THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; 2017 Rating List; indoor adventure centre and premises; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Williams (VO) v Scottish & Newcastle Retail Ltd and another [2001] EWCA Civ 85; *Appeal dismissed.*

APPEAL NUMBERS: CHG101068723 and CHG101068751

BETWEEN:	Innovation Leisure Manchester Ltd	Appellant
	and	
	Amanda Hitchings Valuation Officer	Respondent

RE:	Unit 2, Tenax Circle, Tenax Road, Trafford Park, Manchester, M17 1JT (“the appeal property”)
PANEL:	Mrs Fiona Cortese (Presiding Senior Member) Mrs Ann Fielder (Senior Member)
CLERK:	Mrs Deborah Davies BA (Hons), IRRV (Hons)
SITTING ON:	26 March 2024 (Remote Hearing 2)
APPEARANCES:	Mr Owen Scorer, from Altus Group (on behalf of the appellant as both advocate and expert witness) Mr Isaac Rischer (on behalf of the respondent as both advocate and expert witness)

Summary of Decision

1. The appeals were dismissed; there was no change made to the appeal property’s assessments.

Introduction

2. These were 2017 rating list appeals. The appeal property had been entered in the 2017 list as Indoor Adventure Centre and premises with a Rateable Value (RV) of £239,000, with effect from 27 May 2017. This included a 5% end allowance for tramworks. That end allowance was

removed with effect from 22 March 2020, resulting in a revised RV of £250,000, with effect from that date. A separate appeal was made in respect of both assessments but, with the agreement of the parties, the two appeals were consolidated and heard as one.

3. The appellant submitted the challenge on 31 May 2023 and the Valuation Officer determined the proposals to reduce the RVs to £179,000, with effect from 25 May 2017 and £189,000, with effect from 22 March 2020 were not well-founded. The decisions were appealed to this tribunal and the appeals were registered on 17 October 2023, the grounds being 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. The appeal property was located within Trafford Park, a large commercial property park of mainly industrial units, approximately 2 miles from the Trafford Centre and close to Manchester and Salford city centres. Previously an industrial unit, the property underwent a significant fit-out before being assessed as an indoor play centre and premises.

5. In order to assist the tribunal, the parties had agreed all basic facts before the hearing. The measurements of the component parts were not in dispute: the total area of the unit was $3349.87m^2$.

6. Mr Scorer was appearing before the panel 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).

7. Mr Scorer had confirmed that he was representing the appellant in this appeal on a contingency fee basis. However, he declared that he understood and fully accepted that his duty was to the Tribunal in giving 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.

8. The panel accepted the expert witness evidence on the above basis: the appeal was not considered complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions - general) of the Procedure Regulations. The panel determined that it was appropriate to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

9. This hearing was held remotely via Microsoft Teams. There were some small technical difficulties intermittently, but the hearing was unaffected.

10. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

11. The issue before the panel was the correct unadjusted rate (UAR)to be adopted in the appeal property's valuation.

Evidence and submissions

12. The evidence before the panel comprised all of the evidence disclosed and exchanged during the challenge process. This included rating assessments in support of tone, the parties' skeleton arguments, a schedule of comparable assessments, copies of the current and proposed valuations and photographs of the subject property and comparable properties.

13. For the respondent, Mr Rischer contended that the appeal property's assessments of £250,000 RV and £239,000 RV were reasonable, based on the existing UAR of £80.00 per m^2. The appellant's representative put forward revised valuations of £189,000 RV and £179,000 RV, based on his proposed UAR of £60 per m^2.

Decision and reasons

14. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

15. The material day (the date by which physical factors have to be considered) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. For this appeal, the material days are 27 May 2017 and 22 March 2020.

16. The panel analysed the competing evidence with reference to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, which was included within the evidence provided by the Valuation Officer. The Lands Tribunal judgment provided six propositions on the weight to be attached to rental and assessment evidence. The starting point was the subject rent and how closely it related to the statutory definition of rateable value. There was a rent passing on the subject property of £194,359 per annum (pa), effective from 7 December 2016 for a term of 10 years. The lease included an agreement that the first 3 months of the term were rent free and the next 6 months at half-rent. The appellant's representative argued that, even ignoring these incentives, the headline rent alone supported the assertion that the current assessments of £239,000 RV and £250,000 RV were excessive. When questioned, the appellant's representative contended that he believed that the fit out costs had been accounted for in his calculation because he had used the headline rent rather than adjusting for the rent free and incentive periods.

17. The Valuation Officer analysed the rent to £57 per m^2; this was based on the lease agreed before the unit was fitted out as a play centre. Although a full schedule had not been provided by the appellant, it was not disputed that at least £300,000 had been spent on fit out, including upgrading toilet areas, adding changing rooms, a mezzanine floor, and constructing birthday rooms, a refreshment area, reception area and offices. An obstacle course, which would not be rateable, had also been created. The Valuation Officer contended that, once the fit out costs were reflected, £80 per m^2 would not be unreasonable.

18. The Valuation Officer provided further rental evidence in respect of a nearby comparable property. This was Unit 17, Severnside Road, a Jump Nation / Inflata Nation in Trafford Park. Also a former industrial unit fitted out as a play centre, the analysed rent, without accounting for fit out costs, worked out at £69 per m^2. The fit out costs were £350,000 and the UAR applied to Unit 17 was the same as the subject property, at £80 per m^2. The panel found the rental evidence in respect of the subject property and particularly Unit 17 to be very persuasive. The panel noted the appellant's representative's point that the assessment on Unit 17 had been challenged and appealed, with the case due to be heard by the Valuation Tribunal shortly. The basis of that appeal however was slightly different as the appellant's representatives were seeking that it be valued on an industrial basis due to minimal rateable fit out.

19. In line with *Lotus*, the panel moved on to consider the assessments on other comparable properties. The appellant's representative had explained that the tone of the compiled list was

around £45 per m^2 for warehouses, albeit he did not dispute the current mode and category of occupation of the subject property, agreeing that was it no longer a warehouse. However, he argued that £80 per m² was excessive for the appeal property, stating that £60 per m^2 was more appropriate. He provided over 35 comparable properties in the same valuation scheme as the appeal property, 444767, which was *'applicable to all children's activity/adventure play centres or similar throughout the North-West Unit covering Greater Manchester, Merseyside, Cheshire, Lancashire and Cumbria'.* He highlighted that only one of those units had a higher UAR than the subject property, that being one in Bolton at £81 per m². Whilst the panel appreciated that the appeal property had been valued at one of the highest UARs in comparison to the other properties in the same valuation scheme, it was of the opinion that it had a far superior location than the majority of those listed.

20. The appellant's representative had identified three properties in particular that he considered supported his argument that £80 per m² was excessive. These were play centres in what he stated were less desirable locations, in Widnes, Warrington and Bolton, all towns some distance from the subject property. The UARs applied to these three assessments had been reduced in line with the industrial tone in their locality: from £65, £52 and £105 per m² to £60, £37 and £81 per m² respectively. When questioned, the appellant's representative agreed that the comparable properties were a distance away but explained that the scheme covered a wide geographical area, extending over several counties. The panel acknowledged this, and the fact that the scheme also covered different types of play centres, from nurseries to trampoline parks and soft play centres.

21. The Valuation Officer provided details of five play centres near to or on industrial areas with UARs higher than those of their neighbouring industrial units. Typically, the variation in the price per $metre^2$ was £20-£30. The UAR of the play centres varied from £45 to £60 per m^2 but the panel noted that none of the examples were in close proximity to the subject property, nor were they in locations as desirable as Trafford Park.

22. The panel knew that rental evidence carried the most weight and found the rental evidence for both the subject property and the nearby Unit 17 persuasive. The panel understood that, in determining the mode or category of occupation of the appeal property at the material dates, it had to consider the appeal property physically as it stood, or *rebus sic stantibus*. As outlined in the judgement in *Williams (VO) v Scottish & Newcastle Retail Ltd and another* [2001] EWCA Civ 85, there were two strands to the *rebus sic stantibus* or reality principle: the use to which a

property was put, and its physical state on the material day. In this case, the panel acknowledged that the appeal property's mode or category of use was an indoor adventure centre and premises and knew that the valuation should reflect that. The analysed rent of £57 reflected a warehouse, not a play centre. The appellant's representative had not convinced the panel that the fit out costs of at least £300,000 were fairly reflected by ignoring the rent free and incentive periods.

23. Taking all of the evidence into consideration, the panel found that there was insufficient evidence to show that the current assessments were unreasonable and therefore dismissed the appeals.

Date: 9 April 2024 **Appeal numbers:** CHG101068723 and CHG101068751

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.