VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: distribution warehouse and premises; price per m^2 in dispute; Local Government Finance Act 1988; rental evidence; comparable assessments; settlement evidence; appeal dismissed.

APPEAL NUMBER:	CHG101081252
RE:	5 Castle Mound Way, Rugby, CV23 0WB (the "appeal property")
BETWEEN:	Continental Tyres Ltd — Appellant and Lucy Formela-Osbourne (Valuation Officer) — Respondent
SITTING:	*Remotely using Microsoft Teams*
ON:	Monday 31 March 2025
BEFORE:	Ms T Blades, Presiding Senior Member Mr P Jennings, Senior Member
CLERK:	Mrs L Horne
APPEARANCES:	Mr M Iles from Ryan Property Tax Services UK Limited, representing the appellant Mr J Harrison representing the Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel found that the entry in the 2017 rating list was not unreasonable, and confirmed the rateable value (RV) of £1,130,000 with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. 5 Castle Mound Way, Rugby, CV23 0WB (the 'appeal property') had been entered in the 2017 rating list as 'distribution warehouse and premises' with an RV of £1,130,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by Altus Group (now Ryan Property Tax Services UK Limited) on behalf of Continental Tyres Ltd, and was received by the Valuation Officer on 4 July 2023. It had been made on the grounds that the RV shown in the rating list was incorrect. A revised RV of £1,080,000 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 19 March 2024, which disagreed with the proposed alteration, and stated that the rating list entry was reasonable based upon the evidence and information available.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 29 May 2024, in which the appellant's representative sought an alteration to £1,080,000 RV, based upon an adopted price of £52.50 per m^2.

6. Mr Iles 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 declared that he was instructed under a contingency based fee. He confirmed 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 the client's case.

7. 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. 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. No objection was raised by the Valuation Officer to Mr Iles' request to include additional evidence in respect of Unit 4 Waver Way, Rugby CV23 0XF.

Relevant Law

10. Rateable value is to be determined in accordance with paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988, which provides:

    "(1) 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.

11. 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).

12. 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

13. The subject hereditament is a distribution warehouse and premises, located alongside other distribution warehouses on Castle Mound in Rugby. It is a two storey building comprising a large warehouse area and two office floors, and was built in 2004. The property is held leasehold at a passing rent of £1,287,960 per annum, effective from 1 April 2015.

14. The present valuation of £1,130,000 RV is based upon a total significant area of 20,755m^2 at an adopted price of £55.00 per m^2.

15. The case for the appellant is that £55 per m^2 is excessive in light of the AVD rental evidence in this location, together with settlement evidence in respect of comparable assessments.

16. On behalf of the Valuation Officer, Mr Harrison defended the present adopted price of £55 per m^2 with reference to the subject rent and rental evidence drawn from the locality. He disputed the relevance of Mr Iles' comparable properties, which, he argued, were located some distance away and agreed having regard to local rental evidence.

17. Both parties had cited the leading judgement of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which had set out six propositions to be followed when considering the weighting of evidence:

    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 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 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 such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

18. Mr Iles submitted that the subject rent was not a clean rent, as the appellant had been affiliated with the site from 2011. He stated that the original lease was taken by Norbert Dentressangle in 2011, who shared the unit with the appellant. When Norbert Dentressangle sold their business in April 2015, Mr Iles submitted that the appellant, who had a substantial amount invested in the unit, was at the landlord's mercy in agreeing a new rent for the business. As such, he considered that the rent was not reflective of the amount which could have been achieved on the open market.

19. Mr Harrison referred to information contained in the form of return, which stated that a new tenancy had been agreed at a rent of £1,287,960 with effect from 1 April 2015. He analysed the subject rent at £62.17 per m^2, which he considered was comfortably in excess of the adopted price per m^2. Mr Harrison considered the subject rent to provide strong evidence, and while Mr Iles had debated otherwise, he had not provided any evidence in support.

20. The panel considered that substantial weight should be attached to a new letting effective from the AVD, but in line with *Lotus and Delta*, the rents of similar properties should also be considered. The Valuation Officer scheduled two rents from the locality:

Unit 8 Castle Mound Way, CV23 0WB

A property of 9,132 m^2, subject to a rent of £558,710 per annum, effective from 9 February 2015.

Mr Iles analysed the rent at £53.18 per m^2, whereas the Valuation Officer's analysis at £58.18 per m^2 assumed six months' rent free for fit out, adjusted for three months.

Unit 1 Waver Way, Rugby, CV23 0XF

A property of 22,263.61m^2, subject to a rent of £1,445,700 per annum, effective from 1 October 2015.

The Valuation Officer analysed the rent at £56.45 per m^2. Mr Iles argued that less weight should be attached as it was a post AVD rent.

21. Mr Iles' additional rental evidence was in respect of Unit 4 Waver Way, a property of 22,408.65m^2. It had been subject to a new lease effective from 2 December 2024 on the following basis:
- 12 months' rent free
- First five years at £1,146,433.00
- Years 6-10 at £1,297,083.71
- Years 11-15 at £1,467,531.15
- Years 16-20 at £1,660.376.60

22. Mr Iles' analysed the rent at £53.48 per m^2 across the life of the lease, £46.66 per m^2 up to the tenth anniversary, and £50.25 per m^2 up to the tenth anniversary and ignoring six months incentive for fit out. He contended that more weight should be applied to this property rather than Unit 1, as it was agreed before the AVD, in line with *Specialeyes Plc v Felgate (VO)* [1994] RA 338.

23. Mr Harrison did not dispute Mr Iles' analysis of the rent for Unit 4, but commented that he attached less weight to it, as the property was at the higher end of the range, built to the tenant's specification and subject to a longer lease.

24. The panel turned to the summary of comparable assessments scheduled by Mr Iles in support of £52.50 per m^2:

Address	Previous £/m^2	Revised £/m^2	Distance from subject (miles)
Prologis Park, Central Blvd, Coventry, CV6 4QJ	£55.00	£52.50	15
Dorsey Way, Leicester, LE19 4DB	£55.00	£50.00	17
Hams Hall Industrial Estate, Faraday Avenue, Birmingham, B78 1BF	£55.00	£52.50	27
Birch Coppice Business Park, Dordon, Tamworth, B78 1BF	£52.50	£51.00	32
Fradley Park, Woodend Lane, Lichfield, WS13 8SS	£50.00	£47.50	40
Magna Park, Lutterworth, LE17 4XH	£55.00	£52.50	5
East Midlands Gateway, Kegworth, DE74 2BB	£55.00	£52.50	35
Dirft, Crick, Daventry, NN6 7GZ	£55.00	£52.50	7

25. On the basis of the agreements made in respect of modern large distribution warehouses, Mr Iles submitted that £55 per m^2 was excessive for the appeal property. He cited the following extract from *Futures London v Stratford (VO)* [2006] RA 75:

> "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. The list is then said to have settled: rents will be largely subsumed into assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments."

26. In arriving at the decision that the present adopted price of £55 per m^2 was not excessive, the panel decided to attach most weight to the subject rent and rental evidence from the locality. While it was clear that there had been settlements for comparable distribution warehouses, it was significant that they were located some distance from the appeal property, ranging from five to forty miles away. The panel took into account the point made by the Valuation Officer that each estate had been agreed having regard to local rental evidence.

27. The panel decided to attach most weight to the analysis of the subject rent at £62.17 per m^2 effective from the AVD. In the absence of any compelling evidence to demonstrate that it was not agreed at open market value, the panel found that it indicated that the adopted price of £55 per m^2 was not unreasonable. The analysis of the rent for Unit 8 Castle Mound at £58.18

per m^2, further supported the adopted price of £55 per m^2. Mr Iles' analysis at £53.18 per m^2 did not reflect an adjustment for the six months' rent free period.

28. The panel supported Mr Iles' contention that more weight should be attached to the pre-AVD rent for Unit 4 Waver Way, rather than the post AVD rent for Unit 1 Waver Way. However, the rent passing on Unit 4 was on a stepped basis and given the level of adjustment required to conform to the rating hypothesis, the panel attached less weight to it.

29. The panel concluded that the appellant's representative had failed to demonstrate that the present adopted price of £55 per m^2 was excessive.

Disposal

30. In view of the above findings, the panel confirmed the present assessment of £1,130,000 RV with effect from 1 April 2017 and dismissed the appeal.

Date issued to parties: 28 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.