VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeals; 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; appeals dismissed.

APPEAL NUMBERS:	CHG101048142, CHG101053317, CHG101053396 & CHG100822760
RE:	UNIT 8, 18, 17 & 10 M11 Business Link, Parsonage Lane, Stansted CM24 8GF (the “subject properties”)

BETWEEN:	Gamit Ltd, Idel Ltd, Shield Batteries Ltd & Halspan Ltd	Appellants
	and	
	Ms J Moore (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	15 April 2024
BEFORE:	Mr P Blythe-Bartram, Presiding Senior Member Miss K Marsden, Senior Member
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)
APPEARANCES:	Mr S Cyrille (on behalf of the appellants) Mr L Stevens (on behalf of the respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals were dismissed.

2. The Tribunal Panel confirmed the rateable values (RV) of the subject properties of £40,250 for Unit 8, M11 Business Link, Parsonage Lane Stansted (subject property 1), £32,000 Unit 18, M11 Business Link, Parsonage Lane Stansted (subject property 2), £40,000 Unit 17, M11 Business Link, Parsonage Lane Stansted (subject property 3) and £46,250 Unit 10, M11 Business Link, Parsonage Lane Stansted (subject property 4) with effect from 1 April 2017.

Introduction

3. This appeal relates to four 2017 rating list appeals. Firstly in respect of subject property 1 which arises from a challenge made by the appellant's representative on 11 April 2023. The challenge was in respect of the entry in the rating list at £40,250 RV as 'warehouse and premises' effective from 1 April 2017. The appellant sought a revised assessment of £39,500 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 1 October 2023. The appellant made an appeal to this Tribunal In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 which was received on 11 December 2023, on the grounds that the RV was not reasonable.

4. In respect of subject property 2 a challenge was made by the appellant's representative on 20 April 2023. The challenge was in respect of the entry in the rating list at £32,000 RV as 'warehouse and premises' effective from 1 April 2017. The appellant sought a revised assessment of £31,250 RV. After considering the merits of the challenge, the VO determined that it was not well founded and a decision notice to this effect was issued on 1 October 2023. The appellant made an appeal to this Tribunal In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 which was received on 11 December 2023, on the grounds that the RV was not reasonable.

5. In respect of subject property 3 a challenge was made by the appellant's representative on 20 April 2023. The challenge was in respect of the entry in the rating list at £40,000 RV as 'warehouse and premises' effective from 1 April 2017. The appellant sought a revised assessment of £39,000 RV. After considering the merits of the challenge, the VO determined that it was not well founded and a decision notice to this effect was issued on 1 October 2023. The appellant made an appeal to this Tribunal In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 which was received on 11 December 2023, on the grounds that the RV was not reasonable.

6. In respect of subject property 4 a challenge was made by the appellant's representative on 29 June 2022. The challenge was in respect of the entry in the rating list at £46,250 RV as 'warehouse and premises' effective from 1 April 2017. The appellant sought a revised assessment of £45,250 RV. After considering the merits of the challenge, the VO determined that it was not well founded and a decision notice to this effect was issued on 18 October 2023. The appellant made an appeal to this Tribunal In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 which was received on 11 December 2023, on the grounds that the RV was not reasonable.

7. Mr Cyrille appeared on behalf of the appellants 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 Cyrille 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.

8. The panel accepted this expert witness evidence on the above basis as the appeals were 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).

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

10. The subject properties are modern steel portal framed industrial units on a modern estate constructed in 2008. The industrial estate is situated approximately 3.5 miles from Bishops Stortford and 3 miles from Stansted airport. It also has easy access to London via the M25.

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

Background

12. The issue between the parties is whether the subject properties should be valued at an unadjusted rate (UAR) of £87/m^2 or at a UAR of £85/m^2 as the appellant's agent submitted which was in line with the rental evidence of other properties in the same valuation scheme as the subject properties.

Relevant Law

13. 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.

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 appeals, the material day is 1 April 2017, being the date the subject properties entered the rating list.

Discussion

16. Mr Cyrille submitted that the rating assessment of the subject properties were not in line with other assessments in the locality. The Valuation Scheme for all industrial assessments on the M11 Business Link estate range from £85/m^2 and £90/m^2. He drew the panel's attention to three comparable properties:

    Unit 9, M11 Business Link had a UAR of £85/m^2 effective from 20 April 2014.
    Unit 15, M11 Business Link with a UAR of £81/m^2 effective from 1 April 2014.
    Unit 14, M11 Business Link with a UAR of £81/m^2 effective from 2 April 2014.

    All these comparable properties had effective dates close to the AVD and were new leases on a 15 year term. They all had five yearly rent review dates and had a rent free period of six months. They had a UAR below that of the subject properties at £87/m^2 and yet were on the same industrial estate as the subject properties. This, he submitted, supported a UAR of £85/m^2 for the subject properties.

17. Mr Cyrille also referred to a list of 17 assessments on the same industrial estate as the subject properties and which were in the same Valuation Scheme but had a UAR of £70/m^2 except Unit 11 which had a UAR of £85/m^2. They were all less than the present UAR on the subject properties and therefore supported a UAR of £85/m^2 for the subject properties.

18. Mr Stevens submitted that in the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 14 the judge held that the starting point of calculating an RV should always be the rent on the subject property should there be one. The rent on the subject property was £47,000 per annum effective from 1 May 2017 which analysed to £88.12/m^2 which with a base rate of £88.16/m^2 is £0.04/m^2 lower and so supported a UAR of £87/m^2.

19. Turning to the comparable properties on the same industrial estate as the subject properties Mr Stevens drew the panel's attention to the following six comparable properties which had analysed rents of between £69.86/m^2 and £91.11/m^2:

    Unit 15, M11 Business Link – Analysed Rent of £88.02/m^2, effective 01 April 2015.
    Unit 5, M11 Business Link – Analysed Rent of £78.89/m^2, effective 01 November 2015.
    Unit 9, M11 Business Link – Analysed Rent of £91.11/m^2, effective 01 April 2014.
    Unit 7, M11 Business Link – Analysed Rent of £87.61/m^2, effective 01 February 2014.
    Unit 10, M11 Business Link – Analysed Rent of £88.12/m^2, effective 01 May 2017.
    Unit 2, M11 Business Link – Analysed Rent of £69.86/m^2, effective 01 September 2020.

20. He submitted that the analysed rent of Unit 2 was an outlier and should therefore not be relied upon but the others support that the present UAR on the subject properties was reasonable. He stated that in particular Unit 15, M11 Business Link which had an analysed rent of £88.02/m^2 with an effective date of 1 April 2015 the AVD and was slightly larger in size than the subject properties should be the highest weighted evidence in his opinion.
    Mr Stevens referred the panel to the settlement evidence of £85/m^2 for Unit 9 which is larger than the subject properties and so on the basis of quantum would support £87/m^2 for the significantly smaller subject premises. Although there was no quantum applied to this industrial estate in the 2010 valuation list, Mr Stevens argued that the rental evidence for the

2017 list had now demonstrated a quantum factor should be applied. He therefore submitted that a tone had been established for £85/m^2 on the larger properties and £87/m^2 on the smaller units.

Disposal

21. The panel concluded that the appellant's representative had not successfully demonstrated that the subject properties should be assessed at a UAR of £85/m^2. Mr Stevens had demonstrated that there was a settled tone for smaller units in the same industrial estate at a UAR of £87/m^2. The panel put particular weight on the comparable property of Unit 15 which had a lease commencing on the AVD which rent which analysed to £88.02/m^2.

22. The panel also noted that each rating list was 'de novo' and the lack of a quantum allowance in the 2010 list did not mean there could not be one in the new 2017 rating list if the rental evidence supported this and the panel found that it did. The panel therefore confirmed the present RV's for the subject properties with an unadjusted rate of £87/m^2. In view of the above findings and conclusions, the Tribunal Panel dismissed the appeal.

Date issued to parties: 10 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.
