THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeals; Local Government Finance Act 1988; Unadjusted rate per m^2 in dispute; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal dismissed.

RE: 310/320 The Crescent, Colchester Business Park, Colchester CO4 9YQ

APPEAL NUMBER: CHG100706656

BETWEEN:	Linklaters Business Services	Appellant
	and	
	Ms Joanne Moore (Valuation Officer)	Respondent
BEFORE:	Dr E Stuart-Cole	(Chair and Senior Member)
	Mr K Higgins	(Senior Member)
CLERK:	Ms Janice Routledge IRRV (Tech)	
REMOTE HEARING 1:	4 August 2023	
PARTIES PRESENT:	Mr R Proctor of Cushman & Wakefield	Appellant's representative
	Mr Lee Stevens	Respondent's representative

Summary of decision

1. Appeal allowed in part. The Rateable Value (RV) of the appeal property was confirmed as £305,000 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the non-domestic rates payer of the appeal property at 310/320 The Crescent Colchester Business Park, Colchester CO4 9YQ.

3. The appeal property was a warehouse and office space on the Colchester Business Park, an established business park with all amenities and good

connectivity to the national road network. The Rateable Value (RV) was assessed as £320,000 in the 2017 Valuation List.

4. Through the Check, Challenge, Appeal (CCA) process the appellant's representative proposed that the appeal property should be valued on a rate of £45/m^2 for the whole hereditament with an uplift of 1.39 to reflect the office space and an end allowance of 3.5 per cent to reflect the site was a divided unit. This would reduce the RV of the property to £237,000.

5. The challenge was completed on 27 October 2022 and the valuation officer (VO) determined that the proposal was not well-founded but proposed a revised RV of £310,000 to include a five percent allowance for the split site. The appellant appealed to the Valuation Tribunal.

6. Mr Richard Proctor appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. He 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.

7. 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.

8. This is not intended to be an exhaustive record of the proceedings. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

9. Whether the appeal hereditament should be valued at an overall rate per square metre based on the warehouse space with an uplift for the offices or whether different rates should be applied to the office and warehouse. Additionally, the level of allowance, if any, to reflect the split site.

Evidence and submissions

10. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.

11. The panel turned to the definition of rateable value as contained in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988, as amended by

The Rating Valuation Act 1999, which in brief, explained that the rateable assessment of a property should be equal to the rent that the property would be expected to achieve on the open market as at the antecedent valuation date, which for the 2017 Rating List was 1 April 2015. It would also assume that the hereditament would be in a reasonable state of repair, excluding from this any repairs that a reasonable landlord would consider uneconomic and that the tenant would undertake to pay all usual tenant's rates and taxes, to bear the cost of the repairs and insurance.

12. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

13. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

14. The appeal property comprised of a warehouse and separate office space; both were constructed in the late 1990s. The floor area of the warehouse was sixty-seven percent of the overall space, the remaining space was the separate offices within the curtilage of the hereditament. It is currently assessed as a Warehouse, Office, and Premises.

15. The hereditament was held on two leases and the rent made up of a combination of a new sub-lease agreed in September 2014 at a rent of £151,500 pa for unit 310 the detached office building, and a settled rent review in 2012 of £148,000 pa for unit 320 the warehouse building. This equated to a total rent of £299,500 for the hereditament as a whole at the AVD.

16. It was Mr Proctor's contention that the assessment by the VO which effectively valued each building separately and then combined the two assessments which was referred to as a "hybrid" valuation, to reach the RV for the whole hereditament was erroneous resulting in an unreasonable RV. The end allowance for a split site had also been removed in the 2017 list entry. He confirmed that he was seeking an end allowance of three and a half percent to be awarded in line with the previous 2010 assessment.

17. Mr Stevens argued that the appeal property was primarily an office with the warehouse being ancillary to the office space as the proportion of office to warehouse was higher than usual and this should be reflected in the valuation. The VO considered it was more realistic to value each area in a way that reflected the characteristics of each building described as a "hybrid" valuation.

Decision and reasons

18. The panel noted that the parties were in agreement that the two buildings constituted one hereditament despite the separate leases on each. Mr Stevens confirmed during the hearing that the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 was not relevant to this case, although it had been alluded to in the documents.

19. The panel turned to the definition of rateable value (RV) as contained in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988, as amended by The Rating Valuation Act 1999,

20. The panel were mindful of the judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. In this case, the weight to be put on the rent passing of £299,500 was limited as this was the combined rent from two separate leases in respect of the warehouse and offices.

21. The panel accepted that in considering the RV of the appeal property it had to consider a hypothetical tenant making a rental bid for the hereditament in its entirety rather than as two separate properties.

22. Mr Proctor referred the panel to the previous VTE decision regarding the treatment of the hereditament. This decision although informative was not binding upon the panel. The panel noted this decision was based primarily on the size of the two buildings, the warehouse being the larger of the two spaces and the weight given to the comparable at Lodge Way, Northampton. This comparable evidence was not placed before this panel for consideration, a similar building in the vicinity was cited, this had integrated office accommodation within the building and had been valued as a whole with an uplift for the offices.

23. Mr Proctor provided five comparable properties to support his proposed valuation based on the warehouse base rate with an uplift for the offices.

24. The panel appreciated these comparable valuations were submitted as evidence of the assessment of warehouses with ancillary offices in the locality. However, it noted that the proportion of office to warehouse space in these properties was significantly smaller. The exception was 10 Brunel Way where the office formed the majority of the main space. The panel gave no weight to this assessment as it was clearly at odds with the appeal property.

25. The VO provided ten comparable properties which were "hybrid" assessments. These consisted of offices with separate adjacent warehouses, treated as single hereditaments, although some distance from the appeal property the panel accepted these as comparable properties.

26. The panel found that of these ten comparable properties, six had a similar proportion of office to warehouse percentages, between twenty three and thirty seven percent. The panel noted that none of these assessments had been challenged. The panel found this was good evidence to support the hybrid assessment as it provided a more realistic valuation of the overall hereditament and was supported by its consistency with the current rent.

27. The VO provided comparable assessments of warehouses in the vicinity of the appeal property which established a tone of £47.50 per m^2 for the warehouse space and a tone for the base price for office and premises of £110.00 per m^2.

28. The panel considered the potential number of hypothetical tenants for a warehouse with a substantial amount of office accommodation may be limited when compared to those for just warehouses or just offices and therefore a hypothetical landlord would accept a discount when letting the whole of the property. This was reflected by reducing the warehouse base rate to £45m^2 and the office base rate to £105.00 with a ten per cent uplift to reflect air conditioning. The end allowance of five percent as proposed by the VO was also accepted as reasonable by the panel as it reflected a similar end allowance to those adopted in the comparable assessments.

29. The panel revised the RV as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
1.1	Ground Floor Office	712.40	115.50	82,282
1.2	Entrance area	7.30	115.50	843
1.3	First floor office	697.70	115.50	80,584
2.1	Ground Warehouse	2688.00	45.00	120,960
2.2	Ground floor office	60.56	57.00	3,452
2.3	Ground area under supported floor	39.05	33.25	1,298
2.4	Mezzanine store	141.88	23.75	3,370
ADDITIONAL FEATURES OF PROPERTY INCLUDED IN THE VALUATION				
	Hard Surfaced, Fenced Land	893.00	2.50	2,233
	Plant and Machinery	-	-	10,180
	Surfaced open space	108.00	150.00	16,200
			Valuation sub-total	321,402
			Adjustment for split -5%	16,070
				305,332
			Say RV	**305,000**

30. The panel therefore confirmed RV as £305,000 with effect from 1 April 2017 and allowed the appeal in part.

Order:

31. Under the provisions of Regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the rating list entry of the appeal property to rateable value £305,000 with the description of offices, warehouse, and premises with effect from 1 April 2017.

32. Under Regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 29 August 2023

Appeal number: CHG100706656

Rights of appeal

Any party who is aggrieved by the Tribunal's decision 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.