THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; Warehouse and premises; Accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal allowed in part.

RE: 8 Airlinks Industrial Estate, Spitfire Way, Hounslow TW5 9NR

APPEAL NUMBER: CHG100734925

BETWEEN: University Delivery Solutions Ltd Appellant

and

Ms D Bunyan Respondent

(Valuation Officer)

PANEL: Mr A Backway (Presiding Senior Member)

Mrs N Carman (Senior Member)

CLERK: Mrs S Morgan

REMOTE HEARING: Friday 21 April 2023

PARTIES PRESENT: Mr A Hair from Altus Group (on behalf of the appellant)

Mr J Balogun (on behalf of the Valuation Officer)

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £50,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. 8 Airlinks Industrial Estate, Spitfire Way, Hounslow TW5 9NR (the 'appeal property') had been entered in the 2017 rating list as 'warehouse and premises' at a RV of £53,000 with effect from 1 April 2017.

3. The challenge submission was made by the Altus Group on behalf of Universal Delivery Solutions Ltd and was received by the Valuation Officer on 5 October 2021. It had been made on the grounds that the rateable value did not represent the rental value of the hypothetical tenant. The appellant's representative believed that the rating assessment for the appeal property was not in line with assessments on comparable properties in the locality, considering the differences in the physical attributes between the properties. He sought a revised RV of £48,500 with effect from 1 April 2017 based on £72.50/m^2.

4. The Valuation Officer issued a challenge case decision notice in which it stated that based upon the evidence and information available, he believed that the existing rateable value based on £85/m^2 was reasonable. However, as a result of an earlier Valuation Tribunal England (VTE) decision (Appeal number CHG100130624) on 12 Airlinks Industrial Estate, Spitfire Way Hounslow, together with comparable evidence, the assessment for the appeal property was reduced from £56,000 RV to £53,000 RV with effect from 1 April 2017, based on £80/m^2.

5. Mr Hair 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), his declaration of truth included a statement that he was instructed on a contingency fee basis. Mr Hair 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 cases.

6. 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.

7. This hearing was held remotely via Microsoft Teams.

8. This tribunal decision document is not and does not purport to be a verbatim record of 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. The appellant's representative contended that the rate adopted for the appeal property was excessive. He sought a reduction to £72.50/m² whilst the Valuation Officer (VO) contended that the existing £80.00/m², was reasonable.

Evidence and submissions

10. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; comparable properties; rental evidence; a location plan and graphs; summary valuation reports; a photograph of the appeal property; and the definition of rateable value and case law.

11. The appeal property was located within Hounslow. It had an area in terms of main space (ITMS) of 624.89.

12. In support of his case, the appellant's representative had looked at the rents and the level of values for similar properties in the locality to the appeal property. He was seeking an unadjusted main space price of £72.50/m^2 with a resultant RV of £48,500.

13. The respondent provided rental details for properties in Hounslow which he believed supported the unadjusted rate of £80/m^2 for the appeal property. Based on the rental evidence he had submitted and his comments, £80.00/m^2 did not appear excessive. The respondent therefore sought a dismissal of the appeal.

14. During the hearing a copy of an earlier VTE decision, dated 10 August 2021, for 12 Airlinks Industrial Estate, Spitfire Way, Hounslow was circulated to the panel members and the clerk. This appeal was allowed. The level of value had been reduced from £102.50/m^2 to £72.50/m^2 based on just the rent passing on that particular property.

Decision and reasons

15. The main issue in dispute concerned the level of value to be adopted for the appeal property.

16. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

17. 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).

18. 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.

19. Both parties had referred to *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. All of the evidence could then be weighted.

20. The appellant's representative contended that the VTE decision for 12 Airways Industrial Estate suggested that the level of value was excessive for the appeal property. He contended that the revised tone brought it more into line with the nearby International Trading Estate where the units were of a similar age and specification to those units within the Airlinks Industrial Estate albeit at a lower level of value.

21. The appellant's representative also listed what he described as three tone brackets and looked at the differentials within each bracket. The first was those properties in the original tone bracket of £105/m^2. The level of value for Units 11, 13, 14, 15, 16 and 23 Airlinks Industrial Estate were reduced from £105/m^2 to £72.50/m^2 to reflect the VTE decision made on 12 Airlinks Industrial Estate.

22. The next tone bracket was for those originally at £85/m^2. These included the appeal property and Units 2, 3, 5, 7, 9-10 and 17-18 Airfields Industrial Estate. The open market rents for these units analysed to between £55/m^2 and £68/m^2 with two additional lettings that analysed to £81/m^2 and £84/m^2. There was also a letting post AVD at £121/m^2. The appellant's representative contended that the market was volatile post AVD and provided a graph to support his view that rents peaked from 2015. He believed that £72.50/m^2 appeared correct and reasonable for the current £85/m^2 quantum bracket.

23. The third tone bracket was those units originally at £80/m^2. This included unit 20A Airfield Industrial Estate and Units 1 and 2 Victory Way, Hounslow. Here there were two open market letting supporting £70/m^2.

24. In light of the VTE decision on smaller units on this industrial estate being valued at £72.50/m^2 and having reviewed the detailed rental evidence for the previous £85/m^2 quantum bracket, the appellant's representative believed that £72.50/m^2 appeared reasonable for the revised adopted rate for the appeal property. He therefore sought a revised valuation of £48,500 RV.

25. The respondent explained in his submission that the challenge proposal had requested an RV of £47,000 which was only £4,000 above the 2013 rent for the appeal property, two years pre AVD. In October 2018, there was an open market letting on the appeal property for 6 years with a rent passing of £68,450 per annum. This analysed to £81.20/m^2. The increase equated to 9% between 2013 and 2018 and 45% from 2015 to 2018.

26. Initially, the respondent made an offer of £75/m^2 in February 2022 however this was revised to £80/m^2 in April 2022 after he had reviewed evidence available from industrial properties in Christopher Road, Heston Estate and National Works Bath Road Estates. This evidence, compared with the appeal property, showed that the existing level of value for properties on Airfields Industrial Estate appeared to be reasonable at £80/m^2. As a result, the level of value for the appeal property was reduced from £85/m^2 to £80/m^2 giving a revised figure of £53,000 RV. The respondent believed that the decision covered properties on both sides of the quantum band. In addition, the respondent contended that the VTE decision on 12 Airfields Industrial Estate only considered the rent on the appeal property itself rather than the basket of rents provided in his submission.

27. In relation to the comparable properties on the International Trading Estate, the respondent was of the view that they held little weight as these were older properties built between 1965 and 1974 and were larger in size bands. With regard to the rents referred to on properties in Victory Way they had not been considered due to there being too many unknowns with those rents and furthermore those properties were much larger than the appeal property.

28. The panel understood that a larger property would normally benefit from a quantum allowance however the quantum argument referred to by the appellant's representative had been created by him as a result of the assessments for the smaller properties on the estate being revised. It did not help that the level of values on the Airfields Industrial Estate were all over the place and that the size bands reflecting quantum were now out of sync with each other following the decision on 12 Airfields Industrial Estate.

29. Having examined the evidence submitted by the parties, the panel found that although they had been presented with an earlier VTE decision on 12 Airlinks Industrial Estate it was not bound by that decision. The panel understood the basis of the respondent's argument that as a result of that decision the actual rent should not have been looked at in isolation and consideration should be given to other rental evidence where available. The panel agreed and therefore gave greater weight to the basket of evidence. Looking at those units where the analysed open market rents varied between £55/m^2 and £121/m^2, the panel was satisfied that those rents closest to the AVD for units of a similar size to the appeal property would support a reduction to £75/m^2 when applying a stand back and look approach,

30. In view of the foregoing, the panel decided that the unadjusted rate should be reduced from £80/m^2 to £75/m^2, as set out below.

Floor	**Description**	**Area m^2**	**Price per m^2**	**Value**
Ground	Office	114.10	£90.00	£10,269

Ground	Laboratory (side)	41.17	£82.50	£3,396
Ground	Store (side)	16.57	£75.00	£1,243
First	Office	84.44	£90.00	£7,600
First	Office (side)	123.49	£90.00	£11,114
Ground	Warehouse low height	69.38	£63.75	£4,492
Ground	Warehouse	117.64	£75.00	£8,823
				£46,937
	Surfaced Open Spaces	12	£280.00	£3,360
				£50,297
			Say	£50,000

31. Consequently, the appeal was allowed in part, the RV was reduced to £50,000 with effect from 1 April 2017.

Order

32. 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 entry in the rating list to show a revised assessment of £50,000 RV for the appeal property, with effect from 1 April 2017.

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

34. 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)) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: Friday 19 May 2023

Appeal number: CHG100734925

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.