VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeals; factory and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; assessments of comparable properties; correct unadjusted rate to be applied to the subject property's assessment; appeals allowed in part.

RE: Crompton House, Nuttalls Way, Blackburn, BB1 2JT

APPEAL NUMBERS: CHG100846866 (appeal 1) and CHG100846874 (appeal 2)

BETWEEN: Huhtamaki BCP Ltd Appellant

and

Mrs A Hitchings
(Valuation Officer) Respondent

PANEL: Mr M Aslam (Presiding Senior Member)
Ms N Chesterman (Senior Member)

CLERK: Mrs J Smith IRRV(Tech)

REMOTE HEARING ON: Thursday 28 March 2024

APPEARANCES: Mrs E Draycott of Altus Group (representing the appellant as advocate and expert witness)
Mr A Macrury (representing the Valuation Officer as advocate and expert witness)

Summary of decision

1. Appeals allowed in part. The appeal property's assessment was reduced to £315,000 Rateable Value (RV) with effect from 1 April 2017 (appeal 1) and £337,500 RV with effect from 1 November 2018 (appeal 2).

Introduction

2. These are 2017 rating list appeals. Crompton House, Nuttalls Way, Blackburn, BB1 2JT, (the 'appeal property') had been entered in the 2017 rating list as 'factory and premises' at £355,000 RV with effect from 1 April 2017.

3. In June 2010, Crompton House was merged with Units 4A and 4B Sett End Road due to the construction of a link corridor between the two units. This formed a new assessment with a total area of 9935.86m^2. This was the total area of the appeal property when it had been entered into the rating list at £355,000 RV with effect from 1 April 2017 (appeal 1).

4. Following further alterations, Crompton House became linked to part of Unit 4C Sett End Road and its total area increased to 10506.40m^2 with a £377,500 RV with effect from 1 November 2018 (appeal 2).

5. There were two appeals before the panel. One in respect of the historic RV compiled list assessment with effect from 1 April 2017 (appeal 1) and one in respect of the assessment with effect from 1 November 2018 (appeal 2). Since the arguments and evidence were the same in both these appeals, the parties agreed that they could be consolidated and heard together.

6. The challenge proposals were submitted by Altus Group on behalf of Huhtamaki BCP Ltd and were received by the Valuation Officer on 26 August 2022. They had been made on the grounds that the RV shown in the rating list on 1 April 2017 (appeal 1) and 1 November 2018 (appeal 2), respectively were inaccurate. Revised RVs were proposed of £292,500 with effect from 1 April 2017 (appeal 1) and £315,000, with effect from 1 November 2018 (appeal 2).

7. The Valuation Officer issued challenge case decision notices on 27 June 2023 which disagreed with the proposed alterations of the list. The respective material dates were 1 April 2017 (appeal 1) and 1 November 2018 (appeal 2).

8. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuation for the hereditament is not reasonable. The appeals were received by the Tribunal on 27 October 2023.

9. Mrs Draycott appeared on behalf of the appellant as both advocate and expert witness. 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 instructed under a contingency fee basis and she declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's case.

10. 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).

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

12. The appeal property is an industrial unit located at Shadsworth Industrial Estate close to junction 5 of the M65 motorway. At 1 April 2017 the hereditament consisted of 3 units with a total area of 9935.86m^2. This historic assessment had been valued at un unadjusted rate (UAR) of £39/m^2.

13. On 1 November 2018 Crompton House became linked with part of Unit 4C with the remaining part of Until 4C let separately. The newly formed assessment, with a total area of 10506.40m^2 had also been valued at a UAR of £39/m^2.

14. Units 1,2 and 4 had been constructed between 2006 and 2010 and Unit 3 was constructed in 1996, the later 1996 part had been valued at a UAR of £33/m^2.

15. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issues

16. The appellant's representative had argued that each of the units had been valued separately and that no allowance for quantum had been made to reflect the overall size of the entire property. She sought a reduction in the UAR to £30/m^2 for Units 1, 2 and 4, which resulted in her proposed assessments of £292,500 RV with effect from 1 April 2017 (appeal 1) and £315,000 RV with effect from 1 November 2018 (appeal 2). The UAR applied to the 1996 built Unit 3 of £33/m^2 was unchallenged.

17. The Valuation Officer defended the present assessments of £355,000 RV with effect from 1 April 2017 (appeal 1) and £377,500 RV with effect from 1 November 2018 (appeal 2).

Evidence and submissions

18. The panel had been provided with an evidence bundle, which comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, challenge further exchange, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

Decision and reasons

19. The appeal hereditament must be valued for the purposes 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, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (appeal 1) and 1 November 2018 (appeal 2).

20. The panel had regard to the Lands Tribunal judgement of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976],* as quoted in the Valuation Officer's Decision. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. 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 as to how that rent compared to the statutory definition of rateable value.

21. Taking the first proposition as set out in *Lotus & Delta*, the panel acknowledged that there was a rent passing on the appeal property although the panel noted that due to a series of alterations, there were currently two separate leases in existence for different parts of Crompton House.

22. There was a lease agreed for the pre-merger units with a total area of 7544.47m^2, of £322,064.44 per annum, for a term of 10 years, which had been set in November 2013. The respondent had analysed this to £43.53/m^2. The panel acknowledged that this lease had been agreed between connected parties and was therefore not an open market agreement. As such, the panel placed caution on the appeal property's rent.

23. The lease for the remaining parts of the subject property, with a total floor area of 2375.10m^2, had commenced on 1 December 2017 for £111,651.45 per annum. This was for a term of 7 years and 6 months with a break clause option on 27 November 2023. The respondent had analysed this to £46.10/m^2. There was nothing to suggest the parties to this lease were connected. However, due to the original part of the lease having been agreed between connected parties and the amount of adjustments required to bring the rents into line with the statutory definition of rateable value, the panel placed little weight on the subject rent when arriving at its decision.

24. In terms of indirect rental evidence, the VO had referred to the rents passing on Units 6,15 and 8, Elder Court. The respondent had analysed these rents at between £55.78/m^2 to £68.05/m^2. However, the panel found this evidence to be of little assistance when considering the assessment for the appeal property as these three properties were significantly smaller than the appeal property, ranging in size from just 153.90m^2 to 389.40m^2.

25. No rental evidence was submitted by the appellant's representative in respect of any comparable properties. As such, the panel went on to have regard to proposition four as set out in *Lotus & Delta* and have regard to the assessments of comparable properties.

26. Mrs Draycott had submitted four scheduled of comparable properties, some of which appeared in more than one table. The panel found the first two schedules the most helpful as they detailed 15 industrial properties in the locality which she stated were of similar age to the appeal property and ranged in size from 7077.70m^2 to 18551.99m^2. These had been assessed with UARs of between £17.50/m^2 and £33/m^2. Mrs Draycott suggested that these

15 properties supported her argument that the UAR of £39/m^2 applied to the majority of the appeal property was too high.

27. The panel found that of these properties, the closest in terms of location and size were Marstons Distribution Centre, Sett End Road North, F D Sims Limited, Lions Drive and Units 14-15 Walker Industrial Park. These comparable properties were all between 7077.70m^2 and 11899.28m^2 and had been assessed at a UAR of £33/m^2.

28. In support of his argument that an allowance for quantum had already been made in the current assessment of the appeal property, Mr Macrury had referred to two other properties in the same valuation scheme as the appeal property. These were Unit 1 (Plot C), Partnership Way, which was 3877.60m^2 and had a UAR of £41.50/m^2 and Blackburn Bakery, Sett End Road, which was 5578.70m^2 had a UAR of £39.50/m^2. Mr Macrury contended that these comparable properties demonstrated that within the valuation scheme a reducing UAR had been applied as the total significant area of the assessments increased and that no further reduction in price was warranted.

29. In considering this evidence the panel noted there was a difference of just £0.50/m^2 in the UAR applied to the appeal property when compared with Blackburn Bakery. Since the appeal property was nearly twice the size of Blackburn Bakery this did not suggest to the panel that within the valuation scheme an appropriate allowance for quantum had been made for properties much larger than 5000m^2. The panel acknowledged that the valuation scheme had been capped at £39/m^2 for all properties 5000m^2 and above.

30. After careful consideration of all the evidence, the panel concluded that the current UAR of £39/m^2 applied to the majority of the appeal property was excessive. However, it was not convinced that a reduction to £30/m^2 as requested by Mrs Draycott was supported by the evidence. After having regard to the appellant's representative's comparable properties of similar age and size, the panel determined that a reduced UAR of £33/m^2 was fair and reasonable. The panel therefore allowed both the appeals in part.

31. The panel determined that the UAR should be reduced to £33/m^2 in respect of Units 1,2 and 4 and remain at £33/m^2 for Unit 3. This resulted in revised assessments of £315,000 RV with effect from 1 April 2017 (appeal 1) and £337,500 RV with effect from 1 November 2018 (appeal 2). A breakdown of the assessments has been shown below. In arriving at these valuations, the panel had applied the measurements put forward by the parties.

Line	Floor	Description	Area m^2	Relativity	£/m^2	Value £
1	Ground	Production Area	4216.23	1	£33.00	£139,136
2	Ground	Warehouse	1776.62	1	£33.00	£58,628
3	Ground	Office	69.56	1.2	£39.60	£2,755
4	Ground	Reception/Entrance	84.72	1.2	£39.60	£3,355
5	Ground	Internal Storage	32.61	0.975	£32.18	£1,049
6	First	Office	384.08	1.2	£39.60	£15,210

7	Second	Office	38.86	1.2	£39.60	£1,539
8	Second	Office	99.03	1.32	£43.56	£4,314
9	Second	Plant Room	18.75	0.39	£12.87	£241
10	Second	Internal Storage	99.09	0.39	£12.87	£1,275
11	Second	Office	17.93	1.2	£39.60	£710
12	Ground	Mess/Staff Room	67.14	1.1	£36.30	£2,437
13	Ground	Laboratory	19.25	1.1	£36.30	£699
14	Second	Kitchen	7.36	1.2	£39.60	£291
15	Second	Internal Storage	32.61	0.4	£13.20	£430
16	Ground	Loading Bay	469.90	0.464	£15.31	£7,194
17	Ground	Warehouse	2141.35	0.975	£32.18	£68,909
18	Ground	Office	90.47	1.2	£39.60	£3,583
19	First	Office	143.32	1.2	£39.60	£5,675
20	Ground	Link Corridor	126.98	0.975	£32.18	£4,086
		Total	9935.86		Subtotal	£321,516
Less 5% for divided/split unit						£16,076
						£305,440

Additional Items	**Size/Spaces**	**Price**	**Value £**
Hard Surfaced, Fenced Land	946	£3.25	£3,075
Hard Surfaced, Fenced Land	926.5	£3.25	£3,011
Car Parking	65	£60.00	£3,900
		Total additions	£9,986
		Subtotal	£315,426
Say £315,000 Rateable Value, with effect from 1 April 2017			

Line	**Floor**	**Description**	**Area m²**	**Relativity**	**£/m²**	**Value £**
1	Ground	Production Area	4216.20	1	£33.00	£139,135
2	Ground	Warehouse	1776.60	1	£33.00	£58,628
3	Ground	Office	69.60	1.2	£39.60	£2,756
4	Ground	Reception/Entrance	84.70	1.2	£39.60	£3,354
5	First	Office	384.10	1.2	£39.60	£15,210
6	Second	Internal Storage	32.60	0.4	£13.20	£430
7	Second	Kitchen	7.40	1.2	£39.60	£293
8	Second	Office	38.90	1.2	£39.60	£1,540
9	Second	Internal Storage	99.10	0.39	£12.87	£1,275
10	Second	Office	17.90	1.2	£39.60	£709
11	Ground	Loading Bay	469.90	0.464	£15.31	£7,194
12	Ground	Warehouse	2712.00	0.975	£32.18	£87,272
13	Ground	Internal Storage	32.60	0.4	£13.20	£430
14	Ground	Laboratory	19.20	1.1	£36.30	£697
15	Ground	Mess/Staff Room	67.10	1.1	£36.30	£2,436
16	Ground	Office	90.50	1.2	£39.60	£3,584
17	First	Office	143.30	1.2	£39.60	£5,675
18	Ground	Warehouse	127.00	0.975	£32.18	£4,087

19	Second	Office	99.00	1.32	£43.56	£4,312
20	Second	Plant Room	18.70	0.39	£12.87	£241
		Total	10506.40		Subtotal	£339,258
Less 5% for split/divided unit						£16,963
						£322,295

Additional Items	Size /Spaces	Price	Value £
Hard Surfaced, Fenced Land	946	£3.25	£3,075
Hard Surfaced, Fenced Land	926.5	£3.25	£3,011
Hard Surfaced, Fenced Land	1759.30	£3.25	£5,718
Car Parking	65	£60.00	£3,900
		Total additions	£15,704
		Total Value	£337,999
Say £337,500 Rateable Value, with effect from 1 November 2018			

Order

32. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to RV £315,000 with effect from 1 April 2017 and RV £337,500 with effect from 1 November 2018, within two weeks of this Order.

Date: 25 April 2024

Appeal numbers: CHG100846866 and CHG100846874

Refund of fees:

A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

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.