THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Local Government Finance Act 1988; warehouse and premises; accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

Re: 2 Abbey Mead Industrial Estate, Brooker Road, Waltham Abbey EN9 1HU

APPEAL NUMBER: CHG100694254

BETWEEN:	Orange Music Electronic Company Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mr K Sutch (Presiding Senior Member)
	Mr WJ Read (Senior Member)
CLERK:	Ms N Shepherd IRRV Hons
REMOTE HEARING 1:	Tuesday 25 July 2023
APPEARANCES:	Mr M Evans, of Altus Group on behalf of the Appellant as advocate and expert witness
	Mr L Stevens, on behalf of the Respondent

Summary of decision

1. Appeal dismissed. The rateable value (RV) of £30,250 was confirmed from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal brought in respect of the appeal hereditament, which had been entered into the rating list as ‘Warehouse and Premises’ at £30,250 RV with effect from 1 April 2017.

3. 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 was served on the Valuation Officer (VO) on 18 May 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and refused to alter the existing assessment of £30,250 RV. A decision notice to that effect was served on the appellant on 5 May 2022. Subsequently, the appellant’s representative then appealed the VO’s decision to the tribunal on 10 August 2022, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appeal hereditament is located on Abbey Mead Industrial Estate, Waltham Abbey, Essex. It had been built in 1990 and the size had been agreed at 359.91m^2. It was within scheme 344670, which was appliable to all industrial units on Abbey Mead Industrial Estate.

5. As Mr Evans appeared on behalf of the appellant as both advocate and expert witness and in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he confirmed that he was aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was not instructed under a conditional fee arrangement or any other success related fee.

6. In order to assist the tribunal, the parties had agreed all basic facts and the analysis of the competing rental evidence.

7. This hearing was held remotely via Microsoft Teams.

8. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

9. The issue in dispute was the correct tone of value for the main space to be applied to the appeal hereditament. Mr Evans sought a reduced entry of £27,500 RV based on a main space price of £72.50/m². Mr Stevens defended the VO’s existing assessment of £30,250 RV based on a main space price of £80.00/m².

Evidence and submissions

10. The evidence comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

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 to 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) to 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 and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, 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 is 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 VO. 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. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration to how that rent compared to the statutory definition of rateable value.

14. The panel noted that a new lease had been agreed in respect of the appeal hereditament with effect from 1 April 2016. The rent had been agreed at £32,000 per annum with an adjustment made as a result of the landlord being responsible for insurance, which analysed to £79.97/m^2.

15. The panel considered the second proposition in *Lotus & Delta* and found that the start date of the lease was more than a year following the AVD. As a result, whilst it attached some weight to the subject rent it found it must also consider other comparable properties to determine whether the RV in respect of the appeal hereditament was reasonable.

16. Mr Evans had provided details of three properties within the same industrial estate and valuation scheme as the appeal hereditament which he considered supported a main space price of £72.50/m^2. The details for these properties were as follows:

i) Unit 6, Abbey Mead Industrial Estate – a rent passing of £30,000 pa with effect from 24 March 2014, which analysed to £72.12/m^2 after adjustments for shared responsibility of insurance and external repairs and a £1500 deduction for a car park. This property had been valued at £80/m^2.

ii) Unit 4, Abbey Mead Industrial Estate – a rent passing of £33,000 pa with effect from 15 January 2015, which analysed to £71.86/m^2 after adjustments for the landlord's responsibility of external repairs, shared responsibility for insurance and internal repairs, and a £1800 deduction for a car park. This property had been valued at £80/m^2.

iii) Unit 1, Abbey Mead Industrial Estate - a rent passing of £45,000 pa with effect from 1 March 2014, which analysed to £72.90/m^2 after adjustments for the repairs being shared and the landlord being responsible for insurance. This property had been valued at £80/m^2.

17. The panel noted that the lease for Unit 4 commenced less than three months prior to 1 April 2015, therefore in terms of proximity to the AVD the panel considered this evidence to be good. However, the panel also had regard to the number of adjustments made and as a result did not consider it to be the most reliable rent, and therefore attached less weight to it.

18. The panel also had consideration to Unit 6, and that this too had a number of adjustments made in respect of the rent, making it less reliable. Furthermore, the lease start date of Unit 6 was further removed from the AVD than that of Unit 4. As a result, the panel attached little weight to this comparable.

19. The panel noted that the passing rent held by the VO differed to that submitted by Mr Evans. Mr Stevens contended that a Form of Return had been received in March 2016 in respect of the appeal hereditament, with the rent confirmed to be £48,000 per annum (pa) as a result of the lease being an open-ended agreement. Based upon a passing rent of £48,000 pa the unadjusted rate analysed to a figure of £79.49/m^2.

20. Having regard to the this, the panel therefore accepted the passing rent at the appeal hereditament to be £48,000 pa, in accordance with the lease being an open-ended agreement and as stipulated on the Form of Return.

21. The panel was aware that the persuasive or legal burden of proof was on the appellant to prove his case and it found that they had failed to discharge that burden. The panel ultimately considered that it had not been provided with enough evidence to suggest that the subject property should have an unadjusted rate of £72.50/m^2. The panel found that the passing rent of the appeal hereditament, in conjunction with that of Unit 1 Abbey Mead Industrial Estate, supported that the current RV of £30,250 was reasonable.

23. The appeal is therefore dismissed.

Date: 22 August 2023

Appeal Number: CHG100694254

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.