THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; factory and premises; unadjusted rate to be adopted in the appeal property's valuation; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *appeal dismissed.*

RE: 25 Rollesby Road, Hardwick Industrial Estate, King's Lynn, PE30 4LS (the 'appeal property')

APPEAL NUMBER: CHG101058561

BETWEEN:	The Bed Base Company Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 1 February 2024

PANEL: Mr D Winters (Presiding Senior Member)
Mr M H Smith (Senior Member)

CLERK: Mrs A Keohane

APPEARANCES: Mr O Plumley of Altus Group on behalf of the appellant as advocate and expert witness
Mr M Green on behalf of the respondent as advocate and expert witness

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Summary of decision

1. Appeal dismissed. The panel determined the rateable value (RV) of the subject hereditament to be £52,000 with effect from 1 April 2017.

Introduction

2. The appeal property was entered in the 2017 rating list as a 'Factory and Premises' at £60,000 RV with effect from 1 April 2017, based upon a rate of £21.50/m^2. The appellant's representative proposed a revised assessment of £27,000 RV based on a reduced rate of £8.85/m^2.

3. The respondent issued a challenge case decision notice on 10 July 2023, which stated that based upon the available evidence, the existing rating list entry was unreasonable

and determined a revised assessment of £52,000 RV based upon a rate of £18.50/m^2. The appellant's representative appealed to this Tribunal against the decision on 27 July 2023, on the grounds that the valuation for the hereditament was not reasonable. At the hearing, the appellant's representative proposed a revised assessment of £28,000 RV based on a rate of £9.17/m^2.

4. The appeal property is a standard industrial unit constructed between 1965 and 1970. It is located on Hardwick Industrial Estate, which is to the south of King's Lynn with good access to the A47 via the A149.

5. Mr Plumley 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), he confirmed that he was instructed on a contingency fee basis. However, 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 the evidence supported the 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 could admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight as it saw fit.

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

Issue

8. The issue in dispute was the unadjusted rate to be adopted in the appeal property's 2017 rating list assessment.

Evidence and submissions

9. A bundle of evidence comprising the information and correspondence exchanged between the parties was provided for consideration. When making the appeal, the appellant's representative had omitted some of the documents exchanged during the challenge process. These were provided by the valuation officer and Mr Plumley accepted the omitted evidence.

10. Mr Plumley argued that in line with the hierarchy of evidence as outlined in the Lands Tribunal decision of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, the appeal property's rent was the starting point in its valuation. Upon consideration of the rent, and having regard to the date on which it was set, he submitted that it carried more weight than the rental/assessment evidence relied on by the valuation officer.

11. The appeal property's rent was £30,000 per annum (pa) for a 10-year lease on full repairing and insuring (FRI) terms, effective from 1 May 2014. The lease included an initial 12-month rent free period as incentive and 12 car parking spaces. There were no rent reviews included and it was argued that the rent may have been set higher to protect the landlord's interests. Mr Plumley had analysed this rent to £9.17/m^2 which

produced a revised assessment of £28,000 RV, effective from 1 April 2017. He considered that the rent accepted by the landlord was reflective of the appeal property's poor quality and that it had previously been vacant for a two-year period.

12. Mr Green concurred that the rent of the appeal property was the starting point, however, *Lotus and Delta* identified other evidence to be considered before reaching a decision. He had placed low weight to the appeal property's rent due to the number of adjustments required. It was argued that this particular agreement benefited both the landlord who had secured a willing tenant who would carry out improvements due to the conditions of the lease, and the tenant had secured a rent that reflected the potential repair costs. This rent had been adjusted to reflect the rent-free period, parking spaces, and costs associated with the conditional improvements, and analysed to £10.43/m^2. He had then tested this analysis with the evidence available for other properties in the locality.

13. A schedule of rental evidence for comparable similar aged properties was submitted. The rents shown therein analysed to between £16.55/m^2 and £21.88/m^2. Based on this basket of evidence, together with the settlement reached on the neighbouring unit at 26 Rollesby Road, the unadjusted rate applied in the appeal property's assessment had been reduced to £18.50/m^2. Applying this, gave the revised valuation of £52,000 RV.

Decision and reasons

14. The appeal hereditament must be valued for the purposes 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 detailed in 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 affecting the physical state or enjoyment of the property, or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

15. The Lands Tribunal judgment in *Lotus and Delta* provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered as the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

16. As outlined in *Lotus and Delta*, the starting point was consideration of the appeal property's rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account when deciding the weight to attach to it. The appeal property's rent had been set close to the AVD and after adjustment, Mr Plumley had come to an analysed rent of £9.17/m^2 and the valuation officer to £10.43/m^2.

17. *Lotus and Delta* also required consideration to be given to the rents of similar properties to confirm, or otherwise, the level of value indicated by the actual rent of the subject. Mr Green referred to evidence obtained from Forms of Return for three other properties situated on Oldmedow Road, which was confirmed to be off Rollesby Road. This evidence was as follows:

i. Factory 1 at 55 Oldmedow Road, PE30 4JJ. The rent of £53,095 pa was the result of a new open market letting commencing on 1 August 2012 for a term of 10 years, with three yearly reviews. After adjusting for a rent-free period and car parking, the analysed rent was £16.55/m^2. The appellant's representative had carried out his own analysis to £15.94/m^2. The assessment of this property was based upon an unadjusted rate of £25/m^2.

ii. Factory 2 at 55 Oldmedow Road, PE30 4JJ. The rent of £65,000 pa was from a lease renewal commencing on 3 July 2013 for a term of 16 years and 6 months, with five yearly reviews. Following adjustment, it gave an analysed rent of £21.88/m^2. Mr Plumley's analysis produced the same figure. The assessment of this property was based upon an unadjusted rate of £22.50/m^2.

iii. 36 Oldmedow Road, PE30 4JJ. The rent of £80,000 pa was from a new letting effective from 1 September 2014. This was not on a FRI basis, included car parking and was the result of an open-ended agreement with no reviews. When adjusted the rent analysed to £21.29/m^2. The appellant's representative disputed this was a new letting but a lease renewal with more car parking spaces included in the lease than identified on the Form of Return. He had analysed this rent to £20.54/m^2. He also considered this rent was inflated to reflect the lack of rent reviews. The assessment of this property was based upon an unadjusted rate of £22.50/m^2.

18. Whilst the panel accepted that not all of the above rents related to new lettings as envisaged by the rating hypothesis, the evidence was considered pertinent as the lease renewals had been agreed between the parties in 2013 and 2014. The rent of Factory 1 was also considered to be relevant as this stemmed from a new letting, albeit it over 2 ½ year prior to the AVD. All of the rents were in respect of properties of a comparable age to the appeal property and within a reasonable proximity.

19. Upon consideration of the evidence, the panel concluded that the appeal property's present assessment was correct. It found the basket of rents provided the best evidence, and this established to the panel's satisfaction that the rent of the appeal property was out of line with other rents in the locality. For this reason, the panel determined that the appeal property's rent could not be used in isolation to determine its rating assessment.

20. Following adjustments, both parties had analysed the rents of the comparable properties to between £15.94/m^2 and £21.88/m^2. The assessments of the comparable properties were based on rates of between £22.50/m^2 and £25/m^2. The panel was not persuaded that either the parties' analysis of the rents or the rates on which the assessments of the comparable properties were based, showed the unadjusted rate of £18.50/m^2 adopted in the appeal property's assessment to be excessive.

21. Mr Plumley had argued that the rental level set for the appeal property reflected its inferior quality and high maintenance costs. The panel found no evidence to show the level of maintenance costs applicable. The available photographs confirmed that externally, those properties with brick-built frontages (including the appeal property) appeared of a similar character. Other external and internal images were submitted to show the appeal property's condition; however, similar views were not available for the comparable properties to enable a comparison to be made. On balance, the panel accepted Mr Plumley's contention that the appeal property was of a lower quality, but it

found that a 10% allowance had been incorporated in its assessment to reflect this. There was no evidence to show this level of allowance was unreasonable.

22. A settlement had been reached in respect of 26 Rollesby Road whereby its unadjusted rate had been reduced from £35/m^2 to £27/m^2. Mr Plumley argued this property was superior to the appeal property and with greater eaves height. The panel accepted this but noted that the assessment of 26 Rollesby Road was based on a higher rate than that adopted for the appeal property, which would reflect its superior nature.

23. All things considered, the panel was not persuaded that the assessment of the appeal property was excessive. It found that the majority of the available rental and assessment evidence supported its current assessment of £52,000 RV. Consequently, the subject appeal was dismissed.

Date 27 February 2024
Appeal Number; CHG101058561

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.