THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal dismissed.

RE: Unit 1, Acorn Place, Alfreton Road, Derby DE21 4AS

APPEAL NUMBER: CHG100710650

BETWEEN: MF & VJ Kinane Appellants

and

Mrs J Moore Respondent
(The Valuation Officer)

PANEL: Mrs A Adeola (Presiding Senior Member)
Mrs N Carman (Senior Member)

CLERK: Mr A Johnson Tech IRRV

ON: 27 March 2023

APPEARANCES: Mrs C Taylor of Altus Group (for the appellants)
Mr B Chandler (for the respondent)

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was dismissed. The panel was satisfied that the rateable value (RV) of the subject unit was reasonable. Consequently, the RV remained unchanged at £14,000 with effect from 1 April 2017.

Introduction

2. This decision notice is not, and does not purport to be, a verbatim record of the proceedings. The absence of a reference to any statement or item of evidence should not be construed as it having been overlooked.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The subject unit entered the 2017 non-domestic rating list with effect from 1 April 2017 as a 'warehouse and premises' measuring 313.9m^2 (315.7m^2 in terms of main space (ITMS)). It is located on an industrial estate which had been constructed in the 1980's and it was close to the A61.

4. The challenge sought alteration to the 2017 non-domestic rating list on the grounds that the RV for the subject unit from 1 April 2017 was not reasonable. The RV was £15,750 and the challenge sought a reduction to £12,500.

5. The Valuation Officer (VO) considered the challenge and decided that it was not well-founded. However, the rating list entry of £15,750 was found to be inaccurate and it was subsequently reduced to £14,000 from 1 April 2017.

6. Mrs Taylor appeared on behalf of the appellants as advocate and expert witness. Mrs Taylor declared that she had been instructed on a contingency fee basis and she accepted that, when presenting evidence as an expert witness, her duty was to the Tribunal regardless of whether or not the evidence supported her clients' case.

7. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO* [2018] UKUT (LC), the panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

Issue

9. The issue in dispute before the panel was the correct RV for the subject unit. The challenge has sought a reduction of the RV to £12,500 based upon £40 p/m^2.

Summary of evidence

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

Decision and reasons

11. This was an appeal against an entry in the 2017 rating list and so 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. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the subject unit is 1 April 2017.

12. The panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. Whilst it was not found necessary to list them, this case set out six propositions to have regard to when weighing the evidence.

13. The starting point for consideration is the actual rent passing on the subject unit. The panel understood that a lease had been agreed with effect from 1 November 2015 and the rent was £10,950 per annum. Whilst this had been analysed by both parties to £31.22 p/m^2 the unadjusted rate (UAR) which had been adopted was £45 p/m^2.

14. The panel found that the best evidence to determine this appeal was the rental evidence in respect of the subject unit and two other units which were located within the same industrial estate (units 2 and 3). Unit 2 measured 260.2m^2 (230.17m^2 ITMS) and had been the subject of a new lease which commenced on 1 January 2015 for a term of three years with an annual rent of £10,000. The UAR of Unit 2 was £51.40 p/m^2 which had been adjusted to £45.23 p/m^2 to reflect allowances relating to narrow access and shape. Unit 3 measured 156.7m^2 (138.5m^2 ITMS) and had been the subject of a lease which commenced in 2008 with upwards only rent reviews every seven years. The rent with effect from 1 May 2015 was £7,225 per annum. The UAR was £57.43 p/m^2 which had been adjusted to £50.53 p/m^2 to reflect the same allowances. This evidence was not found to show that £45 p/m^2 for the larger and better positioned subject unit was unreasonable.

15. The panel considered the evidence which had been provided in respect of other units in the locality. In particular, the rents of A S Allman and Bella Dame Ltd which had been agreed closest to the AVD (on 1 January 2015 and 1 June 2015 respectively). A S Allman was approximately seven times larger than the subject unit at 2,447.5m^2 (2,161m^2 ITMS) and Bella Dame Ltd was more than three times larger at 1,163.4m^2 (1,055m^2 ITMS). Their respective UAR's were £40.00 p/m^2 and £42.00 p/m^2. The panel concluded that, after

allowing for an element of quantum a UAR of £45.00 p/m^2 for the subject unit was not unreasonable.

16. After full consideration of the evidence presented by the parties, the panel found that the appellants had not discharged their legal and evidential burden of proof to demonstrate that the RV of the subject unit was unreasonable. This appeal was therefore dismissed.

Date: 11 April 2023

Appeal Number: CHG100710650

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.