VALUATION TRIBUNAL FOR ENGLAND

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

APPEAL NUMBER:	CHG100810347
RE:	Home Bargains, Belton Road West Extension, Loughborough, Leicestershire LE11 5XH (the "subject property")

BETWEEN:	T J Morris Ltd	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	29 April 2024
BEFORE:	Mr M Aslam, Presiding Senior Member Mr WJ Read, Senior Member
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)
APPEARANCES:	Mr A Allen (om behalf of the appellant) Ms K Cockhill (on behalf of the respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The Tribunal Panel determined a revised rateable value (RV) of £168,000 for the subject property with effect from 21 October 2017.

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered in the 2017 rating list as ‘retail warehouse and premises’ at an RV of £207,000 with effect from 21 October 2017. The challenge proposal was submitted on 23 May 2022. The challenge sought a revised assessment of £168,000 RV with effect from 21 October 2017. The Valuation Officer (VO) determined that it was well founded and issued a challenge case decision notice on 24 July 2023 which stated that based upon the evidence and information available, the new rating list entry was £189,000 RV.

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 £189,000 was still unreasonable and appealed the decision which was received by the Tribunal on 10 November 2023.

5. Mr Allen 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 his 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). Mr Allen confirmed that he was instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported his 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. The subject property consisted of a former Staples Retail Warehouse redeveloped and occupied by Home Bargains from October 2017. It is located just off the A6004 Belton Road in an area of mixed units of retail warehouses, industrial units, commercial units and car showrooms. It is approximately 1.7 miles from the centre of Loughborough. It has a GIA of 1,792.82m^2 with a customer car park and loading area.

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

Preliminary issue

10. Mr Allen made the tribunal aware that he was unwell but confirmed that he was well enough to continue with the hearing. The panel determined that it was in the interests of justice to hear the case and that Mr Allen had confirmed that he was well enough to continue.

Background

11. The issue between the parties is whether the subject property should be valued at a main rate of £100/m^2 as submitted by the VO or a main rate of £90/m^2 as the appellant's agent submitted.

Relevant Law

12. 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.

13. 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).

14. 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 21 October 2017, being the date the subject property entered the rating list.

Discussion

15. Mr Allen submitted that the main rate of £100/m^2 was unreasonable and referred the panel to three comparable properties:

    (1) Currys Unit C-D Regent Place Retail Park, Broad Street Loughborough which is a modern retail warehouse located on a retail park. It has a GIA of 1,802.87m^2 which is vey similar in size to the subject property and has a main rate of £90/m^2. This rate was agreed with the agents acting for Currys.

    (2) The Range, Unit 5 Willowbrook Park, Derby Road, Loughborough which is located on a retail park close to the subject property and has a GIA of 1,853.10m^2 and a main rate of £90/m^2. This assessment has not been challenged.

(3) Wickes Building Supplies, Belton Road, Loughborough which has a GIA of 2,418.60m^2 and a main rate of £95/m^2 and has not been challenged.

16. Mr Allen submitted that Currys and The Range had demonstrated a tone had been set in the vicinity of the subject property for a main rate of £90/m^2. Both of these properties were on retail parks which would make them more desirable as they would have the benefit of spinoff trade compared to the subject property which was a standalone property. This supported the main rate at £90/m^2 on the subject property. In connection with Wickes he stated that the main rate may not have been challenged as Wickes were due to leave the property.

17. Ms Cockhill, representative for the respondent submitted that the main rate of £100/m^2 was reasonable. She stated that the three comparable properties referred to by Mr Allen were of a different style to the subject property and so were not truly comparable. The most comparable property in her opinion was Wickes which she submitted supported the main rate for the subject property and had not been challenged and so was deemed to have been accepted as reasonable. Wickes was larger with a GIA of 2,418.60m^2 compared to the subject property which had a GIA of 1,792.82m^2. Wickes therefore had a lower main rate to the subject property due to quantum. She did however concede during questioning that she had not introduced any evidence of quantum in the evidence bundle.

18. The panel concluded that the appellant's representative had successfully demonstrated that a tone had been established for retail warehouses in the vicinity of the subject property being £90/m^2. The fact that the subject property was disadvantaged by being a standalone property would also have to be reflected in the main rate. The panel therefore found the subject property to have a main rate of £90/m^2. The panel therefore allowed the appeal.

The RV is as follows:

Floor	**Description**	**Area/m²**	**Price per m²**		**RV**
Ground	Sales	1592.10	90.00		14,3,289
Ground	Store	135.10	90.00		12,159
Ground	Office	65.62	90.00		5,906
			Total		**161,354**
Plus	Canopy	24.45	15.00	367	
	Air conditioning	1592.10	4.00	6368	
					6735
				Total	**168,089**
				Say	**£168,000**

Order

19. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list for Home Bargains, Belton Road West

Extension, Loughborough, Leicestershire LE11 5XH be revised to a rateable value £168,000 with effect from 21 October 2017.

20. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of fees

21. 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 issued to parties: 13 May 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.
