VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal: warehouse and premises; price per m² in dispute; rental evidence; comparable properties; Local Government Finance Act 1988; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; appeal dismissed.

APPEAL NUMBER:	CHG101207178		
RE:	Unit A, Croft Way, Witham, Essex CM8 2FB (the "appeal property")		
BETWEEN:		DD Products And Services Ltd	Appellant
		and	
		Lucy Dyer (Valuation Officer)	Respondent
SITTING:	Remotely using Microsoft Teams		
ON:	Monday 25 November 2024		
BEFORE:	Mr P Blythe-Bartram, Presiding Senior Member Ms T Blades, Senior Member		
CLERK:	Mrs L Horne		
APPEARANCES:	Mr O Plumley from Altus Group, representing the appellant Mrs N Awoyokun representing the Valuation Officer		

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel found that the entry in the 2023 rating list was not unreasonable, and confirmed the rateable value (RV) of £75,000 with effect from 1 April 2023.

Introduction

2. This is a 2023 rating list appeal. Unit A, Croft Way, Witham, Essex CM8 2FB (the 'appeal property') had been entered in the 2023 rating list as 'warehouse and premises' with an RV

of £75,000 with effect from 1 April 2023. This was based upon an adopted price of £82.50 per m^2.

3. The challenge proposal was submitted by Altus Group on behalf of DD Products And Services Ltd and was received by the Valuation Officer on 16 April 2024. It had been made on the grounds that the RV shown in the rating list on 1 April 2023 was wrong. A revised RV of £65,500, based upon £72.00 per m^2 was proposed with effect from 1 April 2023.

4. The Valuation Officer issued a challenge case decision notice on 22 May 2024, which stated that, based upon the evidence and information available, the rating list entry was reasonable and there would be no change.

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 12 June 2024, in which the appellant's representative sought a revised RV of £68,500 based upon £75.00 per m^2.

6. Mr Plumley 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 on a contingency based fee, and 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.

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 2023 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2021, in accordance with the Rating Lists (Valuation Date) (England) Order 2020. As this was a compiled list appeal, the material day (the date by which physical factors must be taken into account) was 1 April 2023.

Discussion

12. The issue in dispute is the base price per m^2 to be adopted in the valuation of the appeal property.

13. The appeal property is an end of terrace industrial unit built in 2006, comprising warehouse on the ground floor and offices on the ground and first floor. It has the benefit of a lift and ten car parking spaces. The total floor area is agreed at 931.99m^2, or 894.95m^2 in terms of main space. A new lease for a term of eight years had been agreed with effect from 23 June 2021 on a stepped rent basis: the first two years at £75,000 per annum and then £80,000 per annum until the review in the fourth year.

14. Both parties referred to the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case set out the six propositions to have regard to when considering the weighting of evidence and expert opinion. These are:

(i) Where the property which is the subject of consideration is actually let, that rent should be taken as the starting point.

(ii) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements, the more weight should be attached to it.

(iii) 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 appeal property.

(iv) 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.

(v) 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.

(vi) 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.

15. In consideration of an additional rent-free period of three months at the start of the term, the parties agreed an analysis of the subject rent at £81.06 per m^2. Mr Plumley questioned the agreement of the analysis at the hearing, however, the panel noted that the agreement had been confirmed in the challenge submission. The Valuation Officer's reference to a "without prejudice" discussion was disregarded by the panel.

16. Mr Plumley submitted that the adopted tone of £82.50 per m^2 was excessive in view of the analysed rent at £81.06 per m^2. While the subject rent was the starting point, the panel had to consider the basket of rental evidence, and also take into account the point made by the Valuation Officer that the rent had not been agreed according to open market value.

17. The rents on 1 A-C, Freebournes Road, Witham and Elmbeck Transport Logistics Centre, Crittall Road, were considered by Mr Plumley to hold the highest weight after the subject rent, due to being of comparable age and size, and effective close to the AVD. Those rents analysed at £68.54 per m^2 and £64.09 per m^2 respectively. The Valuation Officer submitted that less weight should be attached to Elmbeck Transport Logistics Centre as it was a stepped rent, and highlighted that this was an older property built in 2001, without the benefit of a lift. The panel noted that 1 A-C, Freebournes Road was built a year after the appeal property in 2007, and while the rental analysis was at £68.54 per m^2, it was assessed at a tone of £82.50 per m^2, the same price as the appeal property.

18. The Olympic Building, 26 Crittall Road, Witham, was a further comparable property cited by Mr Plumley. A stepped rent effective from 1 April 2022 analysed at £74.39 per m^2, and the property had been assessed at £77.50 per m^2. As this property was slightly older than the appeal property (built in 2002) and was significantly larger at 2,297.50 m^2, the panel attached little weight to that evidence.

19. The panel turned to the rental evidence presented by the Valuation Officer. Units 2, 4 and 5 Waterside Business Park were built in 1990, and ranged between 762 m^2 and 803 m^2. The effective dates of the rents ranged between October 2020 and March 2022, and analysed between £77.61 per m^2 and £84.43 per m^2. They had been valued at £83.06 per m^2 (Unit 2), £80.00 per m^2 (Unit 4) and £83.09 per m^2 (Unit 5). While it was clear that they were not directly comparable in terms of age, they had been presented by the Valuation Officer to demonstrate that older properties had been valued at around £80 per m^2, and therefore the appeal property should not be valued any lower.

20. 2 Swanbridge Industrial Park, Blackcroft Road and Unit B Croft Way were the same age as the appeal property, however, they were significantly smaller at 236.54m^2 and 283.31 m^2 respectively. A rent effective from 1 March 2020 for 2 Swanbridge Industrial Park analysed at £103.68 per m^2; a rent effective from 1 October 2021 for Unit B Croft Way analysed at £102.06 per m^2. While those properties were comparable in age, they were not directly comparable in size. The relevance of their inclusion by the Valuation Officer was to demonstrate quantum: 2 Swanbridge Industrial Park had been assessed at £105.00 per m^2, and Unit B Croft Way at £95.00 per m^2.

21. It was clear to the panel that there was limited evidence in the locality for properties similar in size and age to the subject property. Mr Plumley contended that the appeal property should

be assessed at £75.00 per m^2, however, this was less than the older 1990 units in Waterside Business Park. The panel also took into account that 1 A-C, Freebourne Road, one of Mr Plumley's comparable properties, was assessed at £82.50 per m^2. The panel concluded that the appellant's representative had failed to demonstrate that the present tone of £82.50 per m^2 was excessive.

Disposal

22. The panel was satisfied that the rateable value of the appeal property was not unreasonable, and therefore the appeal was dismissed.

Date issued to parties: 17 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.
