VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; warehouse and premises; alternative approaches for a reduced rateable value; a reduction to the main space rate to be applied; the end allowance to be increased; appeal allowed in part.

APPEAL NUMBER:	CHG100695442	
RE:	Robert Dyas Distribution Centre, Swallowdale Lane, Hemel Hempstead HP2 7EA (the "subject property")	
BETWEEN:	Robert Dyas	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Friday 2 August 2024	
BEFORE:	Dr T Webb, Presiding Senior Member Mr SMA Ullah, Senior Member	
CLERK:	Mr R Patel IRRV (Hons)	
APPEARANCES:	Mr M Hawkins of Colliers International (on behalf of the appellant as both advocate and expert witness) Mr A J Steel (on behalf of the respondent as both advocate and expert witness)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined the assessment of the subject property at £880,000 rateable value (RV), with effect from 1 April 2017 was not reasonable, and that a reduced assessment of £875,000 was fair and reasonable.

Introduction

3. This appeal had been brought in respect of the following: Hemel Portal, (Robert Dyas Distribution Centre), Swallowdale Lane, Hemel Hempstead HP2 7EA, which was currently entered in the 2017 Rating List as warehouse and premises at £880,000 RV, effective from 1 April 2017.

4. The appellant's challenge to the Valuation Officer (VO) was made on 24 May 2021. The appeal to this Tribunal was made on 21 March 2023, following the VO's decision notice of 24 November 2022, in respect of the subject property (hereditament). It had been made on the grounds that the £880,000 RV shown in the rating list on 1 April 2017 was excessive, with a reduced RV of £750,000 sought, with effect from 1 April 2017. This is a compiled list appeal so the material day is 1 April 2017.

5. The appeal property is a warehouse and premises, constructed in 1998, occupied by the appellant and used as a regional storage and distribution warehouse facility. It comprises a post war Distribution Warehouse located in an established industrial area in Hemel Hempstead. The appeal property had a total area of 18,408.96m^2.

6. Mr Hawkins was appearing on behalf of the appellant as advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his 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. Mr Hawkins declared that he was not instructed under any conditional fee arrangement. He also confirmed that he understood and accepted that his duty was 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.

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

Background

9. The appellant sought a reduction in the RV of the subject property to £750,000, offering two different approaches as justification of his proposed assessment, namely:

   i) Mr Hawkins sought an increase of the end allowance from 8.5% to 12.5% to be applied to reflect perceived issues, that he contended detracted value from the subject property, were it to be let on the open market. These features were the substantial size of the mezzanine floor, poor overall layout and circulation, poor shared and restricted access, insufficient loading facilities and dispersed car parking. Mr Steel did not believe an increase in the end allowance was warranted.

ii) Alternatively, Mr Hawkins sought a reduction to the current unadjusted main space rate (UAR) from £67.50/m^2 to £52.47/m^2. Mr Steel defended the existing rate of £67.50/m^2.

Preliminary issues

10. There were two preliminary issues raised by the clerk:

i) Mr Hawkins had provided late evidence that he wished to be admitted in relation to three comparable properties to support his request for an increased end allowance.

ii) Mr Steel was seeking the panel to determine his revised assessment of £875,000 RV, reduced from £880,000, with effect from 1 April 2017, which he had submitted on 31 July 2024, two days before the hearing. This revised assessment of £875,000 RV included a reduction from 3% to 2.5% in respect of a national agreement for the additional value of the fire protection in distribution warehouses. Whilst no such reduction was sought in the original challenge, Mr Steel thought it appropriate for it to be applied to the valuation.

11. Both Mr Hawkins and Mr Steel agreed to the inclusion of the additional material that the other party wished to be admitted. As such, the panel proceeded to hear the appeal having regard to the additional information and evidence.

Relevant Law

12. 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, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

Discussion

13. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD, 1 April 2015. This date was used to ensure that every property was treated in a consistent way.

14. In arriving at its decision, the panel noted that during the hearing Mr Hawkins stated his preference was for the panel to consider a reduction to the current unadjusted main space rate (UAR) from £67.50/m^2 to £52.47/m^2. Nevertheless, the panel gave regard to both approaches, put forward by Mr Hawkins, referred to in paragraph 9 above.

15. The panel was aware that the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be

attached to rental and assessment evidence. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the rent on the subject property, where available, was considered to be the correct starting point and consideration to how that rent compared to the statutory definition of rateable value. The rents on similar properties were also considered and assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

16. In considering whether the current UAR was reasonable, the panel turned to the rent passing on the subject property as at the AVD which was referred to by Mr Hawkins. This was a letting from 10 July 2014 for a term of 10 years with a 9 month rent free period, followed by a 14 month half rent period, and a rent review at 5 years. The passing rent was £990,570 per annum, which he had analysed at £750,000, this being the mid-point of 5 and 10 year analyses at £690,000 and £810,000 per annum, respectively. On this basis, whilst also taking into account that the property was fully fitted when the lease was granted and included the existence of the mezzanine floor, Mr Hawkins suggested this supported a UAR of £52.47/m^2.

17. Mr Hawkins argued that, having regard to the authoritative guidance in *Lotus & Delta*, that the rent passing on the subject property was the best evidence and that this strongly supported his assertion that the current assessment was excessive.

18. The panel considered the subject property's rent, which had been set approximately 9 months prior to the AVD. Mr Hawkins provided the analysis of the rent at over both 5 and 10 year periods, stating that the adoption at the mid-point of £52.47/m^2 would provide a revised RV of £750,000. However, the panel was mindful that the rent of the subject property included significant incentives of a 9 month rent free period followed by a 14 month half rent period. Furthermore, the panel noted that the rent passing of £990,750 was far in excess of the RV sought of £750,000. Therefore, due to these drawbacks, the panel did not want to place an over reliance exclusively on the subject property's rent, preferring to also take into account the other available evidence.

19. As such, in accordance with the propositions set out in *Lotus and Delta*, the panel went on to the third proposition and considered rents set on comparable properties in the locality. Mr Hawkins had not provided any rents of comparable properties, having asserted that the rent passing on the subject property was and remained the best evidence.

20. When the panel had questioned Mr Steel on the evidence to justify the current UAR of £67.50/m^2, the panel was referred to the VO's decision notice which provided four additional rents in support of the current UAR of the subject property:

    i) Unit Two, The Island, Maxted Road, which analysed to £82.90 with effect from 10 February 2015 and had been valued at a UAR of £67.50/m^2;
    ii) Unit 1, at 1 Boundary Way, which analysed to £99.88, with effect from 24 September 2017. This property had been valued at a UAR of £67.50/m^2.

iii) Amazon, Swallowdale Lane, which analysed to £75.85 with effect from 22 October 2013 and had been valued at a UAR of £68.00/m^2;

iv) Next plc, Eastman Way, which analysed to £84.98, with effect from 5 November 2016. This property had been valued at a UAR of £67.50/m^2.

21. In addition to the above four comparable properties, the VO also made reference to two other warehouses and premises namely Unit Two, at 1 Boundary Way, and Amazon Co UK, Boundary Way, as evidence of comparable assessments to the subject property.

22. Mr Hawkins stated that his preferred route to arrive towards his desired RV was via a reduction to the current UAR, relying on the rent of the subject property. However, in the absence of any comparable rental or assessment evidence from Mr Hawkins, the panel attached greater weight to the basket of comparable evidence provided by Mr Steel. The panel could find no justification to reduce the UAR of £67.50/$m^{2,}$ determining this was a reasonable reflection of the subject property's attributes.

23. The panel then moved on to consider Mr Hawkins' second approach, that the RV should be reduced to £750,000 on the basis that the end allowance should be increased from 8.5% to 12.5% to reflect aforementioned issues.

24. To arrive at the requested £750,000 RV, based on the current UAR of £67.50/m^2 the panel established that this would require an end allowance of 22%, rather than an increase from 8.5% to 12.5%, as Mr Hawkins had suggested.

25. Mr Steel stated that the current 8.5% end allowance was that agreed with the same agents, Colliers International when the RV in respect of the 2010 Rating List was disputed, having then been increased from 5%. Mr Steel stated that it was not appropriate to further increase the allowance.

26. In arriving at its decision, when considering this issue, the panel was mindful that whilst the previous increase of the end allowance to 8.5% related to a different rating list, the panel was also aware that the decision arrived at then would be based on the same principles. Notwithstanding, this issue in this appeal was to be resolved with regard to the AVD of 1 April 2015, as opposed to the decision on the 2010 Rating List assessment that had regard to the AVD of 1 April 2008.

27. The panel thought the previous decision should have some bearing, as it was for the same property, and more so, as it was stated to reflect the same arguments and rationale presented for an increased end allowance in the current appeal. The panel noted the onus was on the appellant to evidentially demonstrate that the subject property was disadvantaged to an extent in comparison to other similar properties, such that it necessitated a further increase in the end allowance. No evidence had been presented to show this. Therefore, the panel determined that the features of the substantial mezzanine floor size, poor overall layout and circulation, poor shared and restricted access, insufficient loading facilities and dispersed car

parking were already adequately reflected in the existing end allowance and the passing rent of the subject property.

28. Finally, the panel turned to the revised assessment provided by Mr Steel of £875,000 RV effective from 1 April 2017, which he had submitted on 31 July 2024. This revised assessment included a reduction from 3% to 2.5% in respect of a national agreement for the additional value of the fire protection in distribution warehouses. Whilst no such reduction was sought in the original challenge, Mr Steel thought it appropriate for it to be applied to the valuation and the panel agreed.

29. Accordingly, the panel adopted the revised valuation provided by Mr Steel, as shown below:

HEMEL PORTAL, SWALLOWDALE LANE, HEMEL HEMPSTEAD, HERTS, HP2 7EA

Property description:	Warehouse And Premises
Special category and code:	Large Distribution Warehouses/151
Basis of measurement:	Gross Internal Area

COMPONENT PARTS OF THE PROPERTY					
Ref	**Floor**	**Description**	**Area m²/unit**	**£ per m²/unit**	**Value (£)**
1.1	Ground	Offices	461.30	83.04	38,306
1.2	First	Offices	461.30	83.04	38,306
1.3	Ground	Warehouse	5766.64	69.20	399,051
1.4	Ground	Area Under Supported Floor	5423.36	48.44	262,708
1.5	Mezzanine	Supported First Floor	5423.36	34.60	187,648
1.6	Ground	Gatehouse	19.10	67.51	1,289
1.7	Ground	Pump House	48.30	50.64	2,446
1.8	Ground	Canopy	746.90	16.87	12,600
1.9	Ground	Portable Building	58.70	51.90	3,047
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION					
		Plant and Machinery			9,240
				valuation sub-total	954,641
ADJUSTMENTS MADE TO THE SUB TOTAL					
		Access/circulation	-8.15%		
					-77,803

The total of all the elements above is £876,838, which we have rounded down to a rateable value of £875,000. This is effective from 01 April 2017.

Disposal

30. In view of the above findings and conclusions, the Tribunal panel found the existing assessment to be unreasonable and determined an assessment of £875,000 RV, with effect from 1 April 2017. Therefore, the appeal was allowed in part.

Order

31. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Robert Dyas Distribution Centre, Swallowdale Lane, Hemel Hempstead HP2 7EA to £875,000 RV, with effect from 1 April 2017, within two weeks of the date of this order.

32. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date issued to parties: 30 August 2024

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.