

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 allowed.

RE: 2/4/6 Hovefields Avenue, Basildon, Essex SS13 1EB

APPEAL NUMBER: CHG100720856

BETWEEN: Field Textiles Ltd Appellant

and

Ms D Bunyan Respondent
(Valuation Officer)

PANEL: Mr K Everett (Senior Member)
Mr S Bamawo (Member)

CLERK: Miss F Willson

REMOTE
HEARING ON: 10 May 2023

APPEARANCES: Mr M Clayton from Altus Group (on behalf of the appellant)
Mr L Stevens (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed. The rateable value (RV) of 2/4/6 Hovefields Avenue, Basildon, Essex SS13 1EB (subject property) is reduced from £152,000 to £116,000 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 20 August 2021. The challenge was in respect of the entry in the rating list at £152,000 RV as 'warehouse and premises' effective

from 1 April 2017. The appellant sought a revised assessment of £116,000 RV based on a tone of £40/m². After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 15 August 2021.

3. Mr Clayton 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 Clayton 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 prior to 1978 located on Hovefields Avenue in Basildon. The assessment comprises of ground and mezzanine space with a total area of 2,892.30m².
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 basic price to be adopted for the subject property which the VO submitted was not unreasonable at £52.50/m². The appellant's agent submitted that a reasonable basic price was £40/m².

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 £116,000 based on a basic price of £40/m².
11. In consideration of the comparable properties admitted in evidence, Mr Stevens requested that the tribunal dismiss the appeal and confirm the RV of £152,000 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 was disputed by the appellant on the basis that the appeal property was built prior to 1978 and yet was placed in a scheme for premises built in the 1980's with values ranging from £52.50/m² and £60.00/m². Mr Clayton explained that the warehouse was in fact already in existence by 1978 and was therefore an inferior and older build than the other assessments in the scheme. This meant that the basic price was too high. The correct scheme in his opinion was that for premises built prior to 1979 and which had values of between £35/m² and £57.50/m². This supported a basic price of £40/m² in comparison to properties in what he considered was the correct scheme. In the proposed scheme there were 52 comparable properties with a large number of premises valued at £40/m².

15. Mr Clayton further explained that the subject property was held freehold and so did not have any rental evidence. The nearest comparable properties in the correct scheme were

warehouses on the Burnt Mills Estate which is situated just off Hovefields Avenue. They are in the vicinity of the subject property and in an almost identical locality being less than a mile away. He argued that all the comparable properties put forward by the VO were a significant distance from the subject property and were substantially smaller with one being three times smaller than the subject property and they therefore would be in a different quantum matrix.

16. The panel was aware that a basket of evidence was required to demonstrate a tone for similar neighbouring properties. These would then be weighed in the basket of evidence required to calculate an RV for the subject property.
17. Mr Stevens submitted that the difference in age between the subject property and the others built in the 1980's was not great especially as many of the older units had been refurbished and even extended. He did not agree that the age of the subject property should affect the basic price. He put forward four comparable properties on Hovefields Avenue which had lettings close to the AVD and had analysed rents of between £60.62/m² and £72.48/m² which he submitted supported the basic price of the subject property at £52.50/m².
18. He explained that the comparable properties put into evidence by the appellant were of lower quality than the subject property. Further they were situated in a different locality to the subject property and so should not be given any weight. He also referred the panel to the lack of challenges from within the same scheme as the subject property and submitted that this demonstrated that the basic price was not unreasonable.
19. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that he had discharged that burden. The panel found that it had been provided with evidence to suggest that the tone of the subject property of £52.50/m² was unreasonable. The panel was persuaded by the appellant's comparable properties on the Burnt Mills Estate which had a basic price of £40/m².
20. The panel therefore allowed the appeal. and 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).

Order

21. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £116,000 with effect from 1 April 2017.

Date: 30 May 2023

Appeal number: CHG100720856

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