VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List appeal: Local Government Finance Act 1988; warehouse and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; tone of the rating list; appeal dismissed.

APPEAL NUMBER: CHG101229765

RE: Unit 11, Britannia Industrial Estate, Poyle Road, Colnbrook, Slough SL3 0BH (the "subject property")

BETWEEN:	DG Global Forwarding (UK) Ltd	Appellant
	and	
	(Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 22 January 2025

BEFORE: Mr A P S Crawford, Presiding Senior Member
Mr A Hussain, Senior Member

CLERK: Mrs A Sloan

APPEARANCES: Mr H Seabrook (from Ryan LLC, representing the appellant)
Mr M Ali (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel made no alteration to the existing entry in the rating list.

Introduction

3. The appellant made a proposal on 12 June 2024 to challenge the entry in the 2023 Rating List of £40,250 with effect from 22 May 2024. The proposal sought a reduction to £24,750 as the appellant considered the valuation unreasonable. The Valuation Officer (VO) did not

agree, and a Challenge decision was issued on 22 July 2024 maintaining the existing entry in the rating list. An appeal against that decision was received by the Tribunal on 30 August 2024.

4. Mr Ali stated that he was appearing in a dual role as both Advocate for the respondent and Expert Witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobold LLP v Jackson (VO)* [2018] UKUT 0253 (LC), Mr Seabrook declared that he was also appearing for the appellant as both Advocate and Expert Witness, and he was instructed under a conditional or other success-based fee arrangement. He confirmed that he understood his duty was to the Tribunal, regardless of whether the evidence supported his client's case.

5. The panel accepted Mr Seabrook's 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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). It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

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

Issue and Relevant Law

7. The subject property is valued as a warehouse under a scheme for industrial units in the main estates within Colnbrook and Poyle, built in the 1980s or to a similar standard. The range of values within the scheme covered £110/m^2 to £195/m^2.

8. The issue to be determined by the panel was whether the existing valuation, based on £160/m^2 was unreasonable. The parties had agreed the area measurements but there was a dispute over how to value one area of the hereditament, as a canopy or a loading bay.

9. The material date on which to consider the physical state of the hereditament and its locality was 22 May 2024, when the entry was made in the rating list. The valuation date for the 2023 rating list is 1 April 2021, the antecedent valuation date (AVD). The rateable value (RV) must represent the statutory definition of the annual rent the property might reasonably achieve from year to year, assuming the tenant is responsible for repairs and insurance, with effect from 1 April 2021.

10. Both parties referred to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141, which provided guidance on the weight to be applied to different forms of evidence.

Discussion

11. Mr Seabrook confirmed that the Challenge proposal sought a reduction in the tone to £110/m^2, resulting in a revised RV of £24,750. However, at the hearing, he asked the panel to consider a revised figure of £27,250, based on £120/m^2. Mr Ali contended that the existing valuation, based on £160/m^2 was within the range of the scheme and reasonable for the subject property.

12. In accordance with *Lotus and Delta*, the panel first considered the rent agreed on the subject property. A rent was agreed from 1 May 2023 at £38,780. Mr Seabrook felt this was too far from the AVD to assist with a valuation and placed less weight on it. Mr Ali submitted that the rent was for a five-year term and was stepped from May 2023 to May 2026 at £39,780 increasing to £53,040 between May 2026 and May 2028. The VO had adjusted the rent to £42,225 and analysed it to £167.31/m^2. The panel found this analysis supported the existing valuation, but the rent was some time after the AVD and therefore it must consider the basket of rents available to test the subject rent.

13. The appellant's representative relied on two rents in the same industrial estate as the subject property. Unit 4 is a similar sized unit to the subject property and a rent was agreed on 1 October 2022 at £31,220. The VO had analysed this rent to £121/m^2, and Mr Seabrook's analysis arrived at £117.94/m^2. The property was valued at £160/m^2, the same as the subject property. Mr Ali submitted that the rent on this property needed adjustment as the outside repairs are shared and the assessment has an allowance to reflect the poor construction of the offices. He also highlighted that the rent was a lease renewal, and the ratepayers have been in occupation since 1990. He submitted that the three-month rent-free period was therefore not for fit out. Mr Seabrook contended that this rent was closer to the AVD than the subject property's rent and he felt it demonstrated the tone of £160/m^2 was excessive. The panel noted this example but placed less weight on it, as it appeared the rent was negotiated with a long-established tenant and included an incentive to renew the lease by way of a rent-free period.

14. The appellant's other comparable property was Unit 9, which was around 137m^2 larger than the subject property. It was subject to a new lease from 1 November 2020 at £47,663. The VO analysed this rent to £49,914, resulting in £128/m^2. Mr Seabrook analysed it to £103.55/m^2. The property was valued at £145/m^2. The VO stated this rent included a rent-free period of six months, which the occupier had stated was for repairs and fitout works. Mr Seabrook disagreed with the VO's analysis disregarding three months of the rent-free period and submitted that this rent, agreed around four months before the AVD, demonstrated that the tone at £160/m^2 was unreasonable on the industrial estate. The panel found that the lower price per m^2 applied to this assessment reflected the adjustments required to bring the rent into line with the statutory definition and it was not unusual for a lower unit price to be applied to larger buildings.

15. The VO's evidence included three other units on the same industrial estate, Units 5, 10, and 14. The panel noted that the decision notice under appeal had also made reference to Unit 12. Mr Ali explained that he had re-considered that property as he established the rent was from a Land Tax transaction and the VO had no Form of Return to verify the figures. He had therefore decided not to rely on this example.

16. Mr Ali considered most weight should be placed on Unit 5, which was subject to a new letting from 1 July 2020 at £39,420. The rent required adjustment to reflect the landlord's responsibility for insurance, a five-month rent-free period, and a capital sum paid by the tenant. The parties explained their approaches to the analysis, with the VO reaching £164.41/m^2 and Mr Seabrook arriving at £151.58/m^2. The property was valued at £160/m^2, the same as the subject property. As Unit 5 is only around 26m^2 smaller than the subject property and the rent was agreed on the open market around eight months before the AVD, the panel found this was a useful comparable property.

17. Unit 10 is slightly smaller than Unit 5 and was subject to a new letting from 1 January 2022, nine months after the AVD. The rent was agreed at £45,884 for a five-year term. Again, this required adjustment to reflect the landlord's responsibility for outside repairs and insurance and a four-month rent-free period. The VO analysed this rent to £182.73/m^2, and the property was valued at £160/m^2, the same as the subject property. Mr Seabrook had noted that this transaction was unreliable due to the surrender of the original lease. However, little was made of this at the hearing.

18. Unit 14 had been occupied by the same ratepayer since 2009 and the lease was renewed in September 2022, around 18 months after the AVD, at £45,658. The VO analysed this rent to £167.96/m^2 and Mr Seabrook to £125.52/m^2. The panel understood from the submissions that Mr Seabrook had analysed the rent based on the property measuring 313.40m^2, but Mr Ali submitted the VO recorded the size at 233.7m^2, as agreed with the appellant in the 2017 rating list. The property was valued at £160/m^2. The panel found this property to be comparable in size to the subject property but placed less weight on the rent as it was agreed further from the AVD than Units 5 and 10, and was negotiated with an established tenant, rather than an open market new letting.

19. After considering the basket of rental evidence available, the panel found the most useful evidence to be the rent agreed on Unit 5. Mr Ali had submitted that all of his examples are in the same location and are comparable in age, construction, and size to the subject property and others had not appealed the tone. Unit 5 provided a new letting agreed shortly before the AVD which supported the tone at £160/m^2. Mr Seabrook had questioned the reliability of the rent on Unit 10 due to the turnover of occupiers. However, the panel found that the two rents relied upon by Mr Seabrook were less useful than the VO's examples. The rent on Unit 9 was also agreed close to the AVD but it was on a larger property, and this was reflected in the unit price. Unit 4 was a lease renewal and therefore, as with Unit 14, the panel placed less weight on negotiations with established tenants than new lettings. On balance, the panel was not persuaded that £160/m^2 was unreasonable for the subject property, considering the same unit price was applied to others in the location and supported by new rents from around the AVD.

20. The secondary issue raised by Mr Seabrook concerned the area of the subject property that the VO classed as a loading bay. From the photographs provided, the panel noted this was a covered area with a recessed doorway and roller shutter, where forklift trucks were loading goods into a parked van. Mr Seabrook contended this should be valued as a canopy, rather than a loading bay. He submitted that a canopy would be valued at a lower relativity of the unit price, whereas the VO had applied 100% of the unit price to the loading bay area. Mr Ali contended that the existing valuation had not included the full unit price for the loading bay and a reduction had been made. In his opinion, Mr Ali submitted that a canopy would be a demountable structure, whereas this area of the subject property was part of the building and was described in the marketing details as an open fronted loading bay. He had inspected the subject property and felt that a loading bay was an accurate description.

21. In support of his case, Mr Seabrook referred the panel to photographs of Unit 10 at 1000 North Circular Road, London NW2 7JP. This showed an apparently similar loading area to the front of the hereditament. Mr Seabrook submitted that this property had been agreed, at Check stage, as a canopy and valued accordingly. Mr Ali responded that this assessment had been agreed in the 2017 rating list as a loading bay with Mr Seabrook's firm. Mr Ali submitted that Unit 10 at 1000 North Circular Road had been through the Check, Challenge, Appeal process in the 2017 list and been confirmed as a loading bay. However, he stated that the same property has not gone through the appeal process for the 2023 list and

therefore the loading bay/canopy issue had not been discussed with a valuer. He submitted that a 5% reduction to the main space price was given at the London property, and this has been mirrored for the loading bay at the subject property in this appeal.

22. After hearing from both parties, the panel was not persuaded that the existing valuation was unreasonable. The VO had reduced the main space price to reflect the loading bay, and the panel understood there was no other unit in the Brittania Industrial Estate where similar loading bays had been valued as canopies. The example relied upon by Mr Seabrook was not in the same location, or even in Slough, but in London and the panel was not satisfied that the 2023 valuation of that property had been scrutinized under the appeals process. It therefore concluded that the area in question was a loading bay and was correctly valued as such.

23. The persuasive or legal burden of proof rests with the appellant's representative in this type of appeal. Having considered all available evidence from the parties, the panel was not persuaded there was compelling evidence to demonstrate the existing entry in the rating list was unreasonable.

Disposal

24. In view of the above findings and conclusions, the panel confirmed the entry in the list at £40,250 from 22 May 2024 and dismissed the appeal.

Date issued to parties: 4 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.
