THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Local Government Finance Act 1988; warehouse and premises; accuracy of compiled list entry; rental evidence; comparable evidence; *Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; 5% uplift for superior quality;* appeal allowed in part.

Re: Units 2 & 3 Moorgate Point, Moorgate Road, Liverpool L33 7HX (the "appeal hereditament")

APPEAL NUMBER: CHG100799766

BETWEEN:	Law Distribution Limited	Appellant
	and	
	Amanda Hitching (Valuation Officer)	Respondent

PANEL:	Mr I Lonsdale (Presiding Senior Member) Dr P Thomson (Senior Member)
CLERK:	Ms N Shepherd IRRV Hons
REMOTE HEARING 1:	Tuesday 17 October 2023
APPEARANCES:	Mrs E Draycott, of Altus Group on behalf of the Appellant Mr J Smallwood, on behalf of the Respondent

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Summary of decision

1. Appeal allowed in part. The rateable value (RV) of the appeal hereditament was reduced to £236,000 from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal brought in respect of the appeal hereditament, which had been entered into the rating list as 'Warehouse and Premises' at £248,000 RV with effect from 1 April 2017.

3. The challenge proposal, submitted by Altus Group on behalf of Law Distribution Ltd, was received by the Valuation Officer (VO) on 7 April 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £196,000 RV was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 10 February 2023, which stated that based upon the evidence and information available, the existing rating list entry was considered to be reasonable, and no amendment would be made.

5. The appeal hereditament is a warehouse and premises located on Moorgate Road, just off the A580. It has a total area of 12779.05/m^2 and had been valued as part of scheme 393739. It had entered the list at £248,000 with an unadjusted rate (UAR) of £18.00/m^2 with 5% for uplift, which analysed to £19.47/m^2.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal had been made on the grounds that the rating list was inaccurate. The appeal was received by the Tribunal on 24 May 2023.

7. As Mrs Draycott appeared on behalf of the appellant as both advocate and expert witness and in view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mrs Draycott confirmed that she was aware that in giving her evidence her duty was to the Tribunal and that she would comply with this as well as the requirements of her professional body. Furthermore, she confirmed that she was not instructed under a conditional fee arrangement or any other success related fee.

8. In order to assist the tribunal, the parties had agreed all basic facts and the analysis of the competing rental evidence.

9. This hearing was held remotely via Microsoft Teams.

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

Preliminary issue

11. There was a preliminary issue in that Mr Smallwood wanted to introduce late rental evidence in respect of the appeal hereditament by way of a form of return effective from 1 May 2022.He had emailed the evidence to the clerk to the Tribunal and Mrs Draycott on 11 October 2023.

12. Mrs Draycott objected to the late evidence as she considered that Mr Smallwood should have made an application to have the late evidence included to the Tribunal four weeks before the hearing. Furthermore, the form of return had been provided to the VO in October 2022. Under questioning,

Mrs Draycott confirmed that she did consider she was prejudiced by the late evidence if the panel was to allow it, as she did not consider that she had been given ample time to review and respond to it.

13. Mr Smallwood submitted that the reason for the delay was the form of return had not been available at the time. Furthermore, he had not dealt originally with the case and had only come across the information recently when he took over the case.

14. The panel considered the situation in light of the Upper Tribunal decision in Simpsons Malt Ltd and Other v Jones (VO) UKUT [2017] 460 and Denton v TH White Ltd [2014] 1 WLR 3926 which dealt with non-compliance. This laid out the three-stage test which the panel had to consider.

    Stage 1 – If the panel conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53)

    Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the panel to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

    Stage 3 – The panel must consider all the circumstances of the case including:

    a) the need for litigation to be conducted efficiently and at a proportionate cost;
    b) a failure to grant a sanction may leave an inaccuracy being uncorrected; and
    c) the need to enforce compliance with rules, directions and orders (para. 55); However, such matters must never be allowed to assume a greater importance than doing justice (para. 56).

15. The panel was disappointed by Mr Smallwood's lack of compliance with the Standard Directions and that he had only submitted this information six days prior to the hearing. Having regard to all the circumstances and the prejudice felt by Mrs Draycott in that she had not been given enough time to review the form of return the panel therefore decided it was in the interests of justice to not admit this evidence.

Issue

16. The issue for the panel to determine was the main space price to be adopted. The Valuation Officer argued for a price of £18.00/m^2 with a 5% uplift resulting in an RV of £248,000 whilst the appellant's representative contended that £15.38/m^2 resulting in an RV of £196,500 was fair and reasonable.

Evidence and submissions

17. The evidence comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

Decision and reasons

18. In accordance with paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, the appeal property must be viewed vacant and to let and 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. The date of the hypothetical rent is 1 April 2015, the AVD for the 2017 rating list.

19. 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.

20. Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of 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. Mr Smallwood submitted that the rent passing on the appeal hereditament was the best evidence. He referred to a tenancy schedule provided in respect of the appeal hereditament which showed that there was a new three-year lease agreed on a full repair and insurance (FRI) basis. The schedule stated that there was a passing rent of £325,000 per annum (pa) which analysed to £25.51/m^2, clearly supporting the current main space rate of £18.00/m^2.

22. Mrs Draycott contended the reliability of this evidence as it had been sourced online, and information regarding incentives and rent-free periods were not known. Furthermore, it was not a legal document. As such, she felt less weight should be attached to this evidence.

23. The panel considered Mrs Draycott's contention but having regard to the second proposition in *Lotus & Delta* still considered it good evidence due to the proximity of the lease start date to the AVD.

24. The panel then considered the comparable evidence submitted, all of which were properties situated on Moorgate Road. The panel paid particular attention to Units 5A & 5B Moorgate Point which was situated on the same industrial estate as the appeal hereditament and was located adjacent to it. The panel noted that whilst this property was slightly larger than the appeal dwelling it had the same unadjusted rate of £18.00/m^2. Rental details had also been provided with a new lease commencing on 25 September 2014 for a three-year term for an amount of £469,125 pa. Having regard to the photographs provided the panel also considered that this property appeared to be of a similar quality and style to the appeal hereditament.

25. The panel then considered the other comparable evidence provided. Dairy Crest had an unadjusted rate of £14.25/m^2, The Big Rack had an unadjusted rate of £8.50/$m^{2,}$ and TT Assembly Systems had an unadjusted rate of £40.00/m^2. No rental details had been provided in respect of any these three properties. The panel attached little weight to these comparables due to the differences in age and size between them and the appeal hereditament.

26. The panel then addressed the issue of whether an amount of 5% for uplift was warranted in respect of the appeal hereditament. During questions it was confirmed that the 5% uplift was in relation to the quality of the appeal hereditament being better than average for the locality, based upon it having a sprinkler system and insulated walls and roof.

27. Mrs Draycott submitted that there was a sprinkler system at the appeal hereditament but there were no insulated walls or roof; the appeal hereditament was a solid brick construction, and you were able to see the brick internally. Furthermore, the original asbestos roof had not been fully replaced and insulated, only made watertight. The panel studied the photographs provided and found these also appeared to demonstrate the lack of wall and roof insulation at the appeal hereditament.

28. The panel found that it had not been provided with any evidence to suggest that the appeal hereditament should have an unadjusted rate of £15.38/m^2. It attached most weight to the rental evidence of the appeal hereditament and found this in conjunction with the comparable property at Unit 5A & 5B Moorgate to support the current unadjusted rate of £18.00/m^2. With regard to the 5% uplift, the panel did not consider this to be reasonable; it had been determined based upon the appeal hereditament having insulated walls and roof. Instead, the panel considered an amount of 2.5% to be more appropriate to account for the benefit of the sprinkler system.

29. The appeal was therefore allowed in part, and the following assessment determined:

Description	**Area m^2**	**£/m^2**	**Value (£)**
Ground floor warehouse	12,799.05	£18.00	£230,383
2.5% Uplift			£5759
Total			£236,142

Rounded down to £236,000 RV with effect from 1 April 2017

Order

30. The Tribunal 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 Units 2 & 3 Moorgate Point, Moorgate Road, Liverpool L33 7HX to £236,000 rateable value within two weeks with from 1 April 2017.

Date: 13 November 2023

Appeal Number: CHG100799766

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.