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: Unit 1/2, Hythe Quay, Colchester CO2 8JB

APPEAL NUMBER: CHG100749263

BETWEEN:	Assembly Direct Mail Ltd (Represented by Altus Group)	Appellant
and	Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mrs L Long (Presiding Senior Member) Ms R Sharma (Senior Member)
CLERK:	Mr J Massey
REMOTE HEARING:	Friday 21 July 2023
APPEARANCES:	Mr S Cyrille from Altus Group (Appellant’s representative) Mr J Kent - Valuation Officer’s representative

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Summary of Decision

1. The appeal was allowed in part as the panel determined a tone of value of £27.50 per m². The assessment was therefore reduced from £38,500 to £35,750 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. The appellant’s representative had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal served on the Valuation Officer on 22 November 2022. After considering the proposal and evidence submitted during the challenge period, the Valuation Officer (VO) decided that the proposal was not well founded and refused to alter the existing assessment of £38,500 RV. A decision notice to that effect was served on the appellant on 2 November 2022 and the appellant’s representatives then appealed the VO’s decision to the tribunal on 2 February 2023, 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.

3. The appeal property was a fully heated and insulated detached warehouse, built between 1955 and 1970, in a mixed industrial and residential area along the quayside in Colchester. It has an agreed total area of 1229.2 m^2 (1184.67m^2 in terms of main space (ITMS)) and an eaves height of 3.05 metres. The rate adopted by the respondent of £29.75 per m^2 includes a 5% reduction from the unadjusted rate of £31.32 per m^2 to reflect the disadvantage of being a split/divided unit.

4. The appellant had occupied the appeal property since February 2009, and the rent payable was £30,000 per annum (pa) from 13 February 2014 following a rent review. It was increased to £36,000 pa from 13 February 2019 following a further review.

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

6. Both parties appeared before the panel in a dual capacity as both Advocate and Expert Witness. Mr Cyrille stated that he was on a success related fee but accepted that his first duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), 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 in England).

7. The panel therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

8. The statement of truth signed by Mr Kent confirmed that he was not instructed under any conditional or other success-based fee arrangement.

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

Issue

10. The issue in dispute before the panel was the correct tone of value rate to be applied to the appeal property. The appellant sought a reduced entry of £31,000 RV based on a rate of £25 per m^2. On behalf of the respondent, Mr Kent defended the Valuation Officer's existing assessment of £38,500 based on an adjusted rate of £29.75 per m^2.

Evidence and submissions

11. 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.

Decision and reasons

12. 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.

13. The starting point for consideration was the actual rent passing on the appeal property. The rent passing at the AVD resulted from a rent review effective from 13 February 2014, which Mr Cyrille considered reflected the open market rent and was on full repairing and insurance terms. He had devalued the rent to £24.06 per m^2 and he considered it was not too far from the AVD and required little adjustment to comply with the hypothetical rent.

14. Mr Kent considered that the subject rent was a starting point but should be considered along with all the relevant rental evidence of other similar properties in the local area in setting the rateable value for the subject property.

15. In terms of indirect rental evidence, the Valuation Officer referred to the rents passing on four similar warehouses in Colchester, ranging in size from 1219.08m^2 to 1501.9m^2 ITMS. Their rents had been agreed between 1 July 2014 and 1 September 2016 and had been devalued to between £24.67 and £56.85 per m^2. The unadjusted rates adopted in their assessments ranged from £27.50 to £31.06 per m^2.

16. The closest rent to the AVD was that for R/O 6 Commerce Way, Colchester, CO2 8HH which had been agreed on 1 February 2015 and had devalued to £24.67 per m^2. Mr Cyrille considered this property to be most comparable to the subject property, being four minutes' drive away, and similar in size and age. Mr Kent argued that R/O 6 Commerce Way was in an inferior position to the subject property behind other industrial units which restricted its visibility and this would have been reflected in the rent agreed.

17. The panel noted that a number of the respondent's comparable properties were more modern than the subject property with higher eaves heights. Whilst it accepted that higher eaves would not necessarily increase the rent agreed for a particular property, it considered that in general more modern units with higher eaves provided more flexibility and would attract a wider range of tenants.

18. The panel considered that some weight should be given to the subject rent, although little information had been provided regarding the terms of the lease or any background to the rent review in 2014. However, the subject rent had also been agreed at £36,000 pa on a rent review in February 2019 which indicated to the panel that the current RV of the subject property was excessive. This finding was also supported by the fact that warehouse units which were more modern or had higher eaves heights had been assessed at lower values than the subject property.

19. Having had regard to the whole basket of rental evidence, the panel placed most weight on the rent on R/O 6 Commerce Way, which it considered provided the best comparable as it was similar in size, age and location. However, it did consider that the inferior position of R/O 6 Commerce Way would have had been reflected in its rent agreed in February 2015 and devalued to £24.67 per m^2. It therefore considered that a tone of value of £27.50 per m^2 was fair and reasonable for the subject property and reflected the difference in the attributes of the subject property and the comparable properties. This resulted in a valuation of £35,750 RV and the appeal was therefore allowed in part.

Order

20. 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 appeal property to £35,750 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

21. 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.

Date: 7 August 2023

Appeal number: CHG100749263

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.