THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Local Government Finance Act 1988; workshop and premises; accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Flight Timber Products, Earls Colne Industrial Park, Earls Colne, Colchester

CO6 2NS

APPEAL NUMBER: CHG100741890

BETWEEN:	Flight Timber Products	Appellant
	and	
	Dawn Bunyan	Respondent
	(Valuation Officer)	

PANEL:	Mrs T Watson (Presiding Senior Member)
	Mrs MJ Cole
CLERK:	Ms N Shepherd
REMOTE HEARING 1:	Wednesday 31 May 2023
APPEARANCES:	Mr O Plumley, of Altus Group on behalf of the Appellant as advocate and expert witness
	Mr J Kent, on behalf of the Respondent

Summary of decision

1. Appeal dismissed. The rateable value (RV) of £146,000 was confirmed from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal brought in respect of the appeal hereditament, which had been entered into the rating list as ‘Workshop and Premises’ at £146,000 RV with effect from 1 April 2017.

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 22 October 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and refused to alter the existing assessment of £146,000 RV. A decision notice to that effect was served on the appellant on 9 March 2022. Subsequently, the appellant’s representative then appealed the VO’s decision to the tribunal on 1 June 2022, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appeal hereditament is located on Earls Colne Industrial Park in Colchester. It had been built in 1985 and the size had been agreed at 2,557m^2.

5. As Mr Plumley appeared on behalf of the appellant as both advocate and expert witness and in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he confirmed that he was aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was not instructed under a conditional fee arrangement or any other success related fee.

6. In order to assist the tribunal, the parties had agreed all basic facts and the analysis of the competing rental evidence.

7. This hearing was held remotely via Microsoft Teams.

8. At the commencement of the hearing Mrs Cole unfortunately suffered connectivity issues and had to leave the hearing. I had regard to the Consolidated Practice Statement which states where “a member is unable to act once the hearing has commenced, or the appeal is part-heard, or the panel has otherwise taken steps in the case, the hearing may proceed with the remaining member or members (para. A18(2) of the Act), provided a Senior Member is present.” Taking this into consideration, as a Senior Member was still present, proceedings continued.

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

Issue

10. The issue in dispute was the correct tone of value for the main space to be applied to the appeal hereditament. Mr Plumley sought a reduced entry of £70,000 RV based on a main space price of £19.00/m². Mr Kent defended the VO's existing assessment of £146,000 RV based on a main space price of £50/m².

Evidence and submissions

11. The evidence comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

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. I 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. Bearing these six propositions in mind, I acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration to how that rent compared to the statutory definition of rateable value.

15. I noted that a new ten-year lease had been agreed in respect of the appeal hereditament with effect from 24 June 2013. The rent had been stepped as follows:

Year 1 – £24,000
Year 2 - £36,000
Year 3 - £50,000
Year 4 & 5 - £60,000
Year 6 - 10 - £70,000

16. Mr Plumley submitted that the rent passing on the appeal hereditament was the best evidence. It analysed to an unadjusted rate of £13.09/m^2, which was less than the £19/m^2 proposed by the appellant and which clearly demonstrated that the current unadjusted rate of £50/m^2 was excessive.

17. I had regard to the second proposition in *Lotus & Delta* and found that the terms of the lease were too far removed from the statutory definition of rateable value and therefore attached little weight to this evidence.

18. I then considered the comparable evidence submitted. Mr Kent presented details of three properties located within the same industrial estate and valuation scheme as the appeal hereditament. The details for these properties were as follows:

i) Vulcan – a rent passing of £175,000 per annum (pa) with effect from 1 January 2016, which analysed to £50.95/m^2. This property had been valued at £50/m^2.

ii) Baxter's – a stepped rent ranging from between £145,000 and £200,000 pa with effect from March 2016, which had been analysed to £63/m^2. This property had been valued at an unadjusted rate of £50/m^2.

iii) Victor- rent passing of £100,000 pa with effect from 1 January 2016, which analysed to £53.80/m^2. This property had been valued at £50/m^2.

19. Mr Plumley disputed the comparability of these properties, arguing that their quality was far superior to that of the appeal hereditament. He submitted that rather than changing the unadjusted rate of £50/m^2 that a 65% end allowance could be awarded to reflect the poorer standard of the appeal hereditament. A 65% allowance would also equate to the proposed valuation of £70,000 RV.

20. I studied the photographs of the comparable properties presented. I considered that Baxter's appeared to be superior in quality to the appeal hereditament. However, I found both Vulcan and Victor to appear to be of a similar standard. I also noted that a 10% allowance had been awarded at the appeal hereditament for the workshop and storage areas, which Mr Kent confirmed was to reflect the poor quality. I considered this 10% allowance to be reasonable.

21. Mr Plumley referred to a photograph of the appeal hereditament and submitted that this indicated that it suffered from asbestos, for which there should also be an allowance. However, during questions he confirmed that he could not definitively confirm the presence of asbestos. It was his conjecture based upon photographs of the appeal hereditament and inspections which had been undertaken there. I also noted there was no evidence provided within the evidence submission regarding the presence of asbestos and therefore attached no weight to this argument.

22. The persuasive or legal burden of proof was on the appellant to prove his case and I found that they had failed to discharge that burden. I found that I had not been provided with any evidence to suggest that the appeal hereditament should have an unadjusted rate of £19/m^2, other than the subject rent which it considered to be too far removed from the AVD. There had been no comparable properties provided to support the proposed valuation of £70,000 RV. The comparable properties relied upon by the VO were all on the same industrial estate, with leases commencing closer to the AVD and which I found supported the unadjusted rate of £50/m^2 for the subject property.

23. The appeal is therefore dismissed.

Date: 29 June 2023

Appeal Number: CHG100741890

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.