THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; warehouse and premises; accuracy of rateable value; comparable assessments; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: 14 Haslemere Heathrow Estate, Silver Jubilee Way, Hounslow,TW4 6NF

APPEAL NUMBER: CHG100717054

BETWEEN:	Asendia UK Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr DJ Hayes (Senior Member)
Mrs A Taylor (Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 17 March 2023

APPEARANCES: Mr B Buchkov from Altus Group (on behalf of the appellant)
Mr O Ogbesoyen (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of 14 Haslemere Heathrow Est, Silver Jubilee Way, Hounslow,TW4 6NF (subject property) at £157,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal in respect of the subject property which arises from a challenge made by the appellant's representative on 9 August 2021. The challenge was in

respect of the entry in the rating list at £167,000 RV as 'warehouse and premises' effective from 1 April 2017. This was a compiled list entry, the material date for this appeal was therefore 1 April 2017. The appellant sought a revised assessment of £147,000 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was well founded in respect to lowering the tone from £85/m^2 to £80/m^2 but did not agree with the tone suggested by the appellant's agent of £75/m^2 and the RV was reduced to £157,000. A decision notice to this effect was issued on 20 May 2022. The appellant still contended the RV of £157,000 was not reasonable.

3. Mr Buchkov appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Buchkov stated that he was instructed under a conditional fee arrangement. 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 his client's case.

4. 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.

5. The subject property comprises a warehouse and premises built in 1979. It has partial air conditioning with roof and wall insulation. It consists of a warehouse on the ground floor and offices on the first floor with 12 open surfaced car parking spaces.

6. This hearing was held remotely via Microsoft Teams.

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

Issue

8. The issue in dispute was the main space price applied to the subject premises which the VO submitted was not unreasonable at £80/m^2 the appellant's agent submitted that the reasonable value is £75/m^2.

Evidence and Submissions

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, expert witness statements and photographs of the subject property and other warehouses in its immediate locality.

10. The appellant's representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £147,000 based on an unadjusted rate of £75/m^2.

11. In consideration of the comparable properties admitted in evidence, Mr Ogbesoyen requested that the tribunal dismiss the appeal and confirm the RV of £157,000 with effect from 1 April 2017.

Decision and Reasons

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 (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.

13. 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.'

14. The RV on the subject property is disputed by the appellant on the basis that it does not represent the rental value of the hereditament under the rating hypothesis at the AVD. The appellant took occupation of the subject property under a five-year lease agreement effective from 10 October 2015. It had a headline rent of £182,790 per annum and there was a period of nine months rent free. Analysing the rent over the term Mr Buchkov determined that the base rate of £76.06/m^2 did not equate to the current tone of £80/m^2. He referred the panel to the commencement of the lease being close to the AVD and therefore being strong evidence in support of an unadjusted rate of £75/m^2.

15. The panel was bound by the case of Lotus & Delta where it was determined that the rent on the subject property is only the starting point for assessing the rate to be applied to a property for rating purposes and that other similar properties in the locality of the subject property should be included in the basket of evidence. The panel therefore put little weight on this evidence.

16. Mr Buchkov further submitted that the comparable properties included in the evidence also supported an unadjusted rate of £75/m^2. He drew the panel's attention to Units 3-5 Haslemere Heathrow Estate where the occupier took occupation under three leases. When analysed and taking into consideration the 5% allowance for being a multiple unit provides a base rate of £76/m^2. The rental evidence covers periods both before and after the AVD and in a rising market. He submitted that even taking into account that there were three leases and the fact that the tenant was already in occupation it still supported a rate of £76/m^2.

17. In connection with the open market letting of Unit 15a Haslemere Heathrow Estate which was occupied under a ten-year lease effective from 13 August 2014 with five yearly rent reviews and a break clause in the fifth year. There was also a seven-month rent free period followed by six months at a half rent and a headline rent of £90,640 per annum. When analysed Mr Buchkov submitted that this would equate to a base rate of £76.64/m^2 against a current tone of £90/m^2. This was an open market letting close to the AVD of a unit in the vicinity of the subject property. Mr Buchkov stated that in his opinion the rental evidence on the estate demonstrated that a tone of £75/m^2 would be fair across all the assessments.

18. The panel was aware that the rental evidence would all be weighed in the basket of evidence but the more adjustments that were required to calculate a tone for a property to reflect the rating hypothesis, the less weight that could be put on that rental evidence..

19. Mr Ogbesoyen submitted that the subject property's rental evidence was the most pertinent when determining its RV and he analysed this it to £80.33/m^2. Mr Ogbesoyen confirmed that he had only taken account of six of the nine months' rent free period as the appellant had taken on the subject property and agreed to carry out repairs which would have been expected to be carried out by the landlord prior to its letting. It is assumed that any property is in a reasonable state of repair when assessing it for raring purposes. He submitted that on that basis, the value of £80/m^2 was supported by the subject property's own rental evidence.

20. Mr Ogbesoyen explained that the settlement evidence on 3-5 Haslemere Road at £75/m^2 was due to it being a much larger multiple unit property and so it was not a good comparable property. Further the rental evidence for 13 Haslemere Road a neighbouring property which was the same size and in the same valuation scheme as the subject property had a new lease effective from 1 September 2016 close to the AVD. The lease of four years and three months with a nine-month rent free period which he had adjusted to six months had an analysed rent of £75.41 and a tone of £80/m^2 was adopted and this supports the same rate being applied to the subject property.

21. Unit 10-1 Central Park Estate was built at the same time and was similar in size to the subject property with the rent analysing to £103.81/m^2 and was valued at £82.88/m^2 with a base rate of £80/m^2 which further supports the rate of £80/m^2 on the subject property.

22. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that they had failed to discharge that burden. The panel found that it had not been provided with any evidence to suggest that the subject property should have a main space value of £75/m^2. The panel rejected Mr Buchkov's methodology, which contained two

assumptions. The first was that all comparable properties would receive a rent free period, suppressing the rent. This was not supported on the evidence. The second was the inclusion of an allowance (as in paragraph 18). Such allowances were not assumed and not apparent on the subject property.

23. The appeal is therefore dismissed.

Date: 11 April 2023

Appeal number: CHG100717054

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.