable properties in the nearby Silverlink Point development which he did not consider to be comparable.

Decision and Reasons

16. The subject property 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.

17. 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 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.'

18. Ms Oates confirmed the history of the subject property which was let on a new 20 year lease on 6 March 2006 at a rent of £252,000, with 5 yearly rent reviews. The rent increased to £292,500 after the 2011 review. There was a further review in 2016 when the rent was not increased. Ms Oates submitted the rent agreed in 2011 was too far removed from the AVD to be of any assistance. She argued that as a consequence of the upward only rent review clause, the lack of a rent increase in 2016 was unreliable as an indicator of the rental trend at that time.

19. Ms Oates referred the panel to the properties on Silverlink Park where values ranged between £250 per m^2 and £425 per m^2 depending on the size of the units. This rental evidence she submitted was derived from rent reviews; re-gears and renewed leases. She submitted that many of the properties had nil

increases in their rent because of upward only clauses in the leases and therefore the passing rents were historic and were not reliable indicators of what a vacant and to let unit would have achieved at the AVD.

20. Ms Oates submitted that the rents on the units in Silverlink Point demonstrated that the rate applied to the subject property was excessive. These were new leases taken out in 2016 and 2017 and she argued better reflected the rental market at that time. In particular she referred to Hobbycraft, Unit 3 Silverlink Point which was originally in the list at £425 perm^2 and had recently been reduced by agreement to £350 per m^2. This she argued supported a reduction for the appeal property.

21. Mr Ridley argued that the properties on Silverlink Point were not comparable as they were set on a smaller separate park created in 2015/16. There was only four units and these were destination stores. The new leases were intended to attract new tenants and could not be relied upon as comparable to Silverlink Park. There was also more units including a cinema and restaurants, and a large carpark at Silverlink Park which would attract more footfall and therefore increase the rental potential. He conceded that the Silverlink Point properties were originally valued at the same level as Silverlink Park, however this was now being addressed as evidenced by the agreement to reduce Hobbycraft.

22. The panel noted that none of the properties in Silverlink Point were of a similar size to the subject property, they were in a separate area as evidenced by the map supplied, and outliers from the main park with less units and no ancillary attractions such as restaurants. The panel in comparing the rents agreed in 2016 for the properties in Silverlink Point with similar sized properties in Silverlink Park found that Unit 2 Silverlink Point which was 1173.5m^2 with a ten year lease from August 2016 for £395,000 per annum and Unit 4 Silverlink Point which was 1059.81m^2 with a ten year lease from August 2016 for £431,250 were both noticeably less than Unit B3 Silverlink Park which was 1165.6m^2 with a ten year lease from November 2016 for £502,400 which (adjusting for the fifteen month rent free period) is £496,120 per annum over the ten year lease term. The panel therefore found that it could give less weight to the rents on the Silverlink Point units.

23. In support of the current assessment of the subject property at £390 per m^2, Mr Ridley had provided details of fourteen units including the subject property which were retail warehouses in Silverlink Park which he considered demonstrated the tone of rental evidence in the area. The main space rates varied according to size of the units, the smallest being 569.47m^2 with a main space rate of £425 per m^2 to the largest at 2494.54m^2 with a main space rate of £350 per m^2. He argued the evidence of leases and renewals from before and after the AVD supported £390 per m^2 for the subject property being reasonable.

24. In particular he referred the panel to the 2016 new ten year lease by Halfords which is closest in size at 761.5m^2 and next door to the subject property which analysed to £404.84 per m^2. He also submitted that the rent on Unit B2

(Mothercare), which at 924m^2 was almost thirty per cent larger, had increased following a review in January 2015, three months before the AVD, from £322,304 per annum to £397,384 per annum which analysed to £421.85 per m^2 which supported the main space rate of £390 per m^2 for the subject property.

25. Ms Oates argued that the lease on Halfords was a re-gear and therefore was as a result of a sitting tenant negotiating with a willing landlord, as such it should be treated with caution. The rent increase on Mothercare was also less reliable as it was a much larger unit. Mr Ridley considered it was good evidence to support the subject property assessment.

26. The panel noted Halfords was adjacent to the subject property and in the same mode of use, the closest in size and had been valued at a main space rate of £390. The panel was of the opinion that this was the most useful comparable property. The panel found that it could place most weight on this evidence as the lease although post AVD, was of use in establishing passing rents at that time. The panel also considered the rent increase on Mothercare supported the assessment of £390 per m^2 for the subject property.

27. With regard to the effect of quantum, the panel noted that this was demonstrated in the rental values and the assessed values of Silverlink Park. It considered that the differential in these values demonstrated that it would be reasonable to expect that the rent achieved on the subject property would be £40m^2 higher than on Units B2, B3,C1 and F2 which were all double the size of the subject property.

28. Both parties had provided significant detail regarding the relative advantages and disadvantages of their comparable properties in terms of their locations and other attributes in showing that the current rate applied to the subject property was either reasonable or excessive.

29. Having considered both parties' evidence the panel found the VO evidence more persuasive having regard to the new lease on Halfords and the rental evidence of the subject property itself and concluded that the rate of £390per m^2 adopted by the respondent was fair and reasonable. The appeal was therefore dismissed.

Date: 20 March 2023

Appeal number: CHG100691154

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.