THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; 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 allowed in part.

RE: Beef Barn & Offices, Coursers Farm, Coursers Road, St Albans, AL4 0PD

APPEAL NUMBER: CHG100843479

BETWEEN:	Nurture Landscapes Limited (Represented by Altus Group)	Appellant
and	Dawn Bunyan (Valuation Officer)	Respondent

PANEL: Mrs L Long (Presiding Senior Member)
Ms R Sharma (Senior Member)

CLERK: Mr J Massey

REMOTE HEARING: Friday 21 July 2023

APPEARANCES: Mr M Evans from Altus Group (Appellant's representative)
Mr C Lewell - Valuation Officer's representative – advocate only

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Summary of Decision

1. The appeal was allowed in part as the panel determined a tone of value of £50.00 per m² was not excessive but found that the portable building should be valued in accordance with valuation scheme 302025 at £25 per m^2 and therefore determined a Rateable Value (RV) of £81,000 with effect from 2 December 2019.

Introduction

2. The appellant's representatives had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal served on the Valuation Officer on 18 August 2022. After considering the proposal and evidence submitted during the

challenge period, the Valuation Officer decided that the proposal was not fell founded but considered that the existing assessment of £88,000 RV was excessive and altered the rating list entry to £83,000. A decision notice to that effect was served on the appellant on 14 November 2022 and the appellant's representatives then appealed the Valuation Officer's decision to the tribunal on 26 January 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.

3. The appeal property was a warehouse and premises situated on Coursers Farm and was originally built in the 1950s as an agricultural unit with a total significant area of 1,544.19 m^2. Following the removal of an agricultural exemption on the barn it had been valued at an unadjusted rate of £50 per m^2 from 2 December 2019 in line with the valuation scheme 302025 applicable to rural locations in Hertsmere. As well as two storage containers and land, the assessment also comprised a portable building which had been valued at £40 per m^2.

4. Mr Lewell appeared before the panel as advocate only for the respondent. Mr Evans appeared before the panel in a dual capacity as both Advocate and Expert Witness and he stated that he was on a success related fee. He did, however, accept that his first duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), 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 in England).

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

6. This hearing was held remotely via Microsoft Teams.

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

Issues

8. The issue in dispute before the panel was the correct tone of value rate to be applied to the appeal property. The appellant sought a reduced entry of £50,500 RV based on a tone of value of £29.00 per m^2. The appellant also considered that the portable building should be valued at £25 per m^2 in line with the relevant valuation scheme. On behalf of the respondent, Mr Lewell defended the Valuation Officer's existing assessment of £83,000 based on a tone of value of £50.00 per m^2.

Evidence and submissions

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, photographs of the appeal property, a copy of the subject lease and the respondent's schedule of comparable rental evidence.

Decision and reasons

10. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

11. The starting point for consideration was the actual rent passing on the appeal property. The rent resulted from a lease renewal on a three year term from 1 September 2016 and was £45,000 per annum (pa) on full repairing and insurance terms. The appellant benefited from a 5 months' rent free period. The appellant had devalued this rent to £28.84 per m^2 and the respondent had devalued it to £25.46 per m^2.

12. Mr Evans argued that the rent passing on the appeal property was the best evidence, and the tribunal need not look any further. However, Mr Lewell contended that little weight should be attached to the actual rent, as the rating list was 7 years old and a tone of value of £50 per m^2 had become established over the lifetime of the rating list based on the rents of similar properties.

13. In terms of indirect rental evidence, the Valuation Officer referred to the rents passing on Green Barn at Coursers Farm, Coursers Lane, Colney Heath, St Albans, Herts, AL4 0PD, Hospedia Ltd, Earls Farm, Earls Lane, Ridge, Potters Bar, Herts, EN6 3LT and Lawsons, Tyttenhanger Farm, Coursers Road, Colney Heath, St Albans, Herts, AL4 0PG. Both Green Barn and Lawsons were located off Coursers Road and in close proximity to the subject property, and Hospedia Ltd was located further away but a similar distance from the M25 motorway junction.

14. Green Barn was significantly smaller than the subject property with a TSA of 637.92 m^2 and its rent determined by a rent review from 1 January 2014, devalued to £57.28 per m^2. The appellant contended that it was a more modern purpose-built unit, and its rent was not indicative of that achievable by the much larger subject property. The panel noted that this property was valued on an adopted rate of £55 per m^2, as was Hospedia Ltd, which had a TSA of 947.47m^2 although its rent devalued to £75.06 per m^2.

15. The rent for Lawsons, which had a TSA of 3,937 m^2 was agreed on an upwards only review from 1 December 2013 at £201,000 pa and devalued to £48.27 per m^2. Mr Evans argued that this was a nil increase on the previous rent which indicated that the rent agreed on 1 December 2013 was possibly higher than open market values at this date. He also considered this to be a better quality building than the subject property and insisted that its rent should carry little weight in determining the correct value for the subject property.

16. Whilst all the respondent's comparable rents were agreed on rent reviews, the rent on the subject property appeared to be a lease renewal, agreed 19 months after the AVD and was for only three years. The panel therefore did not consider that it held significantly more weight than the comparable rents as argued by the appellant.

17. No photographs had been provided by the appellant of the respondent's comparable properties to support his contention that they were superior in quality to the subject property.

18. Having had regard to the whole basket of rental evidence the panel placed most weight on the rents attached to Green Barn and Lawsons which had been agreed at a similar time, approximately 15 months before the AVD. The panel considered that the difference in the two rents agreed demonstrated an element of quantum, although only a small amount as

Lawsons was approximately six times larger than Green Barn, whilst its rent analysed to around £9 per m^2 less. Taking this into account, the panel considered that the rents on these two properties supported the current unadjusted rate of £50 per m^2 adopted by the respondent for the subject property.

19. With regard to the value of the temporary building on site, the respondent argued that similar buildings in London boroughs were valued at £40 per m^2 and as the subject property was separated from the London boroughs only by the M25 motorway, its temporary building should be valued the same. He also considered it counterintuitive that office space, although temporary, should be valued at a lower rate than the lower quality warehouse space. In considering this matter, the panel examined the detail of the valuation scheme (302025) for values of industrial properties in Hertsmere (all ages), which referred to a base rate of £50 to £60 per m^2, and a rate of £25 per m^2 for portable buildings.

20. The panel concluded that the scheme itself defined that temporary or portable buildings, which the panel considered included offices, be valued at £25 per m^2 and could not therefore conclude that this approach was incorrect. The subject property was located in Hertsmere, which in fact straddled the M25 motorway, and the scheme defined the value to be placed on such buildings in that borough, irrespective of proximity to the London boroughs. The panel therefore concluded that the area of 145.10 m^2 shown in the valuation of the subject property as 'office -portable building' should be valued at £25 per m^2 as defined in the relevant valuation scheme.

21. In light of the above findings, the appellant's grounds of appeal were therefore made out in part as the existing assessment was unreasonable. The panel determined the rateable value of the subject property at a reduced RV of £81,114 (rounded to £81,000) and the appeal was therefore allowed in part.

Order

22. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for the appeal property to £81,000 RV with effect from 2 December 2019. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

23. A refund of the paid fee will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refund will take around six weeks to process.

Date: 7 August 2023

Appeal number: CHG100843479

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.