VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; workshop and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; Valuation Scheme; tone of value of main space; Paragraph 2 (7) of Schedule 6 to the Local Government Finance Act 1988; material change of circumstance; road closure; one appeal allowed in part, one appeal dismissed.

APPEAL NUMBERS:	CHG100884810 & CHG101048577
RE:	Trinity Works, 78 Back Hamlet, Ipswich IP3 8AR ("the subject hereditament")
BETWEEN:	Titchmarsh & Goodwin Fine Furniture Limited — Appellant
	and
	Joanne Moore (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	3 June 2024
BEFORE:	Mr P Hickson (Presiding Senior Member) Mr K Everett (Senior Member)
CLERK:	Mr S Fletcher IRRV (Hons)
APPEARANCES:	Mr P Rabette of Rabette Chartered Surveyors (Appellant's representative) Mr L Stevens (Respondent's representative)

DECISION and STATEMENT OF REASONS

Decision

1. The appeal in relation to the rateable value (RV) of the subject hereditament with effect from 1 April 2017 was allowed in-part and the appeal in relation to an allowance for a material

change in circumstances was dismissed. The panel determined the RV of the subject hereditament to be £29,500 with effect from 1 April 2017.

Introduction

2. The appeal process began with challenges made by the appellant's representative on 2 December 2022 and 12 April 2023 in respect of the Valuation Officer's (VO) compiled list entry of the subject hereditament at £40,500 RV with effect from 1 April 2017. The appellant's representative proposed a revised assessment of £20,000 RV from that date based on a reduced main space rate and sought an allowance for a material change of circumstance of 10% with effect from 20 December 2022.

3. In relation to the proposal pertaining to the subject hereditament's compiled list entry, the respondent issued a challenge case decision notice on 27 September 2023 which stated that, based on the evidence available, the existing rating list entry of £40,500 was unreasonable, and determined a revised entry of £35,500 with effect from 1 April 2017. In relation to the proposal pertaining to a material change in circumstance, the respondent issued a challenge case decision notice on 26 September 2023 which stated that the proposal was not well-founded and there should be no alteration of the list. The appellant's representative appealed those decisions to the Tribunal on the 22 April 2024 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was a workshop and premises of 1,215m^2 built between 1919 and 1939. The workshop was of a traditional build, with brick and block walls and a flat felt roof, which consisted of several interconnecting workshops. Within the curtilage of the property, there was a two-storey brick-built office, a small Nissen Hut and several open fronted storage units. There was also a car park with twenty-five parking spaces.

5. Mr Rabette 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 his advocacy 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. There were two issues for the panel to determine. Firstly, the correct RV to be attributed to the subject hereditament with effect 1 April 2017. That issue in dispute concerned the tone of

value for main space. All adopted relativities were agreed by the parties. The second issue was whether an allowance was applicable to the RV of the subject hereditament pertaining to a material change in circumstance with effect from 20 December 2022.

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, a map demonstrating the location of the subject, the respondent's challenge decision notice and reference to, and photographs of, properties deemed comparable to the subject hereditament. 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 £20,000 following a reduction to the main space rate from £24 per m^2 to £12.50 per m^2. He contended that the subject hereditament had been valued in the wrong Valuation Scheme and hence was overvalued, referring to several comparable assessments in a Scheme for lower quality premises. End allowances of 7.5% for layout and 10% for access were agreed between the parties prior to the hearing and had been applied in the respondent's revised valuation of £35,500 RV with effect from 1 April 2017. The appellant's representative sought for an allowance of 10% to be applied to the RV of the subject relating to a material change of circumstance in the locality of the subject, which was a nearby road closure with effect from 20 December 2022.

11. The respondent contended that the comparable assessments provided by the appellant's representative failed to demonstrate that the subject hereditament was placed in the wrong Valuation Scheme. It was considered that the best evidence to support the subject's tone of value for main space was an agreement for the 2010 rating list. The respondent did not consider that the road closure cited by the appellant's representative warranted any reduction to the RV of the subject.

Discussion

Compiled rating list entry valuation

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 was 1 April 2017.

15. 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.* When presented, rents on similar properties could also be considered. No rental evidence from either the subject, or from any comparable properties were provided by either party for the panel's consideration.

16. Mr Rabette contended that the subject hereditament had been valued using an incorrect Valuation Scheme. It was currently placed in Scheme 359806 which was for "Basic Industrial Premises not up to modern standard" which comprised a range of values for main space between £20 per m^2 and £50 per m^2. He argued that Scheme 360051 was a better fit as the subject was built in the 1920s and had not been modernised. That Scheme was for "Poor Industrial Premises not up to modern standards" which comprised a range of values for main space between £10 per m^2 and £27.50 per m^2. He adopted a main space value of £12.50 per m^2, in accordance with comparable assessments which fell within Scheme 360051.

17. Mr Rabette referred to 14th Ipswich Scout Group, Store B r/o 19 Ulster Avenue, Unit C at 441 Bramford Road, Store A r/o 19 Ulster Avenue and Eden-Rose Coppice Trust, Long Street to support that the subject was valued in the wrong Scheme. The properties were placed in Scheme 360051, were between 41.80m^2 and 523.31m^2 in terms of area and had indicative main space rates in the range of £12.04 per m^2 and £23.17 per m^2. He argued that the properties were located in residential areas, like the subject. Eden Rose Coppice was 50m from the subject and was partly comprised of a Nissen Hut.

18. The respondent did not provide any comparable assessment evidence. Mr Stevens stated that he was not the decision maker during the challenge stage and if he had been he would have provided comparable properties within Scheme 359806 to demonstrate their likeness to the subject. However, in his written submissions, Mr Rabette had provided some properties in that Valuation Scheme in his contentions for an allowance for layout and access (of which that allowance was agreed prior to the appeal). The respondent referred to Diveline, St Johns Road, Portia House Workshop, 118-120 Star Lane and Co-Op Society Ltd, Pauls Road, and argued they were similar in terms of age and quality.

19. The respondent did not consider that Mr Rabette's comparable assessments supported that the subject was valued in the wrong Valuation Scheme. It was argued that Eden Rose Coppice was primarily a Nissen Hut which was not comparable to the subject, which was purpose built, bricks and mortar workshop. The respondent stated that 14th Ipswich Scout Group lacked heating and water facilities and did not comprise toilets or natural light. It was argued that Store A and Store B were 'room only' stores within larger premises, and Unit C at 441 Bramford Road only comprised 30m^2 of ground floor space when compared to the subject's ground floor space of 1215m^2.

20. The respondent also contended that the subject hereditament had been valued in accordance with the same Valuation Scheme for the past three valuation lists. It was considered that the best evidence to support the subject's tone of value for main space was an agreement with a rating agent of £24 per m^2 for the 2010 rating list in 2013. The respondent argued that Co Star data for industrial values in the locality of the subject indicated that values had increased by 7.5% since the agreed main space rate in 2013, therefore £24 per m^2 was reasonable.

21. In accordance with *Lotus & Delta*, and the absence of any such rental evidence for either the subject or comparable properties, the panel would consider the assessments of other comparable properties. The respondent had failed to provide any comparable assessment evidence. The panel found that the evidence provided by the respondent was essentially an agreed tone of value of main space for the 2010 rating list and Co Star data which indicated a rise in values since the date of that agreement. The panel attached little weight to that evidence as the agreement was from a historic and closed list and the data suggesting trends of value in an area was often generalised and not an accurate way of determining an individual hereditament's RV. The panel considered that such evidence may be persuasive when presented alongside more compelling evidence, such as rental evidence and comparable assessments, but none had been provided by the respondent in this instance.

22. The panel did however find that the Valuation Scheme that the respondent had placed the subject hereditament for the purposes of valuation was reasonable. The panel determined that the subject was clearly of a quality which was distinguishable from the comparable assessments in the Scheme described as "Poor Industrial Premises not up to modern standards". The subject was a workshop and premises significantly larger than the comparables provided by Mr Rabette which were placed in Scheme 360051, and comprised multiple units of storage, offices and floor space. In contrast, 14th Ipswich Scout Group comprised a single store, and Store B and Eden Rose Coppice Trust comprised singular workshops respectively. The subject also benefitted from a distinct car park with a significant number of spaces which the comparable properties lacked.

23. Having determined that the subject hereditament was valued in the correct Valuation Scheme, and that the respondent had failed to provide sufficient evidence to support the tone of value for main space at the subject, the panel found it reasonable to apply the lowest value in the range of values for Scheme 359806, which in this instance was £20 per m^2.

24. Mr Rabette had requested for a Transitional Certificate to be issued. However, the panel's remit in this appeal was solely to determine the subject hereditament's RV at the compiled 2017 rating list entry, it had no power to order the Valuation Officer to issue such certificates.

25. The revised assessment for the compiled list entry with effect from 1 April 2017 as determined by the panel was as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Production area	1215.24	20.00	24,305
Ground	Office	100.56	23.40	2,353
First	Office	102	23.40	2,387
Ground	External Storage	182.07	13.89	2,529
Ground	External Storage	52.28	13.89	726
Ground	External Storage	7.2	14.60	105
Total		**1659.35**		**32,405**
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION				
Car Park (25 spaces)				3,750
Total				**3,750**

ADJUSTMENTS	
Permanent disadvantage	-0.08%
Access	-0.10%
Total	**6508**
Valuation sub-total	**29,647**
Say RV	**29,500**

26. The panel therefore allowed this appeal in part as it considered the respondent's valuation of the subject hereditament was unreasonable, but not to the extent as sought by the appellant's representative.

Material change of circumstances

27. For the appeal pertaining to the proposal on the grounds of a material change in subject hereditament's locality, matters that affected the physical state or enjoyment of the property or the locality were also 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 was the date the accuracy or otherwise of the check was confirmed, which was 6 March 2023. Should the appellant's representative succeed in his appeal, the effective date for list alteration was the day on which the circumstances gave rise to the proposed alteration. In this appeal, the appellant's representative stated that was the 22 December 2022, and that date was not disputed by the respondent.

28. Mr Rabette sought a 10% allowance to the RV of the subject hereditament with effect from 22 December 2022, citing the closure of Cavendish Road as a material change in circumstance within the locality of the subject hereditament. He argued that the road closure was a restriction on the occupation of the subject which caused difficulties for commercial vehicles to access the property, and difficulties to access the main A1156 Fore Hamlet. He stated that the closure was expected to be permanent, and the required detour was an additional one and a half miles. Mr Rabette stated that he was unable to find any comparable properties which had end allowances for road closures, and instead provided several assessments with allowances for access. He contended that the hypothetical tenant would lower their rental bid considering the closure of the road.

29. The respondent stated that an end allowance of 10% was already part of the subject's assessment and contended that the impact of the road closure would not significantly impact a hypothetical rental bid at the subject premises to warrant any additional allowance. Vehicles leaving the property would pass through Back Hamlet which was a one-way street and turn right onto Devonshire Street before reaching Cavendish Road. The respondent argued that Devonshire Street and Cavendish Road were both narrow residential streets with cars parked on both sides which already made access for larger vehicles difficult. It was considered that there was a plethora of other 'B' roads in the area, more suitable for larger vehicles, which would be a more logical route than using Cavendish Road when it was open. The respondent contended that it had calculated two alternative routes to that described by Mr Rabette which were only 300m or 600m longer in distance to a junction of the A1156. As such, the respondent considered that the closure of Cavendish was unlikely to have a detrimental effect on the business or any hypothetical rental bid at the subject.

30. Mr Rabette was asked if there was any evidence of a detrimental impact to trade at the subject, or at any neighbouring retailers as a result of the road closure. He stated there was not. Mr Stevens stated that no other end allowances pertaining to the road closure had been sought in the locality. Both parties were unaware whether there had been any rent reductions conceded by the landlords in the locality for any properties which may have been affected by the road closure.

31. Whilst the panel accepted that the road closure was inconvenient, it was not persuaded that a hypothetical tenant would reduce their rental bid in light of it, and therefore an allowance for a material change in circumstance was not warranted. There was plenty of alternate access to and from the subject hereditament either approaching or leaving Back Hamlet, which was not significantly lengthy when compared to the now closed route through Cavendish Road. Furthermore, access for large vehicles had always been restricted through that route due to its narrow nature and residential parking on the road itself. No evidence had been provided that any neighbouring properties had sought or been awarded an allowance for the road closure, and there was no evidence provided that there was any impact to trade. The subject was located in a residential area where road works and closures were common. The panel considered that such works would be expected by any hypothetical tenant, and therefore would not reduce any hypothetical rental bid as a result.

32. The panel therefore dismissed this appeal.

Disposal

33. In view of the foregoing, the appeal pertaining to the 2017 compiled list entry for the subject hereditament was allowed in part. The appeal pertaining to an allowance for a material change in circumstance was dismissed.

34. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £29,500 RV with effect from 1 April 2017. The respondent must comply with this order within two weeks of its making.

35. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date: 13 June 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.
