VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal: Local Government Finance Act 1988; Factory and premises; Rental evidence; Comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal dismissed.

APPEAL NUMBER:	CHG101169284	
RE:	55 56, BALENA CLOSE, POOLE, BH17 7DY (the “subject property”)	
BETWEEN:	Vinyl Solutions (represented by Altus Group)	Appellant
	and	
	Lucy Formela-Osbourne (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	6 November 2024	
BEFORE:	Mr OL Roberts, Presiding Senior Member Mr WJ Read, Senior Member	
CLERK:	Mrs S Hodgson IRRV(Dip)	
APPEARANCES:	Mr B O’Neill for the appellant Mr T Simango for the respondent	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel determined the Rateable Value (RV) of the subject property at £66,500 with effect from 21 November 2023.

Introduction

3. This was a 2023 rating list appeal. The subject property had been entered in the 2023 rating list as “Factory and Premises” at an RV of £66,500 with effect from 21 November 2023.

4. The challenge proposal was submitted by Altus Group on behalf of Vinyl Solutions and was received by the Valuation Officer (VO) on 4 January 2024. It had been made on the grounds that the RV shown in the rating list was wrong and proposed a revised RV of £50,000 for the subject property.

5. The VO issued a challenge case decision notice on 15 April 2024. The VO’s decision was to treat the appellant’s challenge as not well-founded and proposed no change to the rating list.

6. Mr O’Neill 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 confirmed that he was instructed under a contingency fee. 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 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 (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

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

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

Background

10. The subject property was a factory and premises located in Poole, which comprised a warehouse, staff room, kitchen and office accommodation over ground and mezzanine floors. It measured 895.36m^2.

11. The subject property was originally in the 2023 list with a larger area. Following a full measured survey, the agent submitted a check to have the size reduced. Following the check, the VO increased the RV to £66,500 based on a partial rebuild of the subject property. The subject property was moved from a scheme for industrial properties built pre-1970 with an unadjusted base rate of £55 per square metre (psm) to a scheme for industrial properties built between 1980-1999 with an unadjusted base rate of £75psm.

12. Mr O’Neill contended that the change was unwarranted as the subject property did not undergo any major structural changes and that any works were cosmetic and included painting, decorating and re-cladding of the property. The agent was seeking a reduction back to £55psm.

Preliminary issue

13. Mr Simango sought to introduce new evidence at the hearing, which had been submitted to Mr O’Neill and the Tribunal on Friday 1 November 2024. Mr Simango stated that the new

evidence was not part of the challenge exchanges and had been obtained from the Local Authority planning portal. Following questions, he confirmed the document had been on the planning portal since 21 July 2020.

14. Mr O'Neill objected to the new evidence as it was produced in July 2020 which was before any works at the subject property and inspections had taken place since that date, so he did not consider it a relevant document. He also objected as there had been no time to validate or examine the document in advance of the hearing.

15. The Tribunal's standard directions, sent to the parties on 27 August 2024, prescribed that a party may make an application to include any further evidence no later than four weeks before the hearing. This would give the other party an opportunity to consider the submission and object to, or support, the application. The panel would therefore need to consider the reasons for the late application under the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926. If it was satisfied there were good reasons why the application could not have been made on time, it would then need to decide on admissibility with consideration of the limits set out in Regulation 17A of the Procedure regulations. Regulation 17A restricts new evidence, to matters which relate to the appeals and were not known to the party before the VO issued her decision on the proposal, or evidence agreed by both parties.

16. The panel retired briefly after hearing from both parties and determined that no new documentation would be admitted as the document in question had been available in the public domain since July 2020 and could reasonably have been acquired prior to the determination of the proposal, and indeed more than two working days before the hearing.

Relevant Law

The Local Government Finance Act 1988

17. Schedule 6 of the Act 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.

18. 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.

Discussion

19. The leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, 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.

20. There was a new ten-year lease in respect of the subject property that had been agreed with effect from 1 June 2021 at a rent of £80,000 per annum. Mr Simango analysed the rent to £82.83psm.

21. Mr O’Neill stated that the lease was tainted as the occupier previously occupied the neighbouring unit and was released from the lease with no charge. It was his contention that the appellant was therefore a special purchaser, and the rent was not open market. Mr O’Neill further stated that there was a concession letter held by the appellant’s solicitors which had details of the previous lease affecting the lease on the subject property.

22. Mr O’Neill had provided assessment evidence of properties he considered to be comparable to the subject property, and that were in the valuation scheme for industrial properties built pre-1970:

    Unit 4 at 145 Sterte Road was built in the 1960’s, had an eaves height of 4.58m, had an area of 512.58m^2 and was in the rating list with an unadjusted base rate of £58psm.

    7 Thrush Road was built in the 1940’s, had an eaves height of 3 to 4.5m, had an area of 1231.59m^2 and was in the rating list with an unadjusted base rate of £50psm

180 Stanley Green Road had an eaves height of 3.62m, had an area of 272.80m^2 and was in the rating list with an unadjusted base rate of £75psm.

15-17 Willis Way had an eaves height of 7.25m, had an area of 964.42m^2 and was in the rating list with an unadjusted base rate of £75psm. Mr O'Neill considered this property to be superior to the subject property due to its eaves height, while Mr Simango considered the subject property had a superior quality.

23. Mr Simango put forward seven properties he considered comparable to the subject property, which were all located in Willis Way and were in the valuation scheme for industrial properties built between 1980-1999. The properties varied in size between 90.01m^2 and 2343.15m^2 and had eaves heights recorded between 2.8m and 5.5m. However, Mr O'Neill had provided a marketing document for Unit 3 at 19 Willis Way that indicated the eaves were 6.29m.

24. Mr Simango did not agree that the eaves of the subject property were 3.66m due to the photographs in the evidence bundle. The panel accepted the height of 3.66m as it heard they had been measured onsite by Altus Group and a representative of the Valuation Office Agency, not Mr Simango.

25. The panel found that the best evidence was the rent of the subject property itself. The lease was a new letting agreed two months after the AVD. No evidence had been provided by Mr O'Neill to support his assertion that the lease was tainted. There were no deeds of variation provided, or any lease surrender. While a letter of concession was referred to, it had not been provided within the evidence bundle and no weight was given to this by the panel.

26. No comparable rental evidence had been provided by either party. Therefore, the panel turned to the comparable assessments. It was the panel's view that the closest in comparison to the subject property was 15-17 Willis Way. This was a similar size to the subject property and Willis Way was the closest of the comparable locations. While the eaves height was greater than the subject property, it was the panel's opinion that it had not been demonstrated that this would affect the rent of a property. Unit 3 at 19 Willis Way was also similar in size to the subject property. Both 15-17 Willis Way and Unit 3 at 19 Willis Way were valued at £75psm.

27. When considering the basket of evidence and the rent on the subject property, it was the panel's opinion that the current RV on the subject property was not unreasonable.

Disposal

28. In view of the above findings and conclusions, the Tribunal Panel was satisfied that the RV of £66,500 with effect from 21 November 2023 for the subject property was not unreasonable. Therefore, the appeal was dismissed.

Date issued to parties: 5 December 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.