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; appeal dismissed.

RE: Units 20 & 21 Hainault Works, Hainault Road, Romford RM6 5SS

APPEAL NUMBER: CHG100825125

BETWEEN:	Homestyle Direct Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mrs K Sutch (Presiding Senior Member) Mr W Read (Senior Member)
CLERK:	Ms N Shepherd
REMOTE HEARING 1:	Tuesday 25 July 2023
APPEARANCES:	Mr M Clayton, of Altus Group on behalf of the Appellant as advocate Mr B Porter, of Altus Group on behalf of the appellant as expert witness Mr R Das, on behalf of the Respondent

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Summary of decision

1. Appeal dismissed. The rateable value (RV) of £53,500 was confirmed 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 £55,000 RV with effect from 1 April 2017.

3. The appellant had made a challenge by way of a proposal that he served on the Valuation Officer (VO) on 6 July 2022. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was partly well founded and granted a 2.5% allowance with effect from 1 April 2017. A decision notice to that effect was served on the appellant on 22 November 2022. Subsequently, the appellant’s representative then appealed the VO’s decision to the tribunal on 15 February 2023, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appeal hereditament is located 1.6 miles from Fairlop Station and 5.7 miles from the M11 motorway. It was originally two separate units but was merged as one assessment with effect from 1 April 2017. It measured 638.64m^2 and had been built in 2002.

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

6. Mr Porter appeared on behalf of the appellant as expert witness. In view of the Upper Tribunal’s judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Porter stated that he was instructed under a conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and 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.

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

8. This hearing was held remotely via Microsoft Teams.

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

Issue

10. The issue in dispute was the correct tone of value for the main space to be applied to the appeal hereditament. The appellant sought a reduced entry of £47,000 RV based on a main space price of £74.93/m². Mr Das defended the VO's existing assessment of £53,500 RV based on a main space price of £86.59/m².

Evidence and submissions

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

Decision and reasons

12. 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 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let' and in the state set out in Schedule 6 of paragraph 2(7) to the Act, in relation to both the physical nature of the property and its mode or category of use.

13. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, namely:

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

    (2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

    (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 VO. In subsequent proceedings on that list therefore they can 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 attributed to the differing types of evidence depending on the one hand on 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 such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

14. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration to how that rent compared to the statutory definition of rateable value.

15. Mr Porter submitted that a rental agreement of £22,275 per annum (pa) in respect of Unit 21 commenced with effect from 31 May 2012. Unit 20, which was attached to Unit 21, was then let out additionally for £22,290 pa with effect from 30 May 2017, equating to a rental value of £44,565 for both units. Mr Porter contended that both units were similar in terms of quality and size and that the rents for both conveyed that there had been no increase in the rental value in the years covering the AVD.

16. Mr Das contended that a Form of Return had been provided on 1 June 2017, which showed that the ratepayer was paying a rental amount of £56,240 in respect of both Unit 20 and 21. Mr Das therefore considered that the rents submitted by Mr Porter to be incorrect and that the rental evidence supplied on the Form of Return supported the current base rate.

17. The panel had regard to the second proposition in *Lotus & Delta* and found that both the rental evidence submitted by Mr Porter and the information pertaining to the Form of Return provided by Mr Das were too far removed from the statutory definition of rateable value and therefore attached little weight to this evidence.

18. The panel then considered the comparable evidence submitted. Mr Porter presented details of Units 8, 9, & 10 Hainault Works which he considered to be the best comparable property. This property was leased out with effect from 9 January 2014 at a rate of £83,000 pa which analysed to £71.37/m^2. It had been valued at £90.00/m^2. Mr Porter submitted that this property was a good comparator due to the proximity of the lease commencement date to the AVD, as well as it being of a similar age and construction to the appeal hereditament.

19. Mr Porter contended that this comparable properly clearly demonstrated that there had been little growth in the value of the rental market within the locality. It had previously been valued in the 2010 list at £65.00/m^2, based upon rental evidence at that time. The difference between that figure and the analysed

rent of £71.37/m^2 was 9.8%, demonstrating that the value between the 2010 and 2017 list should have only increased by this percentage. It was Mr Porter's assertion that as this property neighboured the appeal hereditament it was not unreasonable to expect that a 9.8% increase would also apply there.

20. The panel had regard to of Units 8, 9, & 10 Hainault Works and considered that whilst the commencement of the lease was closer to the AVD than that of the appeal hereditament, it was still one year prior to 1 April 2015 and therefore not indicative of rental values at the AVD. It also noted that this property was in a different valuation scheme to the appeal hereditament and comprised of three units as opposed to two. It was also significantly larger, measuring 967.35 m^2. Taking this into consideration the panel attached little weight to this evidence.

21. Mr Porter also referred the panel to Unit 4 2-8 Roebuck Road, Hainault Business Park which was in the same Valuation Scheme as the appeal hereditament and which he considered supported a reduction in RV. However, the panel noted that no evidence had been provided in respect of this property other than the VO submitting that it had a rental value of £33,000 effective from 1 November 2015.

22. The panel was aware that the persuasive or legal burden of proof was on the appellant to prove his case and it found that they had failed to discharge that burden. The panel therefore concluded that it had not been provided with sufficient evidence to suggest that the appeal hereditament should have an unadjusted rate of £74.93/m^2 and determined the current RV of £53,500 to be reasonable.

23. The appeal is therefore dismissed.

Date: 22 August 2023

Appeal Number: CHG100825125

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.