VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992/556); Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; shop and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed in part.

APPEAL NUMBER:	CHG101110999 & CHG101110859	
RE:	Unit 7 and Units 10-12 Greenoaks Way, Widnes,WA8 6UA (the "subject properties")	
BETWEEN:	Yousuf Bux	Appellant
	and	
	Amanda Hitchings BA (Hons) MRICS (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	5 August 2024	
BEFORE:	Mr SP Wood, Presiding Senior Member Miss R Punia, Member	
CLERK:	Mrs J Routledge IRRV(Tech)	
APPEARANCES:	Richard Wackett of Montagu Evans representing the Appellant Kwokfai Ng representing the Valuation Officer	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals were allowed-in-part.

2. The Tribunal Panel was satisfied that the RV on the subject properties was unreasonable. It considered that the larger units should have a reduction to the base rate to £325 per m^2 in recognition that the hypothetical tenant would be able to negotiate a lower rental at the AVD taking into account the market for larger units at that time.

Introduction

3. Under the Appeal Management Powers contained within regulation 6 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269), the hearing of these two appeals were consolidated and the parties agreed for the evidence to be admissible on each.

4. The Valuation Officer issued a challenge case decision notice for both subject properties on 15 October 2023 which stated that based upon the evidence and information available, the rating list entry was unreasonable and there would be a change to the list entry from a Zone A rate of £425 to £375 per m^2. This effectively reduced the Rateable Value (RV) of Unit 7 from £46,500 to £41,000 from 1 April 2023. The RV was reduced on Unit 10-12 from £82,500 to £72,000. A 5% allowance for quantum had been applied to this assessment giving a base rate of £350.

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 hereditaments was not reasonable. The appeal was received by the Tribunal on 10 April 2024. The appellant was seeking a base rate of £300 per m^2 for both these properties.

6. Mr Wackett confirmed he was instructed under a flat fee arrangement and declared he understood that his duty was first and foremost to the Tribunal. This was in view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC).

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 (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.

Relevant Law

9. 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 1992/556) as amended. In respect of the subject appeals, the material day is 1 April 2023.

10. Rateable value is defined in Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, as amended by The Rating (Valuation) Act 1999 as:

"… 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 the usual tenant's rates and taxes and bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state fit to command the rent mentioned above."

11. Both parties referred the panel to the Lands Tribunal judgment *of Lotus & Delta Ltd v Culverwell (*VO*) and Leicester City Council [1976] RA 141*. This case had established six propositions, which gave clear guidance to be followed, 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 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 1976 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.'

12. The clerk also referred to *O'Brien v Harwood (VO) RA/22/2002* and advised that at paragraph 41:

> "There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, entries will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by a valuation tribunal or this tribunal or accepted by lack of challenge. Finally, a stage is reached where 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 that stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position regarding tone of the list at any particular time is a question of fact. Where an assessment is challenged before a Tribunal the correct time for deciding whether a tone of the list has been established is immediately before the hearing."

Discussion

13. The panel was provided with a bundle which comprised all of the documents exchanged between the parties as part of the challenge process: Appellant's challenge submission, initial response to the challenge, challenge further exchange, Valuation Officer's challenge case decision notice, and Appellant's supporting evidence statement.

14. Mr Wackett acting on behalf of the landlord of the Centre advised agreements had been reached on the smaller units at a Zone A rate of £375 per m^2. He advised the larger double units were much more difficult to find tenants for and therefore the rents would be lower and the base rate should be reduced to £300 per m^2. He argued that in accordance with the principles of rating, the panel must take a snapshot in time at the AVD. Pre-pandemic rents would not be reliable to judge the amount a tenant coming fresh to the scene on the material day and agreeing a lease with the hypothetical landlord to take the property on a year to year tenancy on full repairing and insurance terms would be willing to pay. At that time the recovery from the pandemic had just started and there was a poor market for shop rentals as there was little confidence in trading following Covid. Rents that were negotiated at that time did not have the benefit of foresight as to what would happen in the market in the coming years and were influenced by the issues encountered during the Covid pandemic. He stated the most reliable rental evidence was that which occurred close to and just after the AVD as they were a better indicators of market trends at that time.

15. Mr Ng was of the opinion that the rental evidence on the subject properties should not be given weight as both were turnover rents which analysed to well below the rents for units in the centre. A turnover rent did not give the tenant an incentive to be productive as it was based on performance, the lower the turnover the less rent to be paid. He considered the occupant of Unit 10-12 was an anchor tenant with better negotiating power than other individual tenants. The landlord would accept a lower rent or a different arrangement to keep such tenants. He considered the best evidence was the rent on unit 8 which was a similar size to unit 7 it was agreed in 27 May 2022 and analysed to £405 per m^2.

16. The panel noted that the original lease on 10-12 was granted in 1996, there was a renewal in 2012 at £100,000 per annum. Following a rent review on 21 April 2021 a new lease was agreed over five years at a rent of £42,000 the panel noted the date was close to the AVD. On unit 7 the lease renewal was agreed on 15 January 2021 on a turnover basis.

17. The panel having had regard to the first proposition in Lotus and Delta, the subject rent is the starting point found that the weight to be attributable to the renewal lease was diminished by

the change in the assessment of rent payable. The panel considered this cast doubt on the lease being an open market arrangement and the rent was lower due to the landlord's need to keep an anchor tenant. The rent on Unit 7 was a turnover rent and therefore less reliable. Therefore, the weight to be placed on the subject properties rents was limited.

18. The panel went on to assess the other comparable properties in order to form an opinion on the value of the subject properties by reference to those properties. The panel noted that many of the units in the Green Oaks Centre were significantly smaller and had agreed a base rate of £375 per m^2 following challenges.

19. The panel was aware that the level of rent will reflect the date when the lease/tenancy began, the bargaining strengths of the parties and the economic climate at the time. Once the rental evidence, has been analysed a pattern of what the rental market for that type of property was doing at the AVD may be established.

20. There had been agreements on thirteen of the units within Green Oaks which established a tone of £375 Zone A. The panel had to consider whether this tone should be applied to the larger subject properties.

21. The panel noted that many of the properties in Green Oaks had been in the same occupation since 1996 and the majority of the rental evidence were lease renewals that occurred several years pre and post AVD. The panel gave no weight to the rents on the two Kiosks as they were under $30m^2$ and therefore not comparable. Unit 5B was a new lease agreed on 23 April 2021 within days of the AVD. However it was only $59.97m^2$ and therefore the panel gave it little weight.

22. The Valuation Officer considered Unit 8 offered good evidence to support the £375 base rate. However the panel noted this was agreed from 27 May 2022 over twelve months post AVD, and at a time when the retail market was recovering from the worst effects of the Covid pandemic. The panel therefore gave this evidence little weight.

23. The panel noted that Unit 7 and Unit 13-14 had turnover rents agreed between June 2020 and March 2021. Unit 17-18 was vacant and had been offered as two separate units, Unit 10-12 had an agreed rent as of 23 April 2021 which analysed to £207 per m^2, Unit 2-3 had an agreed rent as of 1 December 2021 which analysed to £154.58, both low rents compared to the smaller units. The panel gave these rents some weight as it considered this was good evidence of the greater bargaining power given to the tenants by the effects of Covid and the shift to online retail that occurred around the AVD. The landlord had accepted lower rents or different rental arrangements to keep tenants rather than have empty units particularly the larger ones. There was clearly a pattern of lower rents at the AVD for the larger units which should be reflected in the base rate value.

24. Having had regard to the basket of evidence the panel found that the RV on the subject properties was unreasonable. It considered that the larger units should have a reduction in the base rate to £325 per m^2 in recognition that the hypothetical tenant would be able to negotiate a lower rental at the AVD taking into account the market at that time, this reduction included the 5% allowance previously applied for quantum. The panel also noted that there was a 7.5% allowance for shape on unit 7 which was accepted and should be applied to the new assessment.

Disposal

25. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the RV of £375 is excessive and should be reduced to £325 per m^2 from 1 April 2017 to reflect the market for larger units at that time. Therefore the appeals were allowed in part.

26. Unit 7

27. Description	Area m/²	rate £/m²	Value £
Retail Zone A	72.70	325	23,627.50
Retail Zone B	76.6	162.50	12,447.50
Ground floor staff toilets		N/A	
First floor internal storage	148	16.25	2,405
Subtotal			**38,480**
Adjustment	**shape**	**-7.5%**	**-2886**
total			**35,594**

Rounded to £35,500

Unit 10-12

Description	Area m/²	rate £/m²	Value £
Retail Zone A	101.90	325	33,117.50
Retail Zone B	105.70	162.50	17,176.25
Retail Zone C	105.70	81.25	8,588.12
Ground floor Remaining retail zone	41.5	40.60	1,684.90
Ground floor Fitting rooms	3.50	40.60	142.10
Ground floor staff toilets		N/A	
First floor Office	6.8	16.25	110.50
First floor internal storage	93.40	16.25	1518.75
First floor internal storage	192.40	16.25	3126.50
First floor Kitchen	21.60	16.25	351

First floor staff toilets		N/A	
First floor Office	6.30	16.25	102.37
			65,918
		Plant & machinery	1032
Subtotal			**66,950**

Rounded to £66,500

Order

28. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for the subject properties as follows:

    Unit 7 to £35,500 RV with effect from 1 April 2023.

    Unit 10-12 To £66,500 RV with effect from 1 April 2023.

29. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

30. A refund of the paid fees will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refunds will take around six weeks to process.

Date issued to parties: 5 September 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.
