VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Lotus & Delta v Culverwell (VO) [1976]; Warehouse and premises; Unadjusted base rate; Appeal allowed in part.

APPEAL NUMBER:	CHG100775820	
RE:	8 Lombard Way, Banbury, OX16 4TJ (the "subject property")	
BETWEEN:	DAR Lighting (represented by Colliers International)	Appellant
	and	
	Lucy Dyer MRICS (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	21 October 2024	
BEFORE:	Ms LS Marshall, Presiding Senior Member Mr SC Kamalan, Senior Member	
CLERK:	Mrs S Hodgson IRRV(Dip)	
APPEARANCES:	Mr M Hawkins for the appellant Mrs P Rowntree for the respondent	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined the Rateable Value (RV) of the subject property at £113,000 with effect from 1 April 2017.

Introduction

3. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 Rating List as “Warehouse and Premises” at an RV of £120,000 with effect from 1 April 2017. The material day was also 1 April 2017.

4. The challenge proposal was submitted by Colliers International on behalf of DAR Lighting Limited and was received by the Valuation Officer (VO) on 16 February 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed a revised RV of £102,000 with effect from 1 April 2017 for the subject property.

5. The VO issued a challenge case decision notice on 10 February 2023. The VO’s decision was to treat the appellant’s challenge as not well-founded and proposed no change to the rating list.

6. Following the exchange of evidence and discussions throughout the challenge period, Mr Hawkins revised his valuation and sought a reduction in RV to £108,000 with effect from 1 April 2017.

7. Mr Hawkins appeared on behalf of the appellants 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 Hawkins declared that Colliers International was instructed under a conditional fee arrangement.

8. Mr Hawkins declared that he understood and accepted his duty was to the Tribunal in giving his evidence and he would comply with this regardless of whether or not the evidence supported his client’s case.

9. 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).

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

11. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

12. The subject property was an end-terraced, two-storey, warehouse and premises. It was constructed in 1999 and measured 2,348.64m^2 with an eaves height of 8.51 metres. It was located on an industrial estate on the outskirts of Banbury in Oxfordshire.

Relevant Law

The Local Government Finance Act 1988

13. Schedule 6 of the Act provides that:

> 2(1)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 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).

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.

Discussion

16. Both parties referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, set out six propositions to be followed when considering the weighting of evidence:

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 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 Valuation Officer. 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 differing types of evidence depending on the one hand 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.

17. There was a new 10-year lease on the subject property that had been agreed with effect from 29 May 2015. The lease was agreed on a three-year stepped rent, with a five-year break clause. Mr Hawkins had analysed the rent to the break clause and using a 10% adjustment for the stepped rent to £45.84 per square metre (psm).

18. Mrs Rowntree adjusted the rent in different ways. The first was to the break clause and incorporating the penalty to break the lease at that point. She used an 8% adjustment for the stepped rent to arrive at £47.32 psm. She also analysed the rent over the full term of the lease with one year and one month rent free. By doing this she arrived at £49.45 psm.

19. The panel heard that the subject property, at the material day, had not been refurbished since its construction in 1999, 18 years prior. It had been placed in a scheme for excellent quality industrial units. At the hearing Mrs Rowntree stated that she had only inspected the subject property externally, and this had been done three days prior to the hearing. Following questioning she stated that when the rent was agreed in 2015 and at the material day, the subject property would have been in good condition, not excellent. However, it was her opinion that it would not have been inferior to the comparable properties put forward.

20. The panel reviewed the comparable rental evidence put forward. Five properties had been referred to, three of which were leases based on rent reviews. The two new lettings were Unit 2 Network 11 Thorpe Way and Unit A3 The Phoenix Centre.

21. The panel accepted that due to the age of the subject property and the oral submissions, that the subject property would not have been in an excellent condition on the material day. For this reason, it found that Unit A3 The Phoenix Centre was not a useful comparison having been constructed in 2017 with a lease agreed in April 2016 at which time this would have been occupied as a brand-new property.

22. Cherwell 1 Middleton Road was built in the 1990's, as was the subject property. However, it was significantly larger than the subject property and the rental evidence was a lease renewal. For these reasons, the panel attached less weight to this evidence than to the new lease on the subject property.

23. The panel placed the most weight on the new letting of the subject property which had been agreed just one month after the AVD. Whilst it accepted that there was some adjustment of the rent necessary, it found that in line with Lotus & Delta it would be difficult to reject the subject rent. It was the panel's opinion that the subject rent was better evidence than the rent renewals on the comparable properties at different sites as it was a new lease and agreed in May 2015. The panel found the analysis of Mrs Rowntree to be persuasive as it allowed for the penalty that would be incurred if the lease was broken. For this reason, it was the panel's opinion that the RV of the subject property was unreasonable and should be reduced to £113,000 by way of a reduction in the unadjusted base rate to £47 psm.

Disposal

24. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the existing assessment is unreasonable and determined an RV of £113,000 with effect from 1 April 2017. Therefore, the appeal is allowed in part.

Floor	Description	Area (m^2)	£/m^2	Value (£)
Ground	Warehouse	2068.77	47.00	97,232
Ground	Office/Staff Room/Reception	55.02	44.10	2,426
First	Office	224.85	62.04	13,950
	Total	**2348.64**	**Subtotal**	**£113,608**
			TOTAL VALUE	**£113,608**
			Rateable Value	**£113,000**

25. The Tribunal Panel orders pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of 8 Lombard Way, Banbury OX16 4TJ within two weeks, to £113,000 RV with effect from 1 April 2017.

Date issued to parties: 18 December 2024

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.
