VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeals; office and premises; base rate in dispute; analysis of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Sainitta Global Lawyers (UK) v Mr A Ricketts (Valuation Officer) [2021] UKUT; K Shoe Shops Ltd v Hardy (VO) and Westminster City Council [1983] RA 26 ; ITM Corporation Ltd v Mooney (VO) [1983] (Lands Tribunal) RA at 154; Shrewsbury School Governors v Shrewsbury Borough Council & Plumpton (VO) [1960] 7RCC 313; Shearson Lehman Bros Ltd v Hackney London Borough Council [1991] RA125; appeal allowed.

APPEAL NUMBER:	CHG100875555	
RE:	2 The Boulevard, Blackmoor Lane, Watford WD18 8YW (the "subject property")	
BETWEEN:	Storm Technology Ltd	Appellant
	and	
	Ms L Dyer MRICS (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	8 October 2024	
BEFORE:	Mrs L Bryning, Presiding Senior Member Mr P Patel, Senior Member	
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)	
APPEARANCES:	Mr H Makdumi (on behalf of the appellant) Mr H Leigh (on behalf of the respondent)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The Tribunal Panel confirmed the revised rateable value (RV) of £220,000 for the subject property with effect from 13 January 2021.

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered into the 2017 rating list as 'office and premises' at an RV of £282,500 with effect from 13 January 2021. The floor area was subsequently agreed at 2,003.47m^2 and the VO therefore reduced the RV to £275,000 in accordance with the new agreed floor area using a base rate of £140/m^2. The challenge proposal was submitted on 4 November 2022 by the appellant using a base rate of £110/m^2 and giving an RV of £220,000 with effect from 13 January 2021 on the agreed size. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice to this effect on 17 January 2024.

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 £275,000 was still unreasonable and appealed the decision which was received by the Tribunal on 10 May 2024.

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

Background

9. The subject property is a post 1990 built industrial unit which has been converted to an office and is located on the western side of The Boulevard which is a privately owned road at the northwestern edge of the Croxley Business Park approximately 2.5km from Watford town centre.

10. The issue between the parties is whether the subject property should be valued at a base rate of £140/m^2 as submitted by the VO or £110/m^2 as the appellant's agent submitted. The issue of the size of the subject property now being agreed at 2003.47m^2 and so no longer requires a finding from the panel.

Relevant Law

11. 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.

12. 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).

13. 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 13 January 2021 when the subject property was entered into the rating list as an office.

14. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

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

    (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

    (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 valuation officer. In subsequent proceedings on that list therefore they can be 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 attached to the differing types of evidence depending on the one hand 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 each circumstance, it would be difficult to reject the evidence of the actual rent.

Discussion

15. The subject 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. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 13 January 2021.

16. Mr Makdumi drew the panel's attention to the photographs and the plan of the subject property which were contained in the bundle. He submitted that the subject property was an industrial unit which had been converted into offices. The subject property was built in the 1980's with 50% warehouse, 20% offices and the remainder being research laboratories. The subject property was changed into a larger office with a canteen from 13 January 2021. The building was not a purpose built office and did not have the necessary spec and layout to be a headquarters office unlike the comparable properties in the vicinity of the subject property which also had a base rate of £140/m^2 applied to them. The subject property had a shared access unlike the comparable offices put forward by the VO.

17. He explained that the rent on the subject property was £600,000 per annum but the rent was not based on the value of the subject property but on the mortgage cost plus pricing. It was also between connected parties. The lease commenced on 1 September 2018 which was over three years post AVD and so Mr Makdumi submitted that based on all these facts the rent should be given little weight.

18. The comparable properties put forward by Mr Makdumi were based on tone as none of the properties in the direct vicinity of the subject had any rental evidence:

(1) 1 Blackmoor Lane which he stated was a good comparator for the subject property as it was at the end of the same road to the subject property. It was built in 1994 but the first floor had a full refurbishment and is fitted out as offices. These offices have a rate of £107.50/m^2 plus 5% giving a base rate of £112.88 which supports that the rate of £140/m^2 is unreasonable for the subject property. Mr Makdumi did however agreed with the VO that this was too low a differential to the subject property but he submitted that it did demonstrate that the base rate of £140/m^2 on the subject property was too high.

(2) Numbers 40, 3, 7, 36-38 and 22-34 Caxton Way which are only a three minute drive from the subject property. The properties have an analysed rent of between £71.50 and £121.92 in the 2010 rating list and is in a comparable location to the subject property.

(3) Observer House and Wentworth House are modern offices and are a similar size to the subject property but are valued at £110/m^2. These are on an industrial estate and in the vicinity to the subject property and so were good comparators in Mr Makdumi's opinion.

(4) Belfry Business Park at 13 Colonial Way is made up of several offices which are similar in size to the subject property. Some of the offices are smaller and therefore have a higher tone to take account of the size. The office which is a similar size to the subject property has a base rate of £110/m^2. The VO maintained that this property is wrongly valued and should have a base rate of £140/m^2 but that they are unable to amend the RV due to the 2017 list being closed.

(5) Mr Leigh drew the panel's attention to the case of *K Shoe Shops Ltd v Hardy (VO) and Westminster City Council [1983] RA 26* in which it was found that there should be no reduction of an RV to maintain uniformity. Mr Makdumi however submitted that the VO should not impugn its own list as found in the case of *ITM Corporation Ltd v Mooney (VO) [1983] (Lands Tribunal) RA at 154*. He also referred the panel to the case of *Shrewsbury School Governors v Shrewsbury Borough Council & Plumpton (VO) [1960] 7RCC 313* and *Shearson Lehman Bros Ltd v Hackney London Borough Council [1991] RA125* in which it was also found that the VO should not seek to impugn the rating list when defending the RV of a different rating assessment.

19. Mr Makdumi submitted that in connection with the comparable properties put forward by the VO they were all purpose built offices with good lighting, fully glazed exteriors, a double height reception and had direct access via a security gate.

(1) The Croxley Green Business Park is a prestigious business park set in 75 acres of green park and includes an onsite gym, café, breakout pods, children's nursery and it is fully landscaped with a shuttle bus from there into the town centre. Number 7 is the same size as the subject property and has a base rate of £156.21/m^2 which means that the base rate of the subject property is only approximately 10% lower than the rate applied to this purpose built high quality office space. Mr Makdumi submitted that the subject property should have a much larger differential in the base rate between it and the similar sized offices on the Croxley Green Business Park as they were significantly different from each other.

(2) Mr Makdumi confirmed that 3 The Boulevard was a purpose built two storey office which is fully glazed, has a two storey reception and there was direct access to the property. It is the headquarters for Action for Children and was far superior to the subject property. This property he submitted was not a good comparator as it is purpose built to a very high spec and he questioned how many potential tenants who were in the market for offices in this vicinity would consider the subject property alongside Unit 3 as there were significant differences between the two properties. The base rate applied to this property was the same as that for the subject property being £140/m^2.

(3) Unit 1 The Boulevard Mr Makdumi stated was an inferior property to the subject property and has a base rate of £70/m^2 with an addition of 20% for the offices and 10% for the air conditioning. He submitted that although he freely admitted that the subject property was

a better office he did not believe it was of the same standard as Unit 3 The Boulevard and so its base rate should be higher than for this unit but lower than £140/m^2 .

20. Mr Leigh submitted that in the case of *Lotus v Delta* it was found that the rent on the subject property should always be the first consideration when valuing a business premises. In connection with the subject property the lease commenced on 1 September 2018 and taking the rent free period of two years into account and the rent of £600,000 per annum this analysed to £137/m^2 which supported the current base rate of £140/m^2.

21. He drew the panel's attention to the fact that Mr Makdumi had not provided any rental evidence to support his base rate in relation to his case. He explained that the fact that the rent was agreed was on the basis of a mortgage cost plus pricing was the same method as was used at Link House, 19 Colonial Way. This property was built in 1991 and was only slightly smaller and was approximately three miles away from the subject property with a base rate of £140/m^2 which supported the same rate for the subject property.

22. Mr Leigh also submitted that the level of work carried out on the subject property was extensive and not simply a refurbishment as the work included most of the following:

(1) Relocation of the current B8 warehouse use to another existing building in the local are
(2) Change of use of the current B8 warehouse space to B1 office use.
(3) A single storey side extension to the north-west side of the existing building to house a staff restaurant and kitchen, with a screened, open roof top plant area above.
(4) New glazing and cladding to the current warehouse part of the building as appropriate fo r enhanced office use.
(5) New glazing and small extension to the existing reception area, including a new double s liding door, as an enhanced arrival point for staff and visitors.
(6) Replacement of existing office glazing with higher, fixed, double glazing.
(7) A significant interior refurbishment of all office areas and interior fitting out of existing of warehouse space for offices, to create a new holistic office environment throughout.
(8) A new bin store screened enclosure and covered bicycle parking area located in the nort hwest corner of the site and on the existing hard landscaping.
(9) New hard landscaping to create a paved terrace staff amenity area outside the new restaurant.

These works once carried out have enhanced the thermal performance and reduced heating and cooling requirements. This he stated created a high spec modern office similar to those on Croxley Green Business Park. The look of the subject property, he submitted, was the design choice of the appellant company and did not reflect an inferior office space and therefore supported a rate of £140/m^2.

23. Mr Leigh submitted that in his opinion the converted offices at 1 Blackmore Lane which had been valued at £112.88/m^2 were undervalued and should have been valued at £140/m^2 the same as the subject property. He also put forward the neighbouring offices of 3 The Boulevard and 1 Greenhill Crescent which were good comparable properties for the subject property and had been settled at £140/m^2. He drew the panel's attention to a list of the settlement figures for larger offices in Watford which had all been valued on the same matrix/scheme as the subject property and had a base rate of between £110/m^2 and £180/m^2. The Pavilion, Blackmore Lane which is adjoining the subject property was also valued in the same scheme as the subject property and had a base rate of £150/m^2. This he submitted supported the

subject property which was in the same scheme/ matrix being valued with a base rate of £140/m^{2}..

24. Mr Leigh further drew the panel's attention to the proximity of the subject property to Croxley Green Business Park and the many headquarters of large national companies that were situated on that estate. He stated when questioned that he believed that if the subject property were vacant and to let a large company would consider renting the subject property as it was a high enough spec office building and was close to other office buildings on Croxley Green Business Park. He explained that he had personally visited the subject property and in his opinion the reception area and general spec of the subject property was similar to those on Croxley Green Business Park. He therefore submitted that this evidence demonstrated that the base rate of £140/m^2 was reasonable. The valuation scheme the subject property was in was scheme 423679 which was for designed modernised offices in Watford located on out of town estates and built post 1990.

25. The panel found:

    (1) The conversion of an industrial property into office space would not necessarily mean that the standard would be a lower spec than that of a purpose built office. However in this case the subject property it was of an inferior spec and was only one storey high compared to the comparable properties offered into evidence by the VO. The work carried out on the subject property was mainly required to convert an industrial property into to an office and not to create a headquarter style property.

    (2) The rent on the subject property was as outlined in the case of *Lotus v Delta* the first piece of evidence required in a basket of evidence to determine the RV of a property. The rent on the subject should not however as found in the case of *Lotus v Delta* be the only evidence required to be taken into account when determining an RV of a property. A basket of evidence needed to be considered to determine the correct base rate for the subject property The panel also noted that the rent was over three years after the AVD being 1 September 2018 and was between connected parties and so put little weight on the rent.

    (3) The panel found that the comparable properties put into evidence by Mr Makdumi more persuasive. The panel put most weight on 1 Blackmore Lane which was very similar to the subject property being a one storey building in the direct vicinity of it and which had been refitted as an office. This had a base rate of £107.50/m^2 The panel agreed with Mr Makdumi that this was too low for the subject property but also found that it demonstrated that the base rate of £140/m^2 was unreasonable. The panel also put weight on offices at Belfry Business Park at 13 Colonial Way one of which was an office of a similar size to the subject property which had a base rate of £110/m^2. The panel took into account the fact that the VO could not impugn its own list as demonstrated in the case law and therefore put weight on these comparable properties which supported a base rate of £110/m^2 for the subject property.

    (4) The photographs provided into evidence demonstrated the difference between the subject property and the VO's comparable properties. The subject premises did not have a double storey reception, two floors, nor was it fully glazed and the lower height of the ceilings meant it did not have the open and light feeling of the comparable properties. There was in the panel's view a marked difference between the comparable properties put forward by the VO and the subject property.

(5) The scheme that a property was placed into does not, on its own, determine the base rate of a property. The valuation schemes, as referred to by Mr Leigh and found in the case *of Sainitta Global Lawyers (UK) v Mr A Ricketts (Valuation Officer) [2021] UKUT*, "are just tools used by the Valuation Officer as a convenient method of grouping together the very many nondomestic properties that he or she is required to value" . The panel therefore put little weight on evidence in connection with which scheme the subject property and the comparable properties were in.

26. The panel found the correct RV for the subject property is £220,000 as outlined below:

Floor	**Description**	**Area m^2/unit**	**Price per m^2/unit**	**Value**
Ground	Original Offices	1,016.77	£110	£111,845
Ground	New Offices	755.26	£110	£83,079
Ground	Restaurant	231.44	£110	£25,458
Total				**£220,382**
Say				**£220,000**

Disposal

27. Having considered both parties' comments on the comparable properties provided, the panel concluded that the base rate of £140/m^2 was not fair and reasonable and the proposed base rate of £110/m^2 was after taking into account the basket of evidence. In view of the above findings and conclusions, the Tribunal Panel allowed the appeal.

Order

28. As a consequence of the above decision, the Valuation Officer is ordered to amend the 2017 Rating List entry to an office and premises at £220,000 RV, with effect from 13 January 2021 within two weeks of the date of this Order.

Refund of fees

29. 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.

Date issued to parties: 5 November 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.
