VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; Warehouse and Premises; Accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal allowed in part.

APPEAL NUMBER:	CHG101067663
RE:	Unit 1 Langham Park, Mansfield Road, Chesterfield, S41 0JS (the "subject property")

BETWEEN:	Utopia Tableware Limited	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	10 July 2024
BEFORE:	Mr A Hussain, Presiding Senior Member Mr SC Kamalan, Senior Member
CLERK:	Mr J Massey IRRV(Dip)
APPEARANCES:	Mr S Visavadiya of Knight Frank LLP, representing the appellant Mr C Skerratt, representing the respondent

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed in-part.

2. The Tribunal Panel determined a tone of value of £35 per m² for the subject hereditament was reasonable. It also determined that that the warehouse area was heated and did not warrant the current 2.5% reduction for lack of heating and that a 5% uplift was applicable for 'comfort cooling' in the area described as the showroom. This resulted in a reduced rateable value (RV) of £550,000 with effect from 1 April 2017.

Introduction

3. The appellant's representative had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal (challenge) served on the Valuation Officer on 26 March 2023. After considering the proposal and evidence submitted during the challenge period, the Valuation Officer (VO) decided that the proposal was not well founded but decided to reduce the existing assessment from RV £610,000 to RV £575,000. A decision notice to that effect was served on the appellant on 8 November 2023 and the appellant's representatives then appealed the VO's decision to the tribunal on 6 March 2024, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. Both parties appeared before the panel in a dual capacity as both Advocate and Expert Witness. Mr Visavadiya stated that he was on a success related fee but accepted that his first duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case.

5. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), 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 in England).

6. The panel therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

7. The statement of truth provided by Mr Skerratt confirmed that he was not instructed under any conditional or other success-based fee arrangement.

8. As part of their induction training, a new member of the tribunal was observing proceedings. It was explained to the parties that it was the panel's intention to invite their colleague to accompany it to the retiring room. The parties were assured that the new member would not participate in the decision-making exercise but would simply observe as part of their training. Neither party had any issues or objections to this.

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

Background

10. The subject premises is an industrial unit of steel portal frame construction with a total significant area (TSA) of 15,574.1 m^2 and was built in 2007 with eaves height of 12 metres and an attached two storey office building and car parking located to the front. It is located on Langham Park in Temple Normanton, approximately 2.5 miles south east of Chesterfield adjacent to the A617, around 2 miles from junction 29 of the M1 motorway. The respondent's revised valuation of RV £575,000 as a result of the challenge was based on an unadjusted

rate (UAR) of £37.50 per m^2, whilst the appellant's proposed valuation of £497,500 was based on a UAR of £32.50 per m^2.

11. Two days before the hearing, the parties carried out a joint inspection of the subject property during which it was discovered that the accommodation was not as agreed in the check, with a showroom and canteen being created. The amended areas and relativities were agreed between the parties. Mr Visavadiya had amended his proposed valuation to RV £500,000 to reflect the amended areas.

12. Mr Skerratt stated that during the inspection, a large floor standing cabinet heater was identified in the warehouse, and he therefore contended that the 2.5% allowance for lack of heating in this area should be removed. He also stated that there were two air conditioning cassettes in the area now identified as the showroom area and contended that an uplift of 10% was applicable in valuing this area. This resulted in an increase in the respondent's summary valuation from £575,000 to £590,000, however he was aware that as the 2017 rating list is now closed the VO cannot amend the list to reflect these changes. He asked that if the panel should find in favour of the appellant on the subject of UAR, then the additional value of the heating and air conditioning elements should be offset against any reduction in the valuation resulting from the reduction in the tone.

13. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, expert witness statements and location maps and photographs of the subject premises and other warehouses in its locality. In addition, the panel was provided with a copy of the floor plan of the subject property detailing the agreed areas and a copy of the respondent's summary valuation of the subject property which had been amended to show the agreed areas.

Relevant Law

14. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
> b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
> c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

14. 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, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

15. 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 1 April 2017.

Discussion

Unadjusted Rate

16. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

17. The starting point for consideration was the actual rent passing on the appeal property. The current rent payable on the subject property was £1,087,281 per annum (pa) with effect from 11 December 2018. Mr Visavadiya stated that this was a connected party rent agreed over three years after the AVD and should be given little weight. The panel considered that this rent carried minimal weight as it was not open market and was too remote from the AVD to be of any assistance.

18. The subject property had been let to the previous occupier for a headline rent of £660,547 pa on a ten-year lease agreed on 1 February 2013. This rent had been analysed by the respondent at £51.10 per m^2 in the initial response to the challenge. The appellant considered that the respondent had ignored the incentives agreed by the parties of a two-month rent free period and three years at half rent. Taking these incentives into account resulted in a reduced analysed rent of £28.25 per m^2 which, even taking into account inflation between February 2013 and the AVD, he contended supported a reduced a UAR of £32.50 per m^2.

19. The respondent stated that the additional lease information had been provided by the agents dealing with the previous occupier's letting and differed from the information contained in the form of return (FOR). He considered that there had not been full disclosure of the terms of the lease, and it was unclear what proportion was actually incentive, and what proportion was to compensate for the time and expense of fitting out the subject property which was let as a shell unit.

20. Taking into account the adjustments required and the lack of detail provided, the panel considered that only minimal weight could be attributed to the rent paid by the previous occupier in determining the correct rateable value for the subject property.

21. The appellant had referred to comparable properties in the locality which he contended indicated that the UAR of £37.50 for the subject property was excessive. Plot 2, South Markham Lane, S44 5HS was built in 2012 and almost identical in specification to the subject property except it was smaller with a TSA of 9,411.04m^2. It was better located in an established logistics park at Markham Vale, adjacent to Junction 29A of the M1 and valued at £35.00 per m^2. Similarly located in Markham Vale was Inspiration House, Markham Lane, S44 5HS, which was also smaller with a TSA of 9,423.77m^2. The appellant had also provided a copy of the lease for Inspiration House, the rent of which he had analysed between £27.26 per m^2 and £33.98 per m^2, which he considered supported the UAR applied to both Plot 2, South Markham Lane and Inspiration House. The appellant described the

subject property as being more isolated and older than these two properties and contended that a tenant would not pay as much rent for the subject property for these reasons.

22. Mr Skerratt argued that the subject property was valued in a regional valuation scheme for large distribution warehouses (LDWs) in Lincolnshire, Nottinghamshire, Leicestershire and Derbyshire. He considered that the market demands for LDWs were different than for Plot 2, South Markham Lane and Inspiration House, which is why the subject property was valued in a different scheme. He argued that if the subject property was valued in the same local scheme as Plot 2, South Markham Lane and Inspiration House, there would likely be at least 10% addition for eaves height, as had been applied to Inspiration House and other properties in the locality.

23. Mr Skerratt provided details of nine LDWs in the same scheme as the subject property (403255) which were located in the Chesterfield area and had been valued between £40.00-£41.50 per m^2. They were all described as LDWs and ranged in TSA from 9,056.8m^2 to 46,329.2m^2 with eaves hights ranging from 8.37m to 19.9m. The respondent had not provided any information regarding their locations or relative distances from the subject property or the M1 motorway. The panel noted that Constellation Building was built in 2017 in Markham Vale, and had a TSA of 44,665.85m^2 and an eaves height of 19.43 metres. Its UAR had recently been reduced by agreement to £40.00 per m^2. The respondent had reduced the UAR of the subject property to £37.50 per m^2 due to its isolated position compared with Constellation Building's location adjacent to junction 29A of the M1.

24. Given that the subject property had much lower eaves height, was ten years older, and remotely located, the panel considered that the reduction proposed by the respondent was not sufficient to account for these differences and found that a further reduction to £35.00 per m^2 was warranted for the subject property.

Warehouse heating

25. The panel noted from the photographs provided by the respondent that the heating unit was present in the main warehouse area. Mr Visavadiya stated that the heating unit was inherited from the previous occupier, had been disconnected from the gas supply and not been serviced. For all intents and purposes, he considered that it had been fully decommissioned and as such he considered that the main warehouse area should retain the 2.5% reduction from the UAR to reflect lack of heating.

26. During the joint inspection, Mr Skerratt noted that the gas pipes connecting the heater to the gas mains were still present, and whilst it may not currently be in use, he considered that the heater was in a reasonable state of repair, and no evidence had been supplied from which it could be concluded that it was incapable of being put back into use.

27. The panel was satisfied that the facilities to heat the warehouse were in place on the material day, and no evidence had been provided to confirm that they had been fully decommissioned by that date. The panel therefore considered that the allowance of 2.5% to the warehouse area for lack of hearing was not warranted.

Air conditioning.

28. Further to his inspection of the subject property on 8 July 2024, the respondent had described the presence of two air conditioning cassettes in the area which was now recorded as a showroom area. Whilst this was not a public showroom, he stated it was a higher

standard than the remainder of the office accommodation and benefitted from air conditioning and a standard uplift for air conditioning of 10% should apply to this area.

29. Mr Visavadiya stated that the showroom area was valued as an office, and it was assumed to be heated. Whilst the remainder of the offices in the subject property were heated by hot water radiators, the radiators in the showroom area were no longer effective due to alterations made which had covered them up. The cassettes had been installed to replace the radiators, and he did not consider that they constituted full air conditioning.

30. Having considered the parties' arguments, the panel was satisfied that the showroom area was heated by the air conditioning cassettes which had been installed but found that these would also have provided a certain level of cooling. The panel however did not consider that the extent of the equipment installed would constitute full air conditioning, but what could be better described as comfort cooling, and determined that this warranted an uplift of 5% and not 10% as proposed by the respondent.

31. The panel therefore concluded that the RV of £554,294 shown in the amended valuation below (rounded to RV £550,000) should apply to the subject property with effect from 1 April 2017.

Disposal

32. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Unit 1 Langham Park, Mansfield Road, Chesterfield, S41 0JS to £550,000 with effect from 1 April 2017, within two weeks of the date of this order.

33. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date issued to parties: 25 July 2024

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.

Ref	Floor	Description	Area m^2	£ per m^2/unit	Value (£)
1.1	Ground	Gatehouse	13.03	34.13	445
1.2	Ground	Office	188.53	42.00	7,918
1.3	First	Office	393.27	42.00	16,517
1.4	Ground	Warehouse	14353.39	35.00	502,369
1.5	Ground	Cycle Area	22.70	13.13	298
1.6	Ground	Store	349.73	34.13	11,935
1.7	Ground	Works Office	90.49	38.50	3,484
1.8	Ground	Canteen	60.32	38.50	2,322
1.9	Ground	Showroom	198.27	44.10	8,744
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION					
		Plant and Machinery			263
		Valuation Total			554,294