VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeals; warehouse and premises; base rate in dispute; analysis of rent on comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part

APPEAL NUMBER:	CHG100792675	
RE:	27, Leacroft Road, Birchwood, Warrington WA3 6PJ (the "subject property")	
BETWEEN:	Revolution Transport Services Ltd	Appellant
	and	
	Lucy Formela-Osbourne MRICS (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	8 July 2024	
BEFORE:	Mr Amran Hussain, Presiding Senior Member Ms TM Blades, Senior Member	
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)	
APPEARANCES:	Ms E Draycott (on behalf of Appellant) Mr S Wright (on behalf of the respondent)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The current entry in the Rating List is to be reduced to £310,000 rateable value (RV) with effect from 1 April 2017

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered in the 2017 rating list as 'warehouse and premises' at an RV of £387,500 with effect from 1 April 2017. The challenge proposal was submitted on 5 April 2022, The challenge sought a revised assessment of £255,000 RV with effect from 1 April 2017. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice to this effect on 13 March 2023.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appellant maintained that the RV of £387,500 was unreasonable and appealed the decision which was received by the Tribunal on 12 June 2023.

5. Ms Draycott appeared on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with her obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Ms Draycott confirmed that she was instructed under a contingency fee and she declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported her client's case.

6. 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).

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

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

Background

9. The subject property was an industrial unit situated on an industrial estate in Warrington. It was built in 1978 and refurbished in 2001. It had a main space area of 10,850m^2 and was made up of a warehouse, office and premises.

10. The issue between the parties is whether the subject property should be valued at a main space rate of £35/m^2 as submitted by the VO or a main space rate of £23/m^2 as the appellant's agent submitted.

Relevant Law

11. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which 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.

12. 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).

13. 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 2015.

14. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

    (1) Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

    (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
    section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

    (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 be 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 attached to 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 each circumstance, it would be difficult to reject the evidence of the actual rent.

Discussion

15. 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. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2015.

16. Ms Draycott submitted that the rent on the subject property was the strongest evidence with which to assess the base rate for the subject property. The subject property was held on a lease dated 1 May 2020 for a term of ten years with the rent start date of 1 November 2020 on a stepped rent of :

1/5/20 to 31/10/20	rent of £0
1/11/20 to 30/4/21	rent of £125,000
1/5/21 to 30/4/22	rent of £250,000
1/5/22 to 30/4/23	rent of £350,000
1/5/23 to 30/4/24	rent of £400,000
1/5/24 to 30/4/25	rent of £450,000

17. When analysed the stepped rent devalues to £287,306 per annum which devalues to £22.858/m^2 or £23/m^2. She submitted that although the rent in Warrington had improved since the AVD this supported the base rate of £23/m^2. She submitted that the rent on the subject property is always the first and most important evidence used when determining the RV of the subject property as laid out in the High Court case of *Lotus & Delta v Culverwell.* She also submitted that the rental evidence relied upon by the VO were lease renewals and rent review evidence which carry less weight than open market leases in accordance with the case of *Lotus & Delta*.

18. Ms Draycott referred the panel to three Valuation Tribunal for England (VTE) decisions dated 23 November 2021 in which the base rate for 23, 28 and 29 Kingsland Grange Woolston Warrington were revised from £40/m^2 to £35/m^2. She stated that there had also been various other assessments reduced in the locality as a result of the case but not the subject property. These units were all 3,000m^2 and below but the subject property being larger was not reduced. She did however submit that it was implicit in Mr Clarke's the then Vice President of

the VTE decisions that there were also errors in the larger units but a base rate for them was not determined at that hearing. She submitted that the base rate of £23/m^2 would fit in with the findings of Mr Clarke when it is extrapolated from smaller units to larger units such as the subject property.

19. She also referred the panel to the rents on the following comparable properties:

- Unit 10 Chesford Gange devalues to £21.17/m^2 with effect from 17 October 2013
- Unit 11 Chesford Gange devalues to £21.96/m^2 with effect from 1 March 2013
- Unt 2-4 Chesford Gange devalues to £29.75/m^2 with effect from 7 July 2014

20. Mr Wright submitted that little weight should be put on the lease on the subject property in his opinion. The lease in 2020, five years post AVD, would not have be taken into account when the 2017 rating list was being compiled. He referred the panel to the 2010 lease on the subject property which was then the subject of a lease renewal on 1 September 2015 with a rent of £485,000 per annum. This analyses to £42.23/m^2 and it was agreed between the parties in May 2015 very close to the AVD and supports a base rate of £35/m^2.

21. Mr Wright submitted that the only rent which was close to the AVD was on Units 2-4 Chesford Grange which is close in size to the subject property. The rent would devalue to £29.75/m^2 which would supports the present base rate of £30/m^2 for the subject property.

22. He further submitted that weight should be put on the rent passing on Unit 1 Chesford Grange which was very similar in size and construction to the subject property. It was held on a fifteen year lease from 25 December 2008. The lease renewal on 25 December 2013 to a rent of £485,000 per annum which compares favourably to the RV of £410,000. This rent analyses to £43.16/m^2 . This ‘basket of rents’ he submitted therefore demonstrates that the base rate of £35/m^2 is reasonable for the subject property.

23. The panel found the following:

    a. The panel gave little weight to the lease on the subject property as it was five years post AVD and required adjustments. Ms Draycott had stated that the property had been vacant and to let prior to the lease and this could therefore have led to a low rent particular to those circumstances.

    b. The panel disregarded Unit 1 Chesford Grange due to the fact it had a significantly higher value than the other warehouses and premises produced in evidence. There were also errors in the calculation of the RV as the trade counter facility had now been left vacant and it is currently being marketed for demolition.

    c. The panel put weight on the comparable property 2-4 Chesford Gange with an analysed rent of £29.75/m^2. The subject property was slightly larger than this property and so the panel found that it gave weight taking into account the difference in size to a reduced base rate of £28/m^2 for the subject property.

    d. The panel put weight on the cases determined by the Vice President and the fact that they were leading cases which suggested that the tone adopted for warehouses in this locality were incorrectly calculated and required reassessment. The panel also noted that Mr Clarke had not determined a base rate for units over

3,000m^2 but the smaller units in connection with the case suggested a lower base rate for properties over 3,000m^2 would be reasonable and therefore supported a reduction in the base rate for the subject property .

24. Taking into account all the evidence produced by both parties and considering the 'basket of evidence' it found the present base rate of £35/m^2 was unreasonable. Ms Draycott conceded that the rent on the subject property was very low for a warehouse in the locality and so the proposed base rate of £23/m^2 was too low. The panel therefore determined a base rate of £28/m^2 with effect from 1 April 2017.

25. The panel found the correct RV for the subject property is £310,000 as outlined below:

Floor	**Description**	**Area m^2/unit**	**Price per m^2/unit**	**RV**
Ground	Warehouse	9283.96	£28	£259,950
Ground	Office	278.19	£36.96	£10,281
Ground	Office	339.65	£35.11	£11,925
Ground	Staff Toilets	79.77	£28.00	£2,233
First	Office	272.04	£36.96	£10,054
First	Office	426.72	£33.35	£14,231
First	Staff Toilets	32.16	£18.20	£585
Ground	Canopy	112	£4.20	£470
Ground Floor	External Storage	9.4	£21	£197
Ground	Portable Building	25	£21	£525
Total		**10,858.89**		**£310,451**
Storage container		50	10	£500
Total Value				**£310,951**
Say				**£310,000**

Disposal

26. Having considered both parties' comments on the comparable properties provided, the panel concluded that the base rate of £28/per m^2 was fair and reasonable taking into account the basket of evidence and the appeal was allowed-in-part.

Order

27. As a consequence of the above decision, the Valuation Officer is ordered to amend the 2017 Rating List entry to workshop and premises at £310,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

28. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision.

Date issued to parties: 7 August 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.
