THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; Warehouse and Premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence supported a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*. Decision: Allowed in part.*

RE: Units ZZ1 & ZZ2, Wylds Road, Bridgwater TA6 4DH

APPEAL NUMBER: CHG100779179

BETWEEN:	CRS Building Supplies Ltd (Represented by Roberts Vain Wilshaw) and	Appellant
	Alexandra Morley (Valuation Officer)	Respondent

PANEL: Mr A Backway (Presiding Senior Member)
Mr W Read, Senior Member

CLERK: Ms R Muller

HEARING: Remote Hearing No. 1 on 14 July 2023

APPEARANCES: Mr P Roberts from Roberts Vain Wilshaw, representative for the Appellant
Mr M Croshaw, representative for the Valuation Officer.

Summary of decision

1. Appeal allowed in part. The panel considered that the existing entry in the Rating List for the subject property of Rateable Value (RV) £114,000 was excessive and determined that the evidence showed that an RV of £100,000 was reasonable for the subject property.

Introduction

2. This was a 2017 Rating List appeal. However, Units ZZ1 & ZZ2, Wylds Road, Bridgwater TA6 4DH ("hereafter known as the subject property") had been entered in the 2017 rating list as 'warehouse and premises' at an RV of £139,000 with effect from 29 June 2018.

3. However, based on factual issues, the Valuation Officer (VO) issued a notice of alteration on 9 February 2022 which stated that the RV was reduced to £121,000 with effect from 29 June 2018.

4. The challenge proposal was submitted by Roberts Vain Wilshaw on behalf of CRS Building Supplies Ltd and was received by the VO on 24 February 2022. During the challenge stage, the VO issued a notice of alteration dated 14 December 2022 where the RV had been reduced further to £114,000 with effect from 29 June 2018. However, the appellant's representative, Mr Roberts stated that the appeal had been made on the grounds that the current RV of £114,000 was still incorrect, as the base price of £65 per m² was considered to be too high and not in line with others in the valuation scheme. A revised base price of £50 per m² was proposed which would reduce the RV to £93,000 with effect from 29 June 2018.

5. 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 hereditament is not reasonable. The appeal was received by the Tribunal on 23 January 2023.

6. The subject property was located within two of three adjacent units on Wylds Road, Bridgwater, which included a trade counter / retail area, which was partitioned from the warehouse with demountable partitioning, painted walls, suspended ceilings and recessed lights. In addition, there was a large rear surfaced yard at the rear of the subject property and car parking spaces to the front of the subject property. It had an agreed area with regards to the subject property of 1,534.29 (and 2,945m² which included the land) and had a revised entry within the rating list at a zone A rate of £65 per m² plus £7.75 per m² for hard surfaced, fenced land.

7. The appellant traded as a builders merchant and occupied the warehouse on a 10 years' lease which commenced on 29 June 2018 at an initial rent of £120,000. The rent was increased to £140,000 on 29 June 2020 with a rent review at year five.

8. Both parties appeared before the panel in a dual capacity as both Advocate and Expert Witness. The statement of truth signed by Mr Roberts indicated that he was instructed on a conditional fee basis. He did, however, accept that first his 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. 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). However, 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).

9. The panel therefore, considered the “expert” evidence and attached such weight to it as it saw fit.

10. Mr Read, the senior member had issues with his IT equipment where he could not hear the parties speak, so he joined by video using Teams but also separately used his phone so he could participate in audio discussions. All parties were satisfied that the senior member could fully participate in the proceedings.

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

Issue

12. The issue between the parties concerned the RV of the subject property. The challenge had sought a revised valuation of £93,000 based on a base price of £50 per m².

13. At the hearing, Mr Roberts sought a revised base rate of £50 per m², which resulted in an RV of £93,000. Mr Croshaw defended the respondent’s proposed valuation of the subject property at RV £114,000, based on a base price of £65 per m².

Evidence and submissions

14. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during the challenge which included rental evidence and its analysis, the parties’ skeleton arguments, expert witness statements, photographs of the subject property.

15. Prior to the hearing, the VO had stated that Mr Roberts had submitted his evidence within the deadline provided by the VO, therefore the VO had issued its Decision Notice without waiting for the deadline to pass However, Mr Roberts had sent details of further comparable properties, still within the deadline. As the Decision Notice had already been issued, these comparable properties had not been commented upon by the VO. As the VO had not made any objections to the comparable evidence that Mr Roberts had submitted, the panel did not consider this to be a preliminary matter.

Decision and reasons

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

“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".

17. 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).

18. 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 29 June 2018, which was the date the subject property entered the Rating List.

19. The matter for the panel to determine was the tone, or base price to be applied with regards to the subject property.

20. Both parties had referred to *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

21. The rent on the subject property had commenced on 29 June 2018. The panel held that less weight should be placed on the rent on the subject property, as the commencement of the lease was too far removed from the AVD of 1 April 2015. Therefore, it was necessary to consider the details of the comparable properties provided by both parties.

22. Mr Roberts considered that comparable properties located on the same road as the subject property should be used to come to a determination of the correct price per m² for the subject property. Mr Roberts placed most weight on the neighbouring property of ZZ3, Wylds Road, Bridgwater TA6 4DH. This unit was adjoined onto the subject property and was part of the same building, therefore, identical to the units the appellant occupied. However, the price per m² adopted for ZZ3 was £46, whereas the subject property had been valued at £65 per m². Mr Roberts stated that a tenant coming fresh to the scene would not pay more for the subject property when a neighbouring tenant, within the same building paid significantly less. Mr Roberts also stated that the VO had informed him that the land created extra value to the subject property. However, as the VO had already included a charge of £7.75 per m² for the land, Mr Roberts was of the opinion that valuing the warehouse at a higher value than the neighbouring unit was double counting.

23. The VO informed the panel that the neighbouring unit ZZ3 was not trading as a builder's merchants but as a vehicle workshop and premises, and it also did not have the any land reflected within its assessment. Therefore, the VO did not consider the neighbouring unit as a comparable property to consider when determining the price per m² of the subject property. As this property was valued as a vehicle workshop, the panel placed less weight on the details of this property.

24. Mr Roberts referred the panel to Travis Perkins, which was located at units 10 and 11 on Riverside Mill Business Park, Riverside House on Wylds Road, Bridgwater. This property was valued by the VO as a builder's merchants and in many ways was similar to the subject property. It had been valued at £50 per m² and also had hard surfaced, fenced land valued at £7.75 per m².

25. The VO stated that the units that Travis Perkins occupied was a B3 property and of a different type of construction. A B3 property is typically built in a back street location. The subject property was a B2 property which is considered to be more modern and less brick. Even though they are located on the same road, Travis Perkins did not have the same access, as it could not be accessed from the rear like the subject property. The panel was informed that the subject property could not access the yard from Wylds Road without driving through the warehouse, whereas Travis Perkins had direct access from Wylds Road.

26. The panel noted that the subject property was in scheme 408850, whereas Travis Perkins was in scheme 406087, both were valued as builder's merchants. Therefore, the panel queried why both properties were within different schemes. The VO informed the panel that whether a property was a B2 or B3 property would depend on what scheme it had been placed in. Mr Roberts stated that the scheme did not confirm whether a property was placed into either B1 or B2 or even B3, as he had dealt with properties that were within all 3 B's but had been placed within the same scheme. Therefore, the panel placed little weight to the statement provided by the VO with regards to B2 or B3 properties.

27. Mr Roberts also referred the panel to Magnet, Unit BB Wylds Road, Bridgwater. This property was a showroom. This property had a reasonable amount of land which had not valued as an addition within its assessment. The price per m² had been valued at £50. Mr Roberts stated that there was little different to a builder's merchants, both had a retail / office area and also warehousing space. Unit BB was also of the same construction as the subject property. The panel noted that this property was described as a warehouse and premises, with a warehouse and a showroom. The panel place more weight to this comparable property, as it was slightly smaller in size and located next door to the subject property.

28. The comparable property of Western Timber Ltd, Unit C-D Allerton Road, Wylds Road was discussed. The panel noted that this property was much smaller than the subject property at 590 m² and had been valued at £46 per m². The panel held that as the subject property was much larger in size, it would demand a higher rental value if vacant and to let.

29. The VO had detailed the rental evidence for Unit 2 Market Way, Bridgwater, which had originally been a builder's merchants, but the current occupier was Jolly Jumpers and used as a children's play area. When looking at the rental evidence, the VO confirmed that the FOR had been completed by the current occupiers of Jolly Jumpers, therefore, agreed that it was not comparable with regards to the subject property.

30. The VO referred the panel to 30 Oxford Road, Yeovil, Somerset, which was a builder's merchants. This property was assessed at £29 per m² based on a rental analysis of £25.46. The land was valued at £7 per m². The panel noted that this property was much larger in size with regards to the floor space at 2,685.39 m² with hard surfaced, fenced land of 3,915 m². Therefore, the panel placed little weight on the value of the property. The panel also noted that this property had been placed within a different scheme of 408851.

31. The last comparable property presented by the VO was Jewsons, Priory Way, Taunton, Somerset. This property was similar in size to the subject property at 1,875.84 m². The rent analysed to £42.95 per m² and had been valued at £42.50 per m². This property had a much larger plot of hard surfaced, fenced land of 3,793 m² which was valued at £7 per m². The panel found that this comparable property or 30 Oxford Road did not support the current price per m² of the subject property.

32. The panel held the greatest weight to the two comparable properties of Travis Perkins, Units 10 and 11, Wyld Road and Magnet, Unit BB Wylds Road when making to its decision. Travis Perkins and the subject property both had restricted access to Wyld Road. Travis Perkins had open access and could have deliveries going down the side of the property. Whereas the subject property would have to have deliveries accessed through the warehouse. The panel held that a new tenant coming fresh to the scene would look at the subject property and pay more per m² than Travis Perkins but not as much as the current value of £65 per m². The comparable property of Magnet was of the same construction as the subject property, however, slightly smaller in size and had a showroom as well as a warehouse.

33. The panel was aware that when valuing a property, it had to be considered as vacant and to let. The panel held that considering the evidence before it, the current value of £65 per m² for the subject property was too high.

34. The panel therefore concluded that a reduction in the price per m² was warranted. The are of the warehouse should be valued at £55 per m², which resulted in a reduction of the RV of the subject property to £100,000. Therefore, allowed the appeal in part.

Units ZZ1 and ZZ2, Wylds Road, Bridgwater, Somerset TA6 4DH				
Floor	Description	Area m² / unit	£ per m² / unit	Value (£)
Ground	Office	367.36	60.50	22,225
Mezzanine	Store	309.10	27.50	8,500
Ground	Warehouse	857.83	55.00	47,181
Additional features of the property included in the valuation				
	Hard surfaced, fenced land	2945.00	7.75	22,824
			Valuation sub-total	100,730
			RV say	£100,000

Order

35. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Units ZZ1 & ZZ2, Wylds Road, Bridgwater TA6 4DH to £100,000 with effect from 29 June 2018 within two weeks of the date of this order.

36. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 31 July 2023

Appeal number: CHG100779179

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.