THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; store and premises; end allowances; accuracy of rateable value; comparable assessments; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

RE: Unit 2, 11-13 Roebuck Road, Ilford, Essex IG6 3TU

APPEAL NUMBER: CHG100752177

BETWEEN:	Orange Core Ltd and	Appellant
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr CJ Williams (Presiding Senior Member)
Mr P Blythe-Bartram (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 5 September 2023

APPEARANCES: Mr L Worthington from RVA Surveyors (on behalf of the appellant)
Mr J Griggs (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed in part. The rateable value (RV) of Unit 2, 11-13 Roebuck Road, Ilford, Essex IG6 3TU (subject property) is £17,250 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 30 November 2021. The challenge was in respect of the entry in the rating list at £17,750 RV as 'store and premises' effective from 1

April 2017. The appellant sought a revised assessment of £12,750 RV based on a tone of £67.73/m^2. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to that effect was issued on 23 November 2022.

3. Mr Worthington 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 Worthington 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 his 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 property comprises an industrial unit used as a store and premises. It is single storey and is part of Hainault Business Park Ilford and is accessed off Roebuck Road. There is parking on three sides of the building and it has a total area of 239.63m^2.

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

Issues

7. The issues in dispute were firstly the base rate for the subject property which the VO submitted was not unreasonable at £82.88/m^2. The appellant's agent submitted that a base rate of £67.73/m^2 should be adopted.

8. The second issue is the end allowances applied to the subject property with the appellant's agent arguing that in addition to the 10% end allowance for access and lack of toilet facilities there should be further allowances. He submitted that there should be a 5% allowance for the fact the premises is raised off the ground and another 5% allowance to reflect the lack of insulation and the low eaves height of the roof. The VO submitted that the present allowance was sufficient.

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 units in its immediate locality.

10. The appellant's representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £12,750

11. Mr Griggs requested that the tribunal dismiss the appeal and confirm the RV of £17,750 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 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. The RV on the subject property was disputed by the appellant firstly on the basis that the rent on the subject property was agreed in September 2014 which was very close to the AVD. The lease was on a full FRI basis and the rent was set at £11,000 per annum. The tenancy was renewed for a further three years with a rent of £11,000 per annum. The appellant's agent submitted that as the letting was close to the AVD it provided the strongest evidence under the case of *Lotus and Delta*. He explained that the rent was a stepped rent with the rent payable in year one being £10,000 and then £11,000 for years two and three which he analysed to £44.63 supporting the lower base rate of £66.73/m^2. He noted that the FOR completed by his client stated that the rent was set in February 2014, was a stepped rent, was not on an FRI basis and he had sublet part of the property to a friend who was also

a joiner. Mr Worthington submitted that his client was not a professional surveyor and therefore had not completed the FOR correctly and that the rent was from September 2014 and was on a full FRI basis. He further submitted that the subletting did not impact on the RV as they both shared the space and the appellant paid the full rates himself.

15. The panel was aware that the FOR is a legal document completed by the tenant and the information provided on that document was considered reliable even when not completed by a qualified surveyor. The panel did however note that even when the information from the FOR was applied to the analysis it still supported the base rate of £82.88/m^2 as argued by Mr Griggs.

16. Mr Worthington further referred the panel to the fact that the entrance to the property was raised and so forklift trucks could not access the store and this should be reflected in an end allowance of 5%. There was also the issue surrounding the height of the eaves which are as little as 3.07m although he acknowledged that they did rise to 4.55m at the highest point in the store. This means that if any product or machinery was higher than 3.07m it would not fit in some parts of the building. Mr Worthington also drew the panel's attention to the fact that the subject property's roof was not insulated and referred the panel to the photographs in the bundle. He therefore submitted that a further reduction of 5% should be added in relation to these matters.

17. The panel noted that the photographs did show that the roof was not insulated, a fact conceded by Mr Griggs, and so put weight on an end allowance to reflect this.

18. Mr Griggs on behalf of the VO submitted that the rental evidence on the subject property was only the first type of evidence added to the basket of evidence and needed a significant adjustment to be useful in determining a base rate for the subject property. He submitted that quantum would have already been taken into account when the rent was agreed and so to add any further discount would be to double count that aspect. Mr Griggs submitted that the rent passing on the subject property appeared to be lower then on the surrounding properties and so should not be relied upon in isolation but included as one item in the basket of evidence considered when determining the RV on the subject property.

19. He referred the panel to Unit 4B R/O 19-21 Roebuck Road and Unit 5 at 15-17 Roebuck Road which are in the vicinity of the subject property. The effective date of the rent on both was in close proximity to the AVD. They were both similar in size being 147.09m^2 and 184.67m^2. The rent analysed to between £81.13 and £111.83 and had a base rate of £85/m^2. These he argued supported the current base rate on the subject property. In connection with the comparable property produced by the appellant being Unit 3 at 15-17 Roebuck Road Mr Griggs argued that the lease was agreed in March 2015 at £8 per square foot but the evidence produced by the appellant's agent was too general and there was too little information about the lease to be useful.

20. The panel was aware that the basket of evidence required to demonstrate a tone relied on taking account of similar neighbouring properties. Those rentals presented by the LO demonstrated a tone had been established for the area and the subject property base rate of £82.88/m^2 fitted into that tone.

21. He further drew the panel's attention to the fact that having an eaves height in excess of 3m was average for such units as the subject property. The allowances already in place of 5% for access and 5% for having no toilet had been added to the assessment from the 2005 list. Mr Griggs explained that he had not been provided with evidence to support any additional

allowances being added. He did however concede that from the photographs provided by the appellant there did not appear to be any insulation in the roof.

22. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that he had not discharged that burden except in relation to the end allowance due to the roof not being insulated. The panel therefore found that it had been provided with evidence to suggest that the tone of the subject property of £82.88/m^2 was reasonable but an end allowance of 2.5% was appropriate for the lack of insulation in the roof.

23. The RV for the subject property is therefore calculated as follows:

Floor	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground Floor Store	238.65	82.88	19,779
		Valuation sub-total	
19,779			
Adjustments			
Access	5%		
Toilet Facilities	5%		
Lack of insulation	2.5%		
			-2,410
Total			£17,389
		Say	**£17,250**

Order

24. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £17,250 with effect from 1 April 2017. .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: 25 September 2023

Appeal number: CHG100752177

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.