THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeals; Local Government Finance Act 1988; Access; End Allowance; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal dismissed.

RE: Units 1A – 1B, Beacon Hill Industrial Estate, Botany Way, Purfleet, Essex RM19 1SR

APPEAL NUMBER: CHG100893595

BETWEEN:	KBC Logistics Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent
BEFORE:	Mrs Maxine Cole	(Chair and Senior Member)
	Mr Philip Blythe-Bartram	(Senior Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 3:	26 October 2023	
PARTIES PRESENT:	Mr Sheldon Cyrille of Altus Group	Appellant's representative
	Mr Lee Stevens	Respondent's representative

Summary of decision

1. Appeal dismissed. The Rateable Value (RV) of the appeal property was confirmed as £166,000 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the non-domestic rates payer of the appeal property at Units 1A – 1B, Beacon Hill Industrial Estate, Botany Way, Purfleet, Essex RM19 1SR.

3. The RV of the property was £166,000 based on an unadjusted rate of £70/m^2 and the appellant had proposed that it should be based on a rate of £42/m^2 reducing the RV to £125,000 with effect from 1 April 2017.

4. The valuation officer disagreed with the proposed alteration of the list and the appellant appealed to the tribunal.

5. The appeal property was a warehouse and premises 1,464m^2 in area located within the Thurrock billing authority area. There were two industrial units with the oldest unit constructed in 2004 and there were associated yard and parking areas.

6. Mr Sheldon Cyrille appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. 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.

7. Mr Lee Stevens appeared on behalf of the VO as advocate and expert witness. 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 respondent's case.

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

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

Issue

10. The RV of the appeal property.

Evidence and submissions

11. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries, the appellant's challenge submission and a photograph of the appeal property and a location plan.

Decision and reasons

12. The panel referred to the Local Government Finance Act 1988 in respect of the definition of rateable value in paragraph 2(1), Schedule 6 to the Act (as amended). 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. The material day for this appeal was 1 April 2017.

13. The panel also referred to the hierarchy of rental evidence that should be used to determine the RV of the appeal property as detailed in the authoritative and binding Lands Tribunal

judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had established six propositions that gave clear guidance to be followed when assessing rateable value.

14. Bearing these six propositions in mind, the panel acknowledged that the correct starting point was the actual rent passing on the appeal property and consideration as to how that rent compared to the statutory definition of rateable value. The panel made reference to the rental evidence submitted by the appellant's representative.

15. The panel considered the arm's length new letting of £106,000 per annum (pa) with effect from 31 January 2020. This was nearly five years after the AVD and the panel found that this was too far removed from the AVD to be of significance in the assessment of the appeal property and attached little weight to it.

16. The panel also considered the earlier letting from 26 November 2016 for £208,000 pa inclusive of business rates payable. The appellant's representative stated that the net rent would therefore have been £125,000 pa and that this devalued to £41.81/m^2, rounded to £42/m^2 and should form the basis of the valuation assessment.

17. The panel took the 2016 rent into account and noted that it was a new letting, however, it found that that there was a significant drawback with the rental agreement as it was agreed 20 months after the AVD.

18. Accordingly, the panel went on to examine the third and fourth propositions outlined in *Lotus and Delta* and had regard to the rents and assessments placed on comparable properties. The panel noted that the appellant's representative had not submitted any properties or rental evidence beyond that of the appeal property and found that this did not assist his case.

19. The respondent's representative had provided six comparable properties all within the same RM19 1 post code area. He stated that there was not a great deal of relevant rental evidence available and so had had to rely on properties on the Ensign Estate, a location that the appellant's representative deemed more secure and more desirable than Beacon Hill Industrial Estate. The panel noted that the properties there were much older than the appeal property, mostly built in the period 1945-1970's, but found that they provided a reasonable degree of comparability.

20. The panel noted that two of the rents had been agreed in 2012, some three years prior to the AVD and therefore found that less evidential weight could be attached to them.

21. However, four of these comparables had rental agreements within one year of the AVD. These rents had been analysed by the respondent's representative and ranged from £68.53/m^2 for Units C15, C15A, C18, C19 & C20 to £109.17/m^2 for D&B (Top Site). The panel found that this evidence supported the valuation of the appeal property.

22. The panel noted that the rental analysis by the respondent's representative showed their analysed rents to be substantially higher than that of the appellant representatives' analysis of the rent on the appeal property. The panel found that this supported the valuation of the appeal property.

23. The panel noted that five of the properties were considerably smaller than the appeal property but that their unadjusted rate was at least 10% more with two of them having a

value of £85.00/m^2. The panel found that, as a basket of evidence, these properties supported the unit rate on the appeal property and, further, that none supported a reduction of 40% as proposed by the appellant's representative.

24. The panel placed the greatest weight on the property Units C15, C15A, C18, C19 & C20. Although this was smaller than the appeal property with an area of 972.8m^2, it was assessed on an unadjusted rate of £58.65/m^2 and the rent devalued to £68.53/m^2. The rental commenced 1 April 2014, just one year prior to the AVD. This rent would have been a consideration of the hypothetical tenant and landlord when discussing the rent for the appeal property at the AVD. For these reasons, the panel found this supported the current valuation on the appeal property.

25. The panel found that there was sufficient evidence to support the existing valuation on the appeal property although it was not particularly strong. However, other than the rents on the appeal property well after AVD there was little evidence supporting the proposed unadjusted rate of £42/m^2.

26. In appeals of this nature, the burden of proof was on the appellant to provide evidence to demonstrate that the existing assessment was excessive. However, having regard to the evidence before it, the panel was not convinced that the current unadjusted rate of £70/m^2 was unreasonable. Accordingly, the panel confirmed that the appeal property had been correctly valued at £166,000 RV with effect from 1 April 2017.

28 The appeal was therefore dismissed.

Date: 14 November 2023

Appeal number: CHG100893595

Rights of appeal

Any party who is aggrieved by the Tribunal's decision 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.