VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; factory and premises; accuracy of rateable value; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268); Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed

APPEAL NUMBER:	CHG100894836	
RE:	Lassic Ltd Castle Mills, Bradford Road, Cleckheaton BD19 3PS (the "subject property")	
BETWEEN:	Lassic Limited	Appellant
	and	
	Mrs J Moore IRRV (Hons) (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	21 November 2024	
BEFORE:	Mrs S Sohota, Presiding Senior Member Mr CM Taylor, Senior Member	
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)	
APPEARANCES:	Mr C O'Carroll of Gerald Eve (on behalf of the appellant as advocate and expert witness) Mr H Hussain (respondent's representative as advocate only)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The Tribunal Panel determined a revised rateable value (RV) of £285,000 with effect from 26 January 2022.

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered in the list as ‘factory and premises’ at an RV of £445,000 with effect from 26 January 2022. The challenge proposal was submitted on 5 January 2023. The challenge sought a revised assessment of £285,000 RV with effect from 26 January 2022. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice on 27 March 2024 which stated that based upon the evidence and information available, the rating list entry of £445,000 RV was reasonable.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, this appeal was received by the Tribunal on 28 June 2024.

5. Mr O’Carroll 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 O’Carroll confirmed that he was instructed under a fixed fee for attending the hearing and a contingency fee for work leading up to the hearing 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 subject property consists of a large industrial site with a total significant area of 16,326m^2. It is a stand-alone unit and not on an industrial estate and suffers from poor access and is not located close to a motorway. The property is made up of several buildings which were built between 1900 and 1919 with extensions in 1985 and 1991. The property is valued over three survey units reflecting the respective ages and characteristics of each area. The VO accepted the amended areas put forward by the previous surveyor, Mr Whittington, and reduced the RV from £455,000 to £452,500. This was further reduced following the challenge stage to £442.500.

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

Issues

9. The issue between the parties is should the subject property be valued at a rate of £28/m^2 as proposed by Mr Hussain or £22.41/m^2 as submitted by Mr O’Carroll. The second issue is should the subject property have a 20% end allowance as proposed by Mr O’Carroll.

Preliminary issue

10. The appellant had originally been represented by Mr Whittington who had retired and Gerald Eve took over representing him in this case. Mr Whittington had informed the VO that he was retiring in December 2023 and asked that the challenge stage not be completed until Gerald Eve had had time to consult with the appellant which was agreed. The case was taken over by Mr O'Carroll on 28 November 2023. He then met with the appellant and began email correspondence with Mr Hussain and introduced his comparable properties and Mr Hussain rebutted them and introduced his own further comparable properties and the Challenge Decision was issued on 27 March 2024. In the Challenge Decision Mr Hussain made it clear that despite responding to the new comparable properties he would not agree to them being introduced should the case be appealed to the VTE. He therefore opposed the evidence being introduced at this hearing.

11. Mr Hussain referred the panel to *Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268)* Regulation 9 (10)

    *(*10) Before the proposal is determined, the proposer may provide the VO with further evidence relating to the grounds of the proposal if that evidence was not known to the proposer and could not reasonably have been acquired by the proposer before the proposal was made*.*

    He submitted that the evidence put forward by Mr O'Carroll to be new evidence which was known to the appellant at the time of the challenge being submitted and should therefore not be admitted to the hearing under Regulation 9 (10). Mr Hussain argued that he had only responded to the 'new evidence' and added extra comparable properties in case the matter came to this Tribunal and he had to rebut this new evidence but he stated that this did not mean that he had accepted the 'new evidence' and he had always held that he would oppose the new evidence if Mr O'Carroll tried to have it admitted at the appeal stage.

12. Mr O'Carroll submitted that it was not new evidence as it was analysis of the properties contained in the same scheme as the subject property and that the VO would therefore be aware of these properties. He further submitted that Mr Hussain had replied to this evidence and had added his own new comparable properties to counter that evidence. Mr O'Carroll submitted that including this evidence would not prejudice Mr Hussain as he had already responded to it. Mr O'Carroll submitted that the only person prejudiced if it was not allowed in would be the appellant and this went against the interests of justice.

13. The panel found that the relevant regulation in connection with this issue was Regulation 9 (7) and (8) of the Non-Domestic Rating (Alteration of Lists and Appeals (England) Regulations 2009 (SI 2009/2268) :

    > (7) On receipt of the proposal, the VO must if it considers it reasonable to do so provide the proposer with any information the VO holds that relates to the particulars of the grounds of the proposal.
    > (8) Before the proposal is determined, the proposer in response to the information provided under paragraph (7) may provide the VO with further evidence to support the grounds of the proposal.

14. The panel found that comparable properties submitted by Mr O'Carroll had been served in response to the VO providing its own evidence during the Challenge Stage of the procedure and was therefore in accordance with regulation 9(8). The evidence was part of the free flow of information as part of the process of appealing an RV. The evidence had been discussed, rebutted and extra comparable properties had been introduced by Mr Hussain and he was therefore not prejudiced by them being included and so it was in the interests of justice to allow that evidence into the hearing

Relevant Law

15. The appeal 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 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 26 January 2022 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6, paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

16. 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 26 January 2022, being the date the subject property entered the rating list at an RV of £442,500.

17. Mr O'Carroll referred the panel to 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.

18. Mr O'Carroll submitted that as there was no rental evidence available for the subject property or the other comparable properties the case of *Lotus v Delta* would not be applicable in this case. Both parties therefore had to rely on comparable properties under proposition (4), (5) and (6) to determine a reasonable and fair RV for the subject property.

Discussion

19. Mr O'Carroll explained that the subject property was held freehold from January 2022 by the appellant which meant that there was no rental evidence in this case. The subject property has no heating and is not to the standard of a modern warehouse. The site was a split site made up of separate buildings which have differing head heights and lacks easy access. On the site itself there is little room to manoeuvre and very little parking and no room for expansion. The subject property is built onto the side of a hill and so has exceptionally poor access causing problems for HGV vehicles. Surface water flows across the site and into the River Spen and so in winter it has problems with ice. The subject property is not on an industrial estate but is a stand-alone industrial premises surrounded by residential properties and has a restaurant next door.

20. Mr O'Carroll submitted that the rate of £28/m^2 was the same as that applied in the 2010 rating list. The other properties in the same valuation scheme as the subject property range from £15.50/m^2 to £48/m^2.

(1) Carrington House is a regular shaped building of 20,610m^2 and is valued at £39/m^2 with effect from 1 April 2017. It had an RV of £660,00 which was reduced to £625,000 with effect from 11 November 2019 and then had an increase in RV to £780,000 with effect from 19 March 2022. It had however fallen by approximately 5% in value between the 2010 and the 2017 list. It is located on a well established industrial park close to the M62 motorway with good vehicular access and extensive parking and so is far superior to the subject property.

(2) Black Cat Fireworks which was valued at £15.50/m^2 is located in a rural area and is comprised of a number of smaller buildings with poor access and is not located near a motorway. Mr O'Carroll submitted that it was not the best comparator and he therefore put little weight on it but he had included it as it had a similar location to the subject property as it was not on an industrial estate.

(3) Rixonway Kitchens Ltd was similar in size to the subject property at 15,827m^2 and was valued at a rate of £30/m^2 with a fall of approximately 15% between the two lists. It is well located being close to the M1 motorway and unlike the subject property is regular in size and shape. This site is far superior to that of the subject property but is valued at a rate of only £2/m^2 more than the subject property. Mr O'Carroll submitted that if a

tenant was considering renting one of the two units he would opt for the Rixonway building as it was only £2/m^2 for a far superior building with good access and ample car parking.

(4) Unit 1 Holden Ing Way is valued at £33/m^2 and is 14,156m^2 but is in a good location on an industrial estate next to IKEA and close to the M621/62 motorways. It is valued at £33/m^2 giving an RV of £450,000 effective from 1 April 2017 and has been reduced to an RV of £425,000 with effect from 24 July 2017. It is regular in shape and has good access and plenty of parking. It has also fallen in value between the 2010 and 2017 rating lists.

(5) Oakwell 27 is in an excellent location and has a regular shape. At 10,955m^2 it is much smaller than the subject property and is valued at £33/m^2. It also had a fall in value between the 2010 and 2017 rating lists.

21. Mr O'Carroll submitted that all these comparable properties were all of a far superior quality to the subject property with the exception of Black Cat Fireworks. They all have a regular shape with good access and parking. None of them were split sites and were on industrial estates close to the motorways. They all had a fall in RV of up to 15% in value between the 2010 and 2017 lists. None of them had an end allowance which are generally only applied where a particular property has disabilities such as poor access and a split site. Despite this the difference between the rate of these properties and that of the subject property was as little as £2/m^2 and with no end allowance. This supported a fall in the rate for the subject property as the differential between all these comparable properties and the subject property was not sufficient in his opinion to take account that the subject property was a far inferior unit.

22. Mr O'Carroll submitted that the applying a 20% reduction to the £28/m^2 which was the rate applied in the 2010 rating list gives a revised figure of £22.41/m^2. The sister site also owned by Lassic Ltd and has a rate of £21/m^2 he therefore determined that the subject property should have a rate of £22.41/m^2 as it was a newer site. He explained that he had applied a 20% reduction as the best located comparable properties demonstrated a fall in RV of 15% and so a poorer property such as the subject property would have an even greater fall in RV. The subject property also requires an end allowance due to the split site and poor access and layout 20% was not uncommon for these types of disabilities and he referred the panel to his spreadsheet which demonstrated an average end allowance of 11% for such reasons in the area. This would support a revised RV of £285,000 including a 20% end allowance.

23. Mr O'Carroll also referred the panel to the other property owned by the appellant company which was just off the ring road in Bradford. It was three to four miles from the subject property and was 17,000m^2. It was also a basic low value space and the appeal on that assessment was agreed at £21.50/m^2. If that same main space rate was applied in the case of the subject property it would lead to a 20% reduction and support an RV of £285,0000.

24. Mr O'Carroll stated that in connection with the comparable properties put into evidence by Mr Whittington he did not think that they were as strong as the ones he had submitted but Mr Whittington had still arrived at the same RV. This meant that two experienced surveyors had separately assessed the correct RV for the subject property and had come to almost the same RV which again added weight to this being correct. Both opinions were supported by strong evidence.

25. Mr O'Carroll submitted that the comparable properties put forward by the VO were not truly comparable as they were mainly in well established industrial estates and were smaller than the subject property which meant that due to quantum they were more valuable per metre squared. In the case of Owl Lane Bakery it was in situated in Ossett which was a more expensive area than Cleckheaton where the subject property was. It was also a bakery and not a factory unit and so was in a different mode and category of occupation. Ellis JT & Co Ltd was also on an industrial estate and close to the motorway. Sheard Packaging is on an industrial estate with a number of other units also occupied by Sheard Packaging and so Sheard Packaging would be willing to pay more for another unit which was on the same industrial estate as its other premises. Mr O'Carroll further submitted that the subject property had 7% line adjustments made on each survey unit and not 21% as stated by Mr Hussain and that no end allowance is shown at all on the RV breakdown for the subject property.

26. Mr Hussain referred the panel to his four comparable properties being:

(1) Flexitallioc Lts which is approximately 0.5 miles away from the subject property. It is of mixed age and has a similar location to the subject property and has two survey units. The 1955-1970 element is valued at £24.20/m^2 and the 1990's parts are valued at £39/m^2. It had an increase in value between the 2010 and 2017 rating lists and therefore supported the fact the RV on the subject property did not necessarily fall between the two lists. The RV was challenged by the Altus Group but was accepted as fair and reasonable.

(2) Owl Lane Bakery is a mixed age unit with values of £15/m^2 on the 1919-1954 element, £30/m^2 on the 1988 element and £41.50/m^2 on the 2013 element. This supports that the rate on the subject property is fair and reasonable as the 1990's element on the subject property is valued at £28/m^2.

(3) Ellis JT & Co Ltd is a large industrial unit circa 17,000m^2 and was built in 1985. It was well founded at Challenge stage at a rate of £27/m^2 only £1/m^2 less than the subject property.

(4) Sheard Packaging is a mixed age unit over several survey units and is approximately 20,000m^2 and the 1980's element has a valued at £27/m^2 again only £1/m^2 different.

27. Mr Hussain also submitted that every rating list is separate and distinct and any changes in the property or locality as they physically existed at the respective material day were considered. Each rating assessment stands alone based on its own relevant evidence at the time. It was therefore not correct to compare the differentials of comparable properties between the 2010 and 2017 rating lists.

28. Mr Hussain referred the panel to the comparable properties which had been put forward by Mr Whittington and submitted that they in fact supported the present RV for the subject property. In connection with the comparable properties put forward by Mr O'Carroll he submitted that although they were all superior to the subject property, the subject property was valued at £28/m^2 which was significantly lower than the rates of £30/m^2 to £39/m^2 as used in some of Mr O'Carroll's comparable properties and this demonstrated that the rate on the subject property was therefore not unreasonable. He explained that the subject property already has an allowance of 7.5% in connection with it being a split site and having difficult access and he did not believe there were grounds to increase that allowance further

29. The panel found:

(1) The subject property was a stand-alone, split site, budget quality unit with poor access both into the premises and within the premises. The property was built piecemeal and the photographs of the subject premises demonstrate that it is a low quality industrial unit in a residential area, is on a very steep incline and next to a river with and as a consequence suffers with ice in the winter. This meant that it was inferior to many of the other comparable properties produced by both parties. The comparable properties put into evidence by Mr O'Carroll were all from the same scheme and so on the basis the VO had grouped them together suggested that the VO considered them to be comparable properties.

(2) The panel found that the subject property should not be valued at the mid range of the value rates for the scheme it was placed in of £15.50/m^2 to £48/m^2. The comparable properties put into evidence by Mr O'Carroll supported that significantly superior industrial properties in good locations in particular Rixonway which was valued at only £2/m^2 more than the subject property supported that the RV on the subject property was not fair and reasonable. The panel also found, however, that the value placed on Black Cat Fireworks of £15.50/^{2} reflected that this was a far inferior unit to the subject property and supported the value for the subject property should be higher.

(3) The comparable properties put forward by the VO were in most cases in well-established industrial estates and not stand-alone, were smaller than the subject property and in a better location. The property Owl Lane Bakery was a bakery not a factory. The panel therefore put little weight on these properties as comparators for the subject properties due to the major differences between them and the subject property.

(4) The fact that the end allowance of 20% applied for the subject property in the 2010 rating list but not carried forward into the 2017 rating list was not supported. The VO had deemed it to be relevant to the subject property when assessed for the 2010 list and no evidence had been produced to demonstrate why it should not be applied to the 2017 rating list. The panel for the reasons put forward by Mr O'Carroll therefore found that a 20% end allowance was still relevant and it was fair and reasonable for the subject property to continue to have the end allowance of 20%.

(5) The low standard of the units owned by the same appellant only three to four miles away and of a similar standard having a value of £21.5/m^2 also supported the rate of £22.41/m^2 for the subject property. This value was as a result of an agreement between the parties and so gave weight to the value for that unit being fair and reasonable.

(6) The valuation by Mr Whittington had calculated the RV to a figure which was very close to the one calculated by Mr O'Carroll having both used different comparable properties and both being in Mr O'Carroll's submission experience valuers the panel found persuasive.

Disposal

30. The panel concluded that having considered all the evidence the appellant's representative had successfully demonstrated that the rate for the subject property at £28/m^2 was not fair or

reasonable. The fact of the subject property being on a split site, low quality, having poor access, not being close to a motorway and being a stand-alone unit led the panel to adopt a rate of £22.41/m^2 and grant an end allowance of 20% for the reasons laid out by Mr O'Carroll.

31. The RV for the subject property is as follows:

Floor	Description	GIA Area m^2	Factor	£/m^2	Value
Ground	Office	525	1.11	£24.90	£13,070
Lower Ground	Office	330	1.00	£22.41	£7,395
Ground	Warehouse	552	0.95	£21.25	£11,729
Ground	Production Area	753	0.95	£21.25	£16,000
Ground	Production Area	660.1	0.95	£21.25	£14,026
Ground	Production Area	1,725.59	0.95	£21.25	£37,590
Ground	Staff Toilets	12.7	0.81	£18.21	£231
Ground	Warehouse	3706.2	1.04	£23.37	£86,606
Ground	Production Area	585.6	0.97	£21.78	£12,757
Ground	Production Area	1955.9	0.97	£21.78	£42,607
Ground	Production Area	493	0.97	£21.78	£10,740
Ground	Production Area	567.9	0.97	£21.78	£12,371
Ground	Workshop	79.7	0.89	£19.96	£1,591
Ground	External Storage	139.2	0.34	£7.59	£1,057
Ground	Garage	122.8	0.35	£7.74	£951
Ground	Production Area	4032.1	0.96	£21.54	£86,868
Ground	Plant Room	6.9	0.80	£18.01	£124
Ground	Staff Toilets	15.4	0.80	£18.01	£277
Ground	Plant Room	18.4	0.80	£18.01	£331
Ground	External Storage	9.7	0.60	£13.50	£131
Ground	External Storage	35.7	0.60	£13.50	£482

Total					**£356,934**
Access, Layout, Split Site				**0.20**	**-71,386**
Total					**£285,548**
Say					**£285,000**

Order

32. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list for the subject property be revised to a rateable value £285,000 with effect from 26 January 2022.

33. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of fees

34. 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: 8 January 2025 (re-issued 7 January 2025)

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*Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to 2 clerical errors. Both appear in the introduction is amended to substitute "*as advocate on behalf of the respondent*" for "*respondent's representative as advocate only*" and*
"on behalf of the appellant as advocate and expert witness" for "as advocate and expert witness"

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.
