

THE VALUATION TRIBUNAL FOR ENGLAND



Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Distribution warehouse and premises; main space price; appeal dismissed.

RE: Tesco Distribution Centre, Pochin Way, Middlewich, Chester CW10 0TE

APPEAL NUMBER: CHG100692379

BETWEEN:	B & M Retail Ltd	Appellant
	and	
	Mrs A Hitchings (Valuation Officer)	Respondent

PANEL: Ms Caiquo (Presiding Senior Member)
Mr P Hickson (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 4 on 17 July 2023

APPEARANCES: Mr D Cownie from CBRE (Appellant's representative);
Mr T Jenks (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The panel concluded that the main space price of £32/m² and the resultant rateable value of £1,320,000.00 was correct.

Introduction

2. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 11 May 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was partly well founded and altered the existing assessment of £1,410,000 RV down to £1,320,000. A decision notice to that effect was served on the appellant on 4 July 2022 and his representatives then appealed the VO's decision to the Tribunal on 3 November 2022 on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of

the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. The appeal property was a distribution warehouse and premises with an agreed gross internal area (GIA) of 43,031.64m².
4. Mr Cownie appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Cownie's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.
5. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).
6. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

7. The issue in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Cownie had sought a reduced entry of £1,130,000 RV based on an unadjusted value of £29/m². Mr Jenks defended the VO's existing assessment of £1,320,000 based on an unadjusted value of £32/m².
8. The difference was how the mezzanine floor was reflected in the rental analysis. Mr Cownie had included the mezzanine floor when analysing the rent and the VO had excluded it. But, the VO considered that the rent was not reliable as the previous occupant had left a substantial amount of storage racking in the appeal property. Mr Jenks considered that it would cost the landlord a significant amount to remove it (approximately £1m).
9. As the racking and mezzanine floor had been left, Mr Jenks argued that the appeal property would only attract a limited number of occupants. As the appeal property had been unoccupied for two years, he submitted that the landlord would have been desperate to let the unit and the appellant knowing that it had been unoccupied and potentially difficult to let with the racking, would have negotiated a lower rent.

Evidence and submissions

10. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence for the appeal property and its analysis, the parties' skeleton arguments, location maps and photographs of the appeal property.

Decision and reasons

11. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.
12. The starting point for consideration was the actual rent passing on the appeal property. The rent of £1,525,000 effective from 17 August 2015 which was a new letting. There was a six month rent free period and 12 months at half rent. The rent was inclusive of VAT, business rates, insurance and all other outgoings. Mr Cownie had analysed the rent to £27.69/m² and £31.06/m², the former assumed that the rent included the mezzanine floor and the racking. Mr Cownie argued that the rent passing on the appeal property was the best evidence, and the tribunal need not look any further.
13. As the rent for the appeal property required a number of adjustments to reflect the rating hypothesis i.e. that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance. Furthermore, as the VO had suggested that the tenant had negotiated a lower rent due to the appeal property being unoccupied for two years, the panel considered that the rent for the appeal property may not be reliable to determine the RV and applied less weight to the rent for the appeal property. Mr Cownie had not provided any other rental evidence to support the rent for the appeal property.
14. The VO referred to other comparable assessments. However, the panel applied less weight to Northway, Pochin Way which had been valued at £38/m² although it was half the size of the appeal property. Unit 75 Erf Way and Wincanton, Erf Way had been agreed at £32/m² and were similar in size to the appeal property. Mr Cownie had cast doubt on the reliability of the assessment for Unit 75 Erf Way as the appellant's representative had made an error with the size of the unit, although the VO had not suggested that they had correct their records or were going to amend the assessment.
15. The panel considered that there was a dearth of reliable rental and settlement evidence. However, as the panel did not consider the rent for the appeal property to be reliable and no additional evidence had been presented to support the rent, the panel preferred the VO's rental evidence of Unit 75 and Wincanton, Erf Way. These had been settled by the VO and supported the appeal property, being similar in size and location being valued at £32/m².
16. In the absence of any substantial evidence to prove otherwise, the panel concluded that the value of £32/m² and the resultant rateable value of £1,320,000 was not excessive and dismissed the appeal.

Date: 1 August 2023

Appeal number: CHG100692379

Right of further 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.