VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

APPEAL NUMBER:	CHG101109243	
RE:	Dulux Decorator Centre, 1A Hylton Grange, Sunderland SR5 3HR (the “appeal property”)	
BETWEEN:	Lucia Holdings Ltd c/o Pelham Associates	Appellant
	and	
	Amanda Hitchings BA (Hons) MRICS (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Monday 28 October 2024	
BEFORE:	Mr AN Backway (Presiding Senior Member) Mr P Blythe-Bartram (Senior Member)	
CLERK:	Miss K Hendry IRRV(Hons)	
APPEARANCES:	Mr G MacKay of Savills UK Limited (Appellant’s Representative) Mr S Lowe (Respondent’s Representative)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed the rateable value (RV) £82,500 with effect from 1 April 2017.

Introduction

3. This is a rating list appeal in which the appeal property had been entered in the 2017 rating list as ‘Retail warehouse and premises’ at a RV of £82,500 with effect from 1 April 2017.

4. The challenge proposal was submitted by the appellant's representative and was received by the Valuation Officer (VO) on 1 August 2023. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £58,500 was proposed with effect from 1 April 2017, based upon a reduced unadjusted rate from £145/m^2 to £108/m^2, as well as an end allowance of 5% for access. The appellants representative also sought for the appeal to be valued as 'warehouse and premises'.

5. The VO issued a challenge case decision notice on 26 January 2024 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

6. 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 23 May 2024.

7. Mr MacKay appeared on behalf of the appellant 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).

8. Mr MacKay confirmed that he was instructed under a performance related fee and he declared 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 his client's case.

9. 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).

10. Mr Lowe confirmed he was acting as both advocate and expert witness.

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

12. The appeal property measured 570.30m^2. It was located on a small commercial estate adjacent to the junction of A1231 (Wessington Way) and A19. It comprised of a detached trade counter / warehouse unit on a self-contained site accessed off Hylton Grange. At the front of the property was a trade counter / showroom, and to the rear was a large warehouse which was accessed via a single roller shutter door from the loading parking area which also provided staff and customer parking.

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

Relevant Law

14. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

2(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.

15. 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).

16. 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, being the date the subject property entered the rating list.

Discussion

17. The appellant had been in occupation of the appeal property for 15 years from May 1998. The rent was reviewed in May 2008 at £84,000. They then entered into a lease renewal for 5 years for £89,000. When the lease was renewed in 2013, additional wording was added to permit the use of the premises to include a use within B8 of the Town & Country Planning (Use Classes) Order 1987 "as a decorator centre with trade counter sales, storage and distribution of paint and other decorating products".

18. As the rent was almost two years prior to the AVD, Mr MacKay argued that it was necessary to have regard to comparable properties in the locality. In his opinion it was evident from the tone adopted in the locality on competing properties that the value adopted on the appeal property should be reduced.

19. Mr MacKay argued that the appeal property should be valued as a warehouse and premises to reflect the fact that the warehouse accounts for the majority of the accommodation (92%) rather than as a retail warehouse. As a retail warehouse, the appeal property was disadvantaged because it was on a hidden estate with a lack of signage and did not benefit from being 'clustered' on an estate of similar retail warehouses.

20. In support of a reduced unadjusted rate, Mr MacKay referred to five comparable properties. Two had a higher rate of £160/m^2, another had at £130/m^2 and two had a rate of £108/m^2. Unit 1, The Galleries Retail Park had been valued at £130/m^2 and was located on a purpose built more modern retail warehouse park. It was situated in a good location and close to the Galleries shopping centre, in a much more superior location than the appeal property. Unit 2, Thomsen Retail park was a purpose built retail warehouse on a small development adjacent to Wickes. The park also included a KFC, McDonalds and had good access from A1231. This

was considered to situated on an inferior retail park and had an unadjusted rate of £108/m^2. The other property with a rate of £108/m^2 was HSS Hire Shops at Unit 2 Dene Road. This property was classified as a warehouse and premises, and was similar to the appeal property in terms of layout. Rent from 2016 supported the RV for this property.

21. Mr MacKay sought for a 5% end allowance for being located away from the ‘cluster effect’ of being situated next to similar properties and for the lack of signage identifying the location of the appeal property.

22. Mr Lowe contended that the rent which was agreed two years prior to the AVD supports the RV for the appeal property. He argued that the actual rent compasses all strengths and weaknesses concerning the appeal property, such as the locality, size, quality and access and had therefore given the rent more weight. He had analysed the rent to £156.06/m^2, in comparison to the unadjusted base rate of £145/m^2.

23. In respect of the appellant’s comparable properties, he considered the two properties at £160/m^2 to superior to the appeal property and are located in clustered locations surrounded by similar properties. Unit 1, The Galleries Retail Park was not within the locality of the appeal property, it was located in a superior location and was newer and was expected to have been valued higher than the appeal property. Mr Lowe confirmed that property was assessed based upon its rental agreement, similar to the appeal property. Unit 2 Thomsen Retail park was much larger in size than the appeal property and has been valued lower accordingly. It was slightly older, having been constructed in 1995, compared to 1998 for the appeal property. HSS Hire Shops, was also much larger than the appeal property. It is significantly older than the appeal property having been constructed in 1976 and was refurbished in 1996.

24. He stated that the appeal property is open to and sells products to the public, and is therefore correctly described as a retail warehouse. Mr Lowe contended that the 5% end allowance being sought for by the appellant’s representative had already been taken account of in the main space rate.

25. Having regard to all of the evidence, the panel held that the rent was a good starting point for determining the RV. The adopted RV of £82,500 was less than the rent prior to it increasing to £89,000 in May 2013. The panel noted that when the lease was renewed in May 2013, the use of the property increased by way of the altered worded within B8 of the Town & Country Planning (Use Classed) Order 1987, which would make the property more valuable. The panel accepted that a hypothetical tenant coming fresh to the scene would be aware of disadvantages of the lack of signage and not being in a clustered location and would negotiate a cheaper rent, such disadvantages were already being accounted for. Therefore, the panel held that no further end allowance was warranted.

26. In respect of the comparable properties put forward, the panel placed little weight of those valued at £160/m^2, and £130/m^2, leaving the two properties which had been valued at £108/m^2. The panel held that only HSS Hire Shops was comparable to the appeal property as it had a similar trade counter style, in comparison to the other comparable properties that the public could walk round. This property had been valued having regard to its rent from 2016, and was much older than the appeal property. For these reasons the panel were not persuaded that a reduction on the appeal property was warranted, and the appeal was dismissed.

Disposal

27. In view of the above findings, the panel concluded that it had not been demonstrated that the present RV of £82,500 was unreasonable and that a lower RV should apply.

Date issued to parties: 20 November 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.
