

THE VALUATION TRIBUNAL FOR ENGLAND



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

RE: 16-20 Howlett Way, Thetford, Norfolk IP24 1HZ

APPEAL NUMBER: CHG100725551

BETWEEN:	Peerless Plastics & Coatings Ltd	Appellant
	and	
	Ms J Moore (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 S Penny from Altus Group (on behalf of the appellant)
Mr C Cole (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of 16-20 Howlett Way, Thetford, Norfolk IP24 1HZ (subject property) at £86,000 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 3 September 2021. The challenge was in respect of the entry in the rating list at £87,500 RV as 'factory 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 £81,000 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was well founded in relation to the unsurfaced land but did not agree with the claim for a 5% disability layout allowance and the RV was reduced to £86,000. A decision notice to this effect was issued on 18 May 2022. The appellant still contended the RV of £86,000 was not reasonable.

3. Mr Penny 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 Penny 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 premises comprises a factory and premises built pre 1998 and is situated on an industrial park on Howlett Way, Thetford. The property comprises of 2,101 m² including factory, office and store area. The building has a brick finish with a steel portal frame construction. It is located close to the A1066 and other major A roads, the centre of Thetford is around 2.4 miles away and there are a number of accessible transport links nearby.
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 before the panel was whether a 5% disability layout allowance should be applied. An earlier dispute concerning unsurfaced land being removed from the assessment had already been agreed and was no longer before this Tribunal.

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 factories in its immediate locality.
10. The appellant's representative submitted that the appeal should be allowed, and a 5% disability layout allowance awarded and the RV on the subject property should be reduced to £81,000.
11. In consideration of the comparable properties admitted in evidence, Mr Coles asked the tribunal to dismiss the appeal and confirm the RV of £86,000 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 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 subject property is held on a ten year lease which commenced on 25 March 2017 with a five yearly rent review at a rent of £85,000. Mr Penny explained that in his view the subject property is not a comparable property with others in the vicinity as it is different in relation to its physical attributes. He explained that there are structural walls which hinder the movement of large goods and materials within the factory. Mr Penny referred the panel to the internal photographs and plans of the subject property. He conceded under questioning that the only area affected by the problems with the layout was between the reflex area and the other internal storage as there was no internal access other than through a small

doorway. He also confirmed that the building had the same layout when the appellant first occupied the subject property.

15. The panel found that the limitations on the free movement around the subject property only related to a small area. The appellant had been aware of this problem when he agreed the lease on the property and so could have either rented a more suitable property or agreed a lower rent. The panel therefore put little weight on this evidence.
16. Mr Penny further submitted that awarding a 5% disability layout allowance had been given with other properties and he included 12 comparable properties which had allowances of between 0% and 9%. He conceded under questioning that he was unable to explain the exact reasons why these properties had been granted the allowance as he had not been able to visit the properties personally.
17. Mr Coles confirmed that the comparable properties referred to by Mr Penny were given disability layout allowance as the assessments comprised of several separate buildings on the same site some of which were old and in a bad state of repair and one of the assessments was no longer a live entry in the rating list.
18. The panel was aware that the information as to the reasons why a property had been awarded a disability layout allowance was determined on a case by case basis. The information provided by Mr Coles demonstrated that the comparable properties were very different and had been awarded a disability layout allowance for very different reasons to the reasons given by Mr Penny in relation to the subject property.
19. Mr Coles submitted that the subject property had been in the rating list from 1997 and no one had put in a challenge based on the layout on any other list and yet the layout had been the same since 1997. He argued that any problems due to the layout would have been taken into account by the tenant when negotiating the lease of the subject property and so was already taken into account in the tone applied. To add a disability layout allowance would have taken the layout into account twice in the RV.
20. 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 an end allowance due to its layout.
21. The appeal is therefore dismissed.

Date: 13 April 2023

Appeal number: CHG100725551

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.