VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal: Local Government Finance Act 1988; tone of the valuation list in the locality; weight to be applied to the rent agreed on the appeal property; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal: dismissed.

APPEAL NUMBER: CHG101155129

RE: The Factory Shop, High Hirst Farm, Ashington, Northumberland NE63 9AQ (the "appeal property")

BETWEEN:	The Factory Shop Limited	Appellant
	and	
	Amanda Hitchings BA (Hons) MRICS (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Monday 27 January 2025

BEFORE: Mrs AE Fielder (Presiding Senior Member)
Mrs NC Yang (Senior Member)

CLERK: Miss K Hendry

APPEARANCES: Mr A Dyson of Colliers International (Appellant's Representative)
Mr C Wilkinson (Respondent's Representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed

2. The panel confirmed the rateable value (RV) £60,500 with effect from 1 April 2023.

Introduction

3. The challenge proposal was submitted by the appellant's representative and was received by the Valuation Officer (VO) on 15 November 2023. It had been made on the grounds that the RV shown in the rating list of £64,500 on 1 April 2023 was inaccurate. A revised RV of

£36,250 was proposed with effect from 1 April 2023, based upon a reduced unadjusted rate from £80/m^2 to £45/m^2. The VO issued a challenge case decision notice on 14 March 2024, which was also the date the list was updated to reduce the RV to £60,500 based on £75/m^2.

4. 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 lodged by the appellant's representative on behalf of the appellant, and received by the Tribunal on 10 July 2024.

5. Mr Dyson appeared on behalf of the appellant as both Advocate and expert witness and declared that he was employed on a fixed fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Dyson's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

6. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

7. The panel hearing the evidence considered the "expert" evidence and assessed what weight, if any, it should give to it in the context of the matters in issue before it.

8. Mr Wilkinson was representing the VO in the dual role of advocate and expert witness.

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

Preliminary issue

10. On 23 January 2025 Mr Wilkinson sought to include some recent photographs from an inspection he had recently carried out. However, Mr Dyson objected to the inclusion of the photographs so close to the hearing date.

11. In determining whether to allow the late evidence, the panel had regard to the Standard Directions for Non-Domestic Rating (NDR) appeals issued with the notice of hearing

> ***Further evidence***
>
> *1. No later than* ***four weeks*** *before the date of the hearing, a party must make written application to the Tribunal (with a copy to the other parties) if it intends to include at the hearing any new evidence which:*
>
> *a) was not included within the notice of appeal but which all parties have subsequently agreed in writing to include (together with a copy of the written agreement); or*

b) relates to the ground on which the proposal was made, 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.

2. The application must specify the reasons for the late application and if under b) above set out:

• why the evidence was not available earlier;
• when it came into the possession of the party.

3. Starting from the date the notice is served on them requesting the inclusion of the new evidence, parties to the appeal have two weeks to raise with the Tribunal any objection in writing and issue copies to all other parties.

12. The panel noted that the request to include further evidence was received by the Tribunal a few days before the hearing. The panel held that as the appeal was submitted on 10 July 2024, and the notice of hearing issued on 31 October 2024, there had been sufficient time for the VO to have inspected earlier and provided the additional photographs in good time. As the appellant's representative had objected to the inclusion of the photographs, the panel held that it would not be fair to allow them to be included and including them could possibly delay proceedings, which the panel did not consider any delay in proceeding to be in the interest of justice. For that reason, the panel excluded the VO's late evidence.

Background

13. The appeal property was a retail warehouse with a ground floor gross internal area of 807m^2. It was located on a small retail park known as High Hurst Farm. It consisted of the appeal property and Lidl. Both units shared the car park although Lidl was the freeholders. It was located on the edge of Ashington Town Centre just off the A197 which was a main road running through the North side of the town. Adjacent to the appeal property was a new leisure centre which opened circa 2017 and a Home Bargains which opened circa 2023. Within the immediate vicinity there was a McDonald's, Asda and a number of offices.

14. The issue between the parties is whether the appeal property should be valued at a main rate of £75/m^2 as submitted by the VO or a main rate of £45/m^2 as the appellant's representative submitted.

Relevant Law

15. The issue before the panel was to determine the correct valuation for the subject property with effect from 1 April 2023. In respect of an appeal against an entry in the 2023 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2021.

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

17. The subject property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988).

18. The panel was aware of the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 cited by the parties. 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.’

Discussion

19. The appeal property had been valued in a scheme which included other retail warehouses. It had been entered into the 2023 rating list at £80/m^2, however following the challenge, the VO had reduced it to £75/m^2, the same as what it was in the 2017 rating list. Mr Dyson argued that the assessment should be valued less than the 2017 rating list to reflect the market value at the AVD.

20. Mr Dyson mentioned a lease renewal on the appeal property on 21 June 2014 for a term of five years with a passing rent agreed at £61,500 per annum (pa) which devalued to £76.21/m^2 supporting £75/m^2. On 12 December 2019, a lease renewal was agreed effective from 7 July 2019 for a term of five years. The passing rent was set at £36,000pa for the first three years, then rising to £42,500pa for the remaining two years. There was also a lease determination date (break date) agreed in year three on July 2022.

21. Looking at the rents in 2014 and 2019, Mr Dyson stated that it is clear that the rent fell by 36%, reflecting the fall in demand for units of such a size in the town. He had analysed the rent from July 2019 using a discounted cashflow, over three years up to the break date in July 2022. This devalued to £44.61/m^2. As rental evidence for the location was sparce, Mr

Dyson considered the rental evidence, despite taking place 16 months pre AVD, to be useful when assessing the value for the 2023 rating list.

22. Mr Dyson referred to a recent settlement which was agreed on 17 July 2024 in relation to 15 Fishergate, Ripon which was another Original Factory Shop property. The RV had been reduced from £54,500 to £46,000 as a result of the rent being the key piece of evidence used to determine the RV, despite it being a CVA rent. The rent was stepped at £47,250pa from 23 April 2021 until 31 July 2021 and then increased to £47,980pa from 1 April 2021 until the end of the lease. The average rent over the five and a half year period was £47,959pa.

23. In response Mr Wilkinson argued that the company had a voluntary arrangement (CVA) in July 2018 due to going into financial difficulty. In early 2019 a number of the Original Factory Shop stores closed. The lease was then signed in 2019 at a reduced rent from the previous lease which he believed was a good indication that the rent had been impacted by the CVA and was therefore not an open market rent and not reliable.

24. The appellant's representative stated that the appeal property was located a reasonable distance away from the town centre and the prime retail areas in a secondary position which put the appeal property at a disadvantage. The only other unit on the retail park was Lidl and whilst it would generate some footfall, it was Mr Dyson's opinion that the impact would not be substantial enough to increase sales for the appeal property. He also argued that the close proximity of the leisure centre would have no impact on the appeal property either as people are unlikely to visit the appeal property after going to the gym. Furthermore, the appeal property was separated from the leisure centre by a fence meaning potential shoppers would have to walk around the perimeter of the retail park.

25. In further support of a reduction, Mr Dyson referred to comparable properties. Unit 1 and 2 Albion Park in Blyth which was situated eight miles away from Ashington. He stated that there is not an abundance of retail park evidence in this area of the Northeast and Northumberland and evidence is scarce. He considered Albion Park to be superior to High Hurst Farm as Blyth was a more affluent town and Zone A was valued at £300/m^2 ZA in comparison to Ashington at £205/m^2 ZA. Albion Retail Park consisted of four units in total, Unit 1, Farmfoods at 1,100/m^2 and Unit 2, B&M Bargains at 1,501/m^2. Both units had been valued at £60/m^2. Unit 1 was previously valued at £75/m^2 in the 2017 rating list reflecting a 20% fall which Mr Dyson argued should at the very least apply to the appeal property. He also referred comparable properties at Unit 2, Clifford Retail Centre, Stanley, Durham which had been valued at £45/m^2, Former Carpetright-Walter Wall Carpets, Wallsend at £60/m^2, Wyndsor World of Shoes Ltd Longbenton, Newcastle Upon Tyne at £65/m^2, Unit 3A and 3B, Teesbay Retail Park, Hartlepool both at £60/m^2 and British Heart Foundation in Darlington at £65/m^2.

26. In response to the comparable properties, Mr Wilkinson did not consider Albion Retail Centre to be comparable as it was located in a different location / market. He argued that the appeal property was considered to be in a better location, directly accessible from the A197 and close to amenities such as the new leisure centre, Home Bargains valued at £130/m^2 and Poundstretcher valued at £100/m^2. He stated that this indicated that a base price of £45/m^2 was out of sync with other retail units within the vicinity.

27. After considering all the evidence presented by the parties, the panel concluded that the appellant's representative had not successfully demonstrated that the appeal property should be assessed at a base rate any lower than £75/m^2. Whether the rent on the appeal property was a CVA rent or not, the panel attached little weight to this evidence as it was effective

from July 2019 and too far removed from the AVD. The panel also attached little weight to the comparable properties provided by the appellant's representative as they were situated too far away from the appeal property. The panel considered location the appeal property and the surrounding area and held it to be in a superior location to the comparable properties.

Disposal

28. In view of the above findings, the panel concluded that it had not been demonstrated that the present RV of £60,500 was unreasonable and therefore the appeal was dismissed.

Date issued to parties: 19 February 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.

Addendum

Following the release of the decision document on 19 February 2025, an error was identified. Paragraph 12 referred in error to the "LO" which has been corrected to "VO".

These errors have now been corrected following authorisation by the Valuation Tribunal for England under regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Reissued: 24 February 2025