VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; factory and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; tone of value of main space for survey unit; land included in valuation; comparable assessments; appeal dismissed.

APPEAL NUMBER: CHG100884361

RE: Dawes Cycles Ltd 154, Wharfdale Road, Birmingham B11 2DG
("the subject hereditament")

BETWEEN: Kozee Sleep (Midlands) Limited — Appellant

and

Lucy Formela-Osborne MRICS (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 26 June 2024

BEFORE: Mrs F Cortese (Senior Member)
Mr S Hooberman (Member)

CLERK: Mr S Fletcher

APPEARANCES: Mr T Hogg of Altus Group (Appellant's representative)
Mr B Walker (Respondent's representative)

DECISION and STATEMENT OF REASONS

Decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of the subject hereditament to be £215,000 with effect from 1 April 2017.

Introduction

2. The appeal process began with a challenge made by the appellant's representative on 6

May 2022 in respect of the Valuation Officer's (VO) compiled list entry of the subject hereditament at £220,000 RV with effect from 1 April 2017. The appellant's representative proposed a revised assessment of £167,000 RV from that date based on a reduced main space rate of a survey unit and the removal of a land area.

3. The respondent issued a challenge case decision notice on 23 January 2023, which stated that, based on the evidence available, the existing rating list entry of £220,000 RV was unreasonable and determined a revised entry of £215,000 RV with effect from 1 April 2017. The revised RV accounted for some agreed adjustments between the parties. The appellant's representative appealed that decision to this Tribunal on 31 January 2024 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was a factory and premises which consisted of multiple buildings. It was situated on Wharfdale Road which comprised numerous industrial premises located four miles southeast of Birmingham City Centre. The appellant, which was its current occupier, was the owner of the property.

5. Mr Hogg 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), the representative confirmed 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 the client's case.

6. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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.

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

Issues

8. The issue for the panel to determine was the correct RV to be attributed to the subject hereditament in the 2017 rating list. The issues in dispute concerned the tone of value for the main space of Survey Unit 2 and whether land at the property should be included in the valuation. All adopted relativities were agreed by the parties.

Evidence and submissions

9. Arguments and factual evidence from both the appellant's representative and the respondent was provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission, the respondent's challenge decision notice and reference to, and photographs of, properties deemed comparable to the subject hereditament by the parties. The Lands Tribunal's judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 was also referred to.

10. The appellant's representative sought a revised RV of £167,000 following a reduction to the main space rate for Survey Unit 2 to £21 per m^2, and the removal of land at the subject hereditament from the assessment. Comparable assessments to Survey Unit 2 were provided to support its sought tone of main space, and it was argued that the land should be removed from the assessment as it was for the purpose of access.

11. The respondent contended that the list entry of the subject hereditament was reasonable based on a main space rate for Survey Unit 2 of £35 per m^2. Rental evidence and comparable assessments in the locality were submitted in support of the valuation. The respondent disagreed that the land should be removed from the assessment as an allowance for 610m^2 for access had already been given.

Discussion

12. 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

13. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

14. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 1 April 2017.

<u>*Tone of value for main space at Survey Unit 2*</u>

15. The respondent stated that Survey Unit 2 was built in 1977 and refurbished in 1985. It had been valued in line with a Valuation Scheme for industrial units of average condition in Birmingham constructed between 1971 and 1984 (384917). The unit was described as steel portal framed with bricks up to the eaves, of which were 7.5m in height. The appellant's representative described the unit as of a 1960's appearance, and a steel truss framed workshop. He contended that a more appropriate scheme was for industrial units in Birmingham built during the 1950s and 1960s which had a range of values from £21 per m^2 to £62 per m^2 (338554).

16. It is a well-established rating principle that the starting point in the determination of a property's RV should be the rent passing on the subject hereditament itself as held in *Lotus and Delta.* No such evidence was available in this instance as the subject was owner occupied.

17. The respondent provided rental evidence of an assessment within the locality it deemed comparable to the subject to support its value of tone for main space of £35 per m^2 at Survey Unit 2. Unit 10, Gravelly Industrial Park was a factory and premises with a reviewed rent agreed of £347,500 effective from 1 June 2015. The respondent had analysed the rent to £36.49 per m^2, and the tone of value for main space was £36.50 per m^2. The unit's eaves were 5.8m. The respondent contended that the assessment supported the tone of value at

the subject property given its rent was in close proximity to the AVD and it was located in a more desirable area than the subject.

18. The appellant's representative provided two comparable assessments to demonstrate the difference between properties valued in line with Valuation Schemes 384917 and 338554. Unit 19 Fortnum Close, was valued in the former and the appellant's representative had agreed a tone of value for main space of £30.50 per m^2 with the respondent. The appellant's representative argued that Survey Unit 2 at the subject hereditament was distinguished from this property as Unit 19 was a superior steel portal framed building. Its eaves height was 4.88m. Unit 18, Tyseley Industrial Estate was valued in line with Scheme 338554, and the appellant's representative had agreed a tone of value for main space of £20.00 per m^2 with the respondent. Its eaves height was 4.3m. The appellant's representative argued that the subject was similar to that property in terms of build, and both had roof support beams throughout the units. The respondent's representative argued that Unit 19 and Unit 18 were circa ten or twenty years older respectively than the subject and therefore not comparable.

19. The respondent's representative provided five comparable assessments to further support the respondent's tone of value at Survey Unit 2. The values ranged from £35 per m^2 to £38 per m^2. The respondent's representative argued that the properties were of similar age to Survey Unit 2, and in the same locality. It was contended that the comparable assessments had lower eaves than the Survey Unit 2 and at least the same tone of value for main space, therefore its valuation was not unreasonable. The appellant's representative argued that no evidence had been provided to suggest that eaves height had an impact on value in the area.

20. The panel upheld the determination of the respondent for the tone of value at Survey Unit 2. The respondent had provided rental evidence for Unit 10, Gravelly Industrial Park, with a rent agreed in close proximity to the AVD, which was analysed to £36.49 per m^2. Whilst the panel accepted that no direct evidence had been provided to substantiate that eaves height was a significant factor in value in the locality, it did consider that higher eaves would command a higher rental bid in the eyes of any hypothetical tenant. Unit 10 was just one year older than Survey Unit 2 and had lower eaves yet was valued at a slightly higher tone of value for main space. The panel found the five comparable assessments submitted by the respondent were also of a similar age to Survey Unit 2, but all had lower eaves. They had a tone of value for main space either the same or higher than at Survey Unit 2. The panel therefore found its tone of value to be reasonable.

21. The panel found no sufficient evidence to support that the respondent had valued Survey Unit 2 in line with the wrong Valuation Scheme. It attached little weight to Unit 18, Tyseley Industrial Estate, submitted by the appellant's representative. It was significantly older than the Survey Unit 2 and had been valued in a Scheme for properties built between the 1950s and 1960s. Considering the photos of the interior of the units, Unit 18 had support beams throughout in contrast to the subject where they appeared less prevalent. The panel therefore did not find the units to be similar. Unit 19, Fortnum Close, was also older than Survey Unit 2. Contrary to the appellant's representative's assertions, the panel found Unit 19 to be similar from an aesthetic perspective to Survey Unit 2 and that it actually supported the tone of value determined by the respondent.

<u>Land included in valuation</u>

22. The respondent valued 1150m^2 of hard surfaced, fenced land as part of the subject

hereditament's assessment. The appellant's representative sought for the land to be removed from the assessment. He contended that the land was for access and should be included with the tone of value for main space. He stated that any typical occupier of the property would keep the area free to accommodate for the arrival of multiple HGVs at any given time. He stated that the proportion of land to the rest of the site was 1:9 and argued that the presence of the land would not impact any hypothetical rental bid of a potential tenant as it was used to access the buildings. He did state that the current occupier had used part of the land to store pallets. He also referred to some of the comparable assessments submitted by the respondent where land had been disregarded for the purposes of valuation.

23. The respondent's representative argued that there was 1760m^2 of land space at the premises and 610m^2 of it had already been disregarded for circulation and access which was considered reasonable. He referred to the photos of the land and stated that parts of the space were being utilised for storage.

24. The panel upheld the determination of the respondent that the hard surfaced, fenced land area of 1150m^2 should be assessed as an additional feature of the property included in the valuation of the subject hereditament. The panel was required to value the subject vacant and to let. The fact that the actual occupier deemed the area for use primarily for access was irrelevant. Evidence was provided to the contrary of that contention as some of the photographs provided demonstrated that areas of the land were used for the storage of pallets. The land was present at the premises, and the panel found that no satisfactory evidence had been provided for it not to be valued. The appellant's representative had referred to allowances given at comparable assessments, however no reasons for those allowances had been given and may have been unique to those premises, nor was evidence provided to substantiate such an allowance. The respondent had disregarded 610m^2 of the land for access and circulation at the property, which the panel found to be reasonable in this instance.

Disposal

25. Having regard to the evidence, the panel determined that the tone of value for the main space at Survey Unit 2 was fair and reasonable at £35 per m^2, and that land at the property should remain in the valuation. The subject's RV at £215,000 with effect from 1 April 2017 was confirmed.

26. In view of the foregoing, the appeal was therefore dismissed.

Date: 15 July 2024

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.
