VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; retail warehouse and premises; comparable properties; tonal evidence; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed in part.

APPEAL NUMBER: CHG101081113

RE: Unit 2 Interchange Retail Park, Race Meadows Way, Kempston, Hardwick Bedford MK42 7AZ
(the "subject property")

BETWEEN:	Dreams Limited	Appellant
	and	
	Joanne Moore IRRV (Hons) (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 24 March 2025

BEFORE: Mr AN Backway, Presiding Senior Member
Ms S Bains, Senior Member

CLERK: Mrs C McAvoy

APPEARANCES: Mr C Strong of Ryan LLP, for the appellant
Ms K Gaunt, for the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed in part.

2. The Tribunal Panel found the current Rateable Value (RV) to be unreasonable and the base rate was reduced to £125/m^2.

Introduction

3. This appeal has been brought in respect of the following: Unit 2 Interchange Retail Park, Race Meadows Way, Kempston, Hardwick, Bedford MK42 7A which was entered in the 2017 Rating List as ‘retail warehouse and premises’ at £155,000 RV effective from 1 April 2017.

4. A challenge was submitted on 4 July 2023 which disputed the determination of the RV. The current RV of £155,000 was based on an unadjusted rate of £170/m^2. The challenge proposed a reduction to £95.50/m^2 which produced a reduced RV of £87,000.

5. The challenge decision reduced the base rate from £170.00/m^2 to £140.00/m^2 this resulted in a RV of £127,000 which the respondent considered to be fair and reasonable. However, the appellant’s representative considered it to be an insufficient reduction and consequently, an appeal was lodged.

6. Both Ms Gaunt, for the respondent and Mr Strong, for the appellant, appeared in a dual role of advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Strong declared that he was instructed under a conditional fee. He declared that he accepted and understood that his overriding duty was to the Tribunal.

7. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals’ rules concerning 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.

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

Preliminary issue

9. A preliminary matter was raised as the respondent made an application for late evidence to be admitted on the grounds that the evidence could not have reasonably been acquired by the respondent prior to issuing a challenge case decision notice. The evidence concerned was provided on 18 March 2025 and concerned a rent review on the subject property which she considered to be pertinent to the case. It was submitted that this was not noted during the course of the challenge due to an incorrect input. When there was a full review of the Forms of Return the review was discovered.

10. The appellant objected to the inclusion of the new evidence on the basis that this request has occurred less than a week prior to the Valuation Tribunal hearing date and he respondent had many opportunities to discuss the rent review but had failed to do so until long after the deadline for new evidence submissions. Furthermore, the respondent acknowledged receipt of the challenge submission documents over eighteen months ago and the rent review being referred to was not discussed throughout the challenge negotiations, nor did it feature within the respondent’s decision notice, which, in his opinion, casts substantial doubt over its pertinence.

11. In reaching its decision on this preliminary matter the panel had regard to regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, which provides the following:

> [17A Admission of new evidence on NDR appeal]
>
> [(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—
>
> (a) that evidence—
>
> (i) is provided by a party to the appeal;
> (ii) relates to the ground on which the proposal was made; and
> (iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or
>
> (b) all the parties to the appeal agree in writing to the party providing the new evidence.
>
> (2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—
>
> (a) the new evidence; and
> (b) the ground on which the proposal was made.
>
> (3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal.]

12. The panel found that the evidence did not meet (1)(a)(iii) as the information should have been reviewed sooner, i.e. during the challenge negotiations. This was not new information, it could have reasonably been acquired sooner and therefore did not satisfy regulation 17a. The evidence was therefore excluded and the hearing of this appeal proceeded on that basis.

Issue and Relevant Law

13. The issue between the parties concerned the RV of the subject property, specifically, the base rate per m² that should apply.

14. The term 'rateable value' as 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 –

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."

15. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. The material day was 1 April 2017.

16. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

'(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(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 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 attributed to the differing types of evidence depending on the one hand on 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 such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

Discussion

17. The subject property is a retail warehouse situated on Interchange Retail Park, Bedford. It is a portal framed, inner terrace single unit, built in 2002 with an area of 912.32m^2 in terms of

main space (ITMS). Interchange Retail Park is split into phase 1 and phase 2. The subject property is situated on phase 2.

18. In deciding this appeal, bearing the six propositions in mind, the panel acknowledged that the starting point was the actual rent passing on the subject property. The property was leased from 9 September 2018 for a rent of £151,860 per annum. The panel found that little weight could be applied to the subject rent. It had been agreed over three years post AVD and was therefore too far removed to assist it with placing a value at the AVD. It was also mindful that this was a lease renewal. The panel therefore found it necessary to consider the basket of evidence provided.

19. The rental evidence provided from the respondent included two properties on Interchange Retail Park. It was submitted that they supported the rate of £140/m^2 to be reasonable. Unit 1, Interchange Retail Park, Race Meadows Way, Kempston Hardwick, Bedford, MK42 7AZ neighboured the subject property and was the same age and similar in size (950.70m^2 ITMS). The lease commenced in June 2002 on a twenty year term with upward only rent reviews. The last review was on 1 June 2017 with a rent of £190,000. The respondent had analysed it to £199.85. The unadjusted rate applied was £140/m^2.

20. The panel did not find the rent on Unit 1 to be strong evidence. As this was a renewal two years post AVD and was originally agreed on a twenty year term. The upward rent reviews hold less weight as may differ to what a tenant fresh to the scene would agree. Furthermore, if the rent carried so much weight, one would question why the respondent had applied a much lower rate of £140/m^2.

21. Unit 3, Interchange Retail Park, Riley Way, Kempston, Bedford, MK42 7GB which was a Marks & Spencer with an area 1007.94m^2 ITMS. The rental information available on this property was a new lease agreed on 7 May 2016 for a term of fifteen years with five yearly upward only rent reviews and a nine month rent free period. The respondent had analysed it to £256.95. The unadjusted rate applied was £170/m^2.

22. The panel applied less weight to the rent for Unit 3, Interchange Retail Park, Riley Way, Kempston, Bedford, MK42 7GB. It was a standalone unit in phase 1, with better facilities such as an exclusive car park. It was constructed in 2014 and located on the opposite side of the retail park. The appellant also submitted that it could be contended that this unit falls within a different mode and category of occupation, considering the substantial £700,000 we are assuming for fit out and the two limbs of the rebus rules, it points toward the unit not being a retail warehouse, which would explain the significant rent.

23. Without any compelling rental evidence, the panel considered the tonal evidence. The following units were discussed:

- Unit 1, Interchange Retail Park, Race Meadows Way, Kempston Hardwick, Bedford, MK42 7AZ
  Rate applied: £140/m^2

- Unit 3, Interchange Retail Park, Race Meadows Way, Kempston Hardwick, Bedford, MK42 7GB
  Rate applied: £170/m^2

- Unit 3-5, Interchange Retail Park, Race Meadows Way, Kempston Hardwick, Bedford, MK42 7AZ
  Rate applied: £95.50/m^2

- Units 4-5, Interchange Retail Park, Race Meadows Way, Kempston Hardwick, Bedford, MK42 7AZ
  Rate applied: £95.50/m^2

24. For the reasons already stated, in regard to the comparability of unit 3, less weight was given to the assessment evidence. Unit 1, which was the neighbouring property, had been reduced from £170/m^2 to £140/m^2 but no explanation as to how this £140 had been calculated. The respondent's position was that the lack of challenge on unit 1 supported this tone, especially at this stage of the list. Specifically, in support of this argument, the respondent referred to *Futures London Limited v Stratford* (2005) RA 75 which provides the following:

> 'Over time assessments will be challenged and agreed or determined by a VT or this Tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list'.

25. Whilst the panel accepts that lack of challenge can support a tone, especially as the 2017 rating list is now closed, it was also mindful that this had been reduced to £140/m^2 seemingly following the reduction of the subject property. Furthermore, there had been a challenge on Unit 4-5, Interchange Retail Park, Race Meadows Way, Kempston Hardwick, Bedford, MK42 7AZ which was well founded. The appellant submitted that Units 4-5, Interchange Retail Park, despite the unit being 1,780.89m^2 ITMS, was valued at £170.00/m^2 at the compiled list stage of the 2017 rating list, reduced to £150.00/m^2 in June 2018 and then subsequently reduced to £95.50/m^2 in July 2020. This unit is occupied by The Range and sits within both the same retail warehouse parade and mode and category as the subject and is therefore highly comparable. The agreement between the Valuation Office and Hart Consult would (or should) have examined all the evidence discussed here and determined the appropriate level of value that a retail warehouse in this locality would attract on the open market on the 1st April 2015.

26. The panel attached weight to this evidence. Unit 4-5 was the same age, situated on the same terrace as the subject property, had the same specifications and had been tested and agreed at £95.50/m^2. It was larger and the respondent submitted that there would be an allowance for quantum. However, the panel heard that unit 3-5 (which was unit 3 and unit 4-5 merged in 2021) had the same rate applied despite being larger at 3147m^2 ITMS. He questioned why quantum would be applicable to the subject property but not to the assessment of 3-5.

27. Having considered the basket of evidence, the panel found that the subject property was over assessed. It attached weight to the assessment of unit 4-5 which had been challenged and agreed at £95.50/m^2. However, it was not persuaded that there would be no element of quantum. However, the difference did appear unreasonable especially given that there had been no allowance for quantum between the merged units which had resulted in a much larger assessment. On that basis, the panel found that the rate/m^2 applied was unreasonable.

28. In conclusion, the panel found that an unadjusted rate of £125/m^2 was reasonable which reduced the RV to £114,000 as set out below:

Description	Area (m2)	£/m2	Value
Ground	912.32	£125	£114,040
		Total	£114,040
		Rateable Value	**£114,000**

Disposal

29. In view of the above findings and conclusions, the appeal is allowed in part.

30. Under the provisions of regulations 38(4) and 38(10) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to show the following:

Unit 2 Interchange Retail Park, Race Meadows Way, Kempston, Hardwick Bedford MK42 7AZ
£114,000 RV effective from 1 April 2017

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

32. 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. The refund will take around six weeks to process.

Date issued to parties: 15 April 2025

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.
