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.

APPEAL NUMBER: CHG100740501
RE: Unit 8, Ellerslie Square Trading Est, Lyham Road, London SW2 5DZ

BETWEEN:	Fitted Mirrors and Glass Ltd Represented by Altus Group	Appellant
and	Mr Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mr D P Hayes (Presiding Senior Member)
Mr S Levy (Senior Member)
CLERK: Mr J Massey
REMOTE HEARING # 2 Monday 23 October 2023

APPEARANCES:
Mr H Edwardes from Altus Group (Appellant's representative)
Mr H Hirani - Valuation Officer's representative

Summary of Decision

1. The appeal was allowed in part as the panel determined a tone of value of £135.00 per m² less 2.5% for lack of heating. The assessment was therefore reduced from £30,250 to £25,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The appeal property had been entered in the 2017 rating list as 'Warehouse and Premises' at a RV of £30,250 with effect from 1 April 2017.

3. The challenge proposal was submitted by the appellant's representatives and was received by the Valuation Officer (VO) on 22 October 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £24,000 was proposed with effect from 1 April 2017. The VO issued a challenge case decision notice on 8 February 2023, which stated that based upon the evidence and information available, the rating list entry of £30,250 RV was reasonable and there would be no amendment.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 31 May 2013.

5. The subject property was one of fourteen terraced warehouse units of steel frame construction on the Ellerslie Square Trading Estate built in 1981. It had an agreed total area of 181.67m².

6. Mr Edwardes appeared on behalf of the appellant as both advocate and expert witness and Mr Hayes asked if there was a success related fee involved and if so whether its existence was compatible with her/his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC).

7. It was established that Mr Edwardes' company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether the evidence supported the client's case.

8. 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.

9. Mr Hirani's declaration of truth included a statement that he was not instructed under any conditional fee arrangement and 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 the evidence supported the client's case.

10. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

11. The issue in dispute before the panel was the correct rate to be applied to the appeal property. The appellant sought a reduced entry of £24,000 RV based on a tone of value of £130 per m² less an adjustment of 2.5% for lack of heating.

12. Prior to the hearing, Mr Hirani submitted a revised rental schedule as evidence as well as a revised valuation for the subject property. In the revised valuation, Mr Hirani proposed a reduced entry of £26,500 RV based on a revised rate of £140.00 per m^2. At the hearing, Mr Hirani explained that the revised valuation did not include the 2.5% adjustment for lack of heating, and therefore should be £25,750 RV.

Evidence and submissions

13. 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 appeal property. As agreed by Mr Edwardes the bundle also included a copy of Mr Hirani's revised rental summary and valuation for the subject property.

Decision and reasons

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

15. "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 –

    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".

16. 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).

17. 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.

18. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141 which was referred to by both parties.

19. The starting point for consideration was the actual rent passing on the appeal shop. The rent was £35,136 per annum (pa) effective from 22 July 2016 and had been devalued to £176.06 per m^2 by the respondent. The panel considered that this rent was sufficiently remote from the AVD to require testing by examining the rents of comparable properties.

20. Both parties had referred to indirect rental evidence for other warehouses on the same estate as the subject property, the rents of which had been agreed much closer to the AVD than that of the subject property. Mr Edwardes considered that the rents agreed on the following supported an unadjusted rate of £130 per m^2.

- Unit 11, Ellerslie Square Trading Est, 1037.94 m^2, was let on a new ten-year lease from 26 June 2014 for £153,835 pa. This rent had been devalued to £127.18 per m^2 by the respondent and £129.19 per m^2 by the appellant.
- Unit 1, Ellerslie Square Trading Est, 361.97 m^2, was let on a new ten-year lease from 9 October 2015 for £45,000 pa. This rent had been devalued to £131.78 per m^2 by the respondent and £139.21 per m^2 by the appellant.

21. Mr Edwardes considered that at the AVD rents were increasing by approximately 8.1% pa. He considered that Unit 1 was most comparable to the subject property, and he had reduced its rent by 1% per month to achieve an approximate AVD value of £131.06 per m^2.

22. Mr Hirani originally considered that the rents agreed on the subject property and on other units on the same estate supported the unadjusted rate of £165 per m^2 adopted for the subject property and similar sized units on the estate. This was based on the devalued rents on five units, which included the subject property and the appellant's two comparable properties and ranged from £131.78 per m^2 to £191.59 per m^2.

23. Having reconsidered the analysis of those rents, which had been agreed between 17 March 2014 and 22 July 2016, Mr Hirani had recalculated the devalued rents which now ranged from £122.98 per m^2 to £176.06 per m^2. The two other industrial units which he had included in his rental summary were:

    - Unit 7, Ellerslie Square Trading Est, 220.79 m^2, was let on a lease renewal from 17 March 2014 for £24,960 pa. This rent had been devalued to £122.98 per m^2 by the respondent and £122.97 per m^2 by the appellant.

    - Unit 9, Ellerslie Square Trading Est ,1303.52 m^2, was let on a lease renewal from 1 March 2016 for £210,000 pa. This rent had been devalued to £148.27 per m^2 by the respondent and £148.64 per m^2 by the appellant.

24. Mr Hirani considered that rents were increasing by approximately 1% per month on industrial units in the locality in the years before and after the AVD. In order to determine the equivalent AVD values of the rents agreed, he had either added 1% per month for those agreed prior to the AVD or subtracted 1% per month for those agreed after the AVD. Taking an average of those 'toned' rents, he had come to the conclusion that the unadjusted rate of the subject property should be reduced to £140.00 per m^2.

25. The panel noted that the rental analyses carried out by both parties for the units on the estate were broadly similar and provided a basket of rents around the AVD. The rent (toned) on the subject property was around £20 per m^2 higher than the toned rent on all the other properties and had been agreed fifteen months after the AVD, whereas all the other rents had been agreed within 12 months of the AVD. The panel therefore concluded that the rent on the subject property was less reliable than those agreed on the other properties in determining its value at the AVD.

26. Taking an average of the remaining 'toned' rents had resulted in a value of £134.94 per m^2. The panel considered that the most comparable property to the subject property was Unit 1 Ellerslie Square Trading Estate, the rent of which had been agreed six months after the AVD and toned back to the AVD to £127.43 per m^2. The panel considered that these rents would have reflected the fact that the units are not heated, and allowing for this, the panel

concluded that an unadjusted rate of £135 per m^2 was reasonable for the appeal property. This resulted in a revised RV for the appeal property of £25,000.

27. The appeal is therefore allowed in part.

Order

28. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for the subject property to £25,000 RV with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

29. A refund of the paid fee will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refund will take around six weeks to process.

Valuation

Address: Unit 8, Ellerslie Square Trading Est, Lyham Road, London, SW2 5DZ					
Floor	Description	Area m^2/unit	Relativity	Price (£/m^2)/unit	Value
Ground	Warehouse	181.67	0.975	£131.62	£23,912.31
Additional Features:					
Car Parking		4		£300.00	£1,200.00
Total Value					£25,112.31

Rounded to £25,000

Date: 20 November 2023 **Appeal number:** CHG100740501

Right of further 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.