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 dismissed.

APPEAL NUMBER: CHG100772786

RE: Unit 2 Enviro21 Park, Queensway Avenue South, St Leonards on Sea, TN38 9AG

BETWEEN:	Rhopoint Instruments Limited Represented by Altus Group	Appellant
and	Dawn Bunyan (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 J Wyndham from Altus Group - Appellant's representative
Mr R Das - Valuation Officer's representative

Summary of Decision

1. The appeal was dismissed. The panel found that the existing entry in the Rating List for Unit 2 Enviro21 Park, Queensway Avenue South, St Leonards on Sea, TN38 9AG (the "subject property") of Rateable Value (RV) £78,000 was reasonable.

Introduction

2. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 rating list as 'Warehouse and Premises' at a RV of £81,000 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 4 February 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was unreasonable. A revised RV of £72,000 was proposed with effect from 1 April 2017. The VO issued a challenge case decision notice on 2 March 2023 which stated that, based upon the evidence and information available, the rating list entry of £81,000 RV was unreasonable and proposed a reduced RV of £78,000.

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 subject property is unreasonable. The appeal was received by the Tribunal on 26 May 2023 in which a revised RV of £75,000 was sought (revised from £72,000).

5. The subject property was one of four steel framed and cladded warehouses situated on Enviro21 Park, which were built in 2013. All four units are in the same scheme and of the same specification. The subject property has an agreed total area of 1376.90m^2.

6. Mr Wyndham 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), he declared that he was instructed under a conditional fee arrangement but 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.

7. 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).

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

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

Issue

10. 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 £75,000 RV based on a tone of value of £63.50 per m^2. On behalf of the respondent, Mr Das defended the VO's revised assessment of £78,000 based on a tone of value of £66.00 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 a photograph of the appeal property.

Decision and reasons

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

13. "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".

14. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing on the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

15. 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.

16. 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.

17. The starting point for consideration was the actual rent passing on the subject property, however the freehold of the subject property is owned by the appellants and so there was no passing rent.

18. Unit 1, Enviro21 Park had a total area of 1084.75m^2 but had no rent as it was also freehold property. The other two units, 3 & 4 were leasehold and had been let as a single unit and their combined total area was 1292.54m^2. The rent of £78,100 per annum (pa) for Units 3 and 4, Enviro21 Park had been agreed on 25 December 2013 and was for a new letting. A premium of £39,050 (six months rent) had been paid by the tenant upon taking the lease. Both parties agreed that due to this being the only leasehold warehouse on Enviro21 Park, it was the best comparable evidence from which to determine whether the current assessment of the subject property was reasonable.

19. Mr Wyndham asserted that the premium payment should be devalued over the full ten-year term of the lease on Units 3 and 4, Enviro21 Park, which would result in an effective rental value of £83,919 pa over those ten years. He had analysed this effective rent to achieve a price of £63.41 per m^2 which he considered supported an assessment of £63.50 for the subject property.

20. Mr Das considered that the premium payment should be devalued over the first five years of the term of the lease, up until the rent review. This would result in an effective rental value of £87,514 over those five years. He had analysed this effective rent to achieve a price of £66.14 per m^2 which he considered supported an assessment of £66.00 for the subject property.

21. Mr Das asserted that it was normal procedure to devalue either a premium or an incentive up until the rent review, and in this case a review took place after five years and the rent was

increased to £79,000 pa with effect from 1 December 2018. However, Mr Wyndham contended that as there was no break clause at five years, the premium should be analysed over the term certain, ie the full ten year term of the lease.

22. The panel would have found it helpful to have had sight of a copy of the lease on Units 3 and 4, Enviro21 Park to confirm the terms of that lease, including the absence of a break clause. In the circumstances, it considered that the rent was agreed by the parties in December 2013 in the knowledge that there would be a rent review after five years. It therefore considered that the effective rent in 2013 would include the premium devalued over five years, rather than ten years. The panel was satisfied that this was normal practice and no evidence had been submitted to persuade the panel that it should diverge from this and devalue the premium over ten years.

23. The panel concluded that the revised entry of £78,000 set out in the VO's challenge decision was reasonable and the appeal was therefore dismissed.

Date: 20 November 2023
Appeal number: CHG100772786

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