THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; workshop and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: Units 3-5 Monarch House, Belgrave Industrial Estate, Honeywell Lane, Oldham, OL8 2LY

APPEAL NUMBER:	CHG100082070
BETWEEN:	Linda Lewis Kitchens Ltd — Appellant
	and
	Mr R Roberts, Valuation Officer — Respondent
PANEL:	Mr C P Stott (Senior Member), Mr M Mistry
CLERK:	Mrs L Horne
REMOTE HEARING ON:	Tuesday 1 December 2020
APPEARANCES:	Ms E Saunders from Altus Group, representing the appellant
	Mr S Hargreaves representing the Valuation Officer

Summary of decision

1 Appeal allowed in part. The Rateable Value (RV) of the appeal property is altered from £39,750 to £35,750 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Units 3-5 Monarch House, Belgrave Industrial Estate, Honeywell Lane, Oldham, OL8 2LY, (the 'appeal property') had been entered in the 2017 rating list as 'workshop and premises' at a RV of £48,250 with effect from 1 April 2017.

3 The challenge proposal was submitted by Altus Group on behalf of Linda Lewis Kitchens Ltd and was received by the Valuation Officer on 19 March 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £28,750 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 7 May 2020, which stated that based upon the evidence and information available, the rating list entry of £48,250 RV was considered to be not reasonable and there would be an amendment to £39,750 RV with effect from 1 April 2017.

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 28 August 2020.

6 The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

7 Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

8 Ms Saunders 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), her declaration of truth included a statement that she was instructed on a contingency fee basis. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's case.

9 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.

10 The appeal property is of steel portal frame construction, built in 1979. It has a total area of 1,421.44 m^2 and comprises workshop and office on the ground floor, mezzanine store and office on the first floor.

11 The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

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

Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice, rental evidence summaries; appellant's challenge submission. Photographs and location plans of the appeal property and comparable assessments had also been provided by Ms Saunders.

14 On behalf of the appellant, Ms Saunders contended that the Valuation Officer's adopted tone of £30.50 per m^2 was excessive when compared to comparable assessments in the locality.

15 There had been a recent agreement in respect of a neighbouring property, Unit 6 Monarch House, which had been identified as an older property and moved to valuation scheme reference 350666 to reflect that the property was built in 1979. This was the reason why the Valuation Officer had altered the RV of the appeal property, as it was the same age, and therefore moved to the same valuation scheme.

16 Ms Saunders contended that the best available evidence was the subject property rent, and she requested a revised RV of £28,750 based upon her adopted price of £22 per m^2.

17 On behalf of the Valuation Officer, Mr Hargreaves referred to rental evidence which he contended supported the adopted unadjusted price of £30.50 per m^2. He submitted that the rental evidence produced by Ms Saunders had not been of sufficient weight to justify a reduction in RV.

18 He therefore asked the panel to confirm the RV of £39,750 with effect from 1 April 2017.

Decision and reasons

19 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, 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—
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> (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.

20 In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April, 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

21 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 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

22 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which 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.

23 In the subject appeal, a new lease had been agreed for a term of six years with effect from 9 September 2016 on a stepped rent basis:

Year 1 - £30,000 per annum
Year 2 - £31,500 per annum
Year 3 - £33,070 per annum

24 It was agreed by the parties that the rent devalued to £22 per m^2. As outlined in above, the starting point is the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements need to be taken into account when deciding the weight to attach to it. The subject rent was agreed one year and five months after the AVD, and was a stepped rent which required further analysis. As such, the panel held that while it carried some weight, it should not be considered in isolation. The panel therefore turned to the available rental and comparable assessment evidence.

25 In support of her adopted price of £22 per m^2, Ms Saunders presented the following:

Unit 2 Coin Street, Royton, Oldham, OL2 6EE.

This was comparable in size to the appeal property at 1,298.18 m^2 in terms of main space (ITMS), but a more modern property built in 1986. The stepped rent effective from 20 November 2015 analysed at £26.50 per m^2. The Valuation Officer had adopted a price of £36.00 per m^2.

Unit 2/1 West Point Industrial Estate, Oldham, OL9 9ND

Similar in size to the appeal property at 1,320.16 m^2 ITMS, but a more modern property built in the 1980s. There was a new lease effective from June 2014 at a rent of £40,000 per annum which analysed at £30.29 per m^2. The property was valued at £37 per m^2.

Tudor Works, Portland Street South, Ashton-under-Lyne, OL7 0PR

This was comparable in size to the appeal property at 1,247 m^2 ITMS, and also a 1970s building. The rent of £30,000 per annum effective from September 2016 analysed at £24.05 per m^2. While there was a possibility that the rent was between connected parties, it was Ms Saunders' understanding that it was an open market rent, and therefore still carried weight. The property was valued at £33 per m^2.

DIY 2 GO Ltd, Palatine Street, Denton, Manchester, M34 3LY

This was smaller than the appeal property at 929.25 m^2 ITMS, but comparable in age, built in 1970. The rent of £25,200 per annum effective from December 2014 analysed at £27.11 per m^2. The property was valued at £30 per m^2

26 Mr Hargreaves submitted that Ms Saunders' evidence was derived from properties a considerable distance away from the appeal property, and in the case of Tudor Works, this was a rent between connected parties which

carried little weight. In support of the present unadjusted price of £30.50 per m^2, Mr Hargreaves presented the following:

Unit 6 Monarch House, Belgrave Industrial Estate, Honeywell Lane, Oldham, OL8 2LY

This was the neighbouring property to the subject, a smaller unit of 443.46 m^2 ITMS, but comparable in age. The rent of £14,283 per annum effective from 1 August 2015 analysed at £32.21 per m^2. It had been valued at an unadjusted price of £33.50 per m^2, which supported an element of quantum.

N P Holdings Ltd, Hill Street, Oldham, OL4 2AG

A considerably larger property of 3,279.76 m^2 ITMS built in 1972. The rent of £81,250 per annum effective from 18 February 2014 analysed at £24.38 per m^2. The form of return (FOR) confirmed that this was an arm's length transaction at open market value.

Units A1 and A2 Pandora Business Park, Greengate, Chadderton, Oldham, M24 1RU

A property of 1,675.4 m^2 ITMS built in 1975. The rent of £65,432 per annum effective from 31 July 2013 analysed at £40.99 per m^2. This was at open market value according to the FOR. The property was valued at a price of £29 per m^2.

Unit I, 100 Shaw Road, Oldham OL1 4AY

A smaller property of 781.09 m^2 ITMS built in 1975. The rent of £24,000 per annum effective from 1 July 2014 analysed at £27.73 m^2. The property had been valued at £31 per m^2. Mr Hargreaves commented that this comparable was supportive of the appellant's case.

R Tindall Fabrications Ltd, Hargreaves Street, Oldham, OL9 9ND

A property of 1,599 m^2 ITMS built in 1979. The rent of £65,000 per annum effective from 22 November 2014 analysed at £45.49 per m^2. The property was valued at a price of £30 per m^2.

Unit 2/1 West Point Industrial Estate, Oldham, OL9 9ND

Also referred to by Ms Saunders, the Valuation Officer's analysis of the rent was higher at £33.43 per m^2.

Unit 1, Westpoint Industrial Estate, Oldham, OL9 9ND

A property of 513.18 m^2 ITMS, built in 1977. The rent of £65,000 per annum analysed at £109.56 per m^2. Although this appeared high, Mr Hargreaves found no reason to disregard it.

27 In summary, Mr Hargreaves stated that there was quite a lot of evidence which supported a lower value and also evidence that at £30.50 per m^2, the valuation had been pitched correctly. Ultimately he was not convinced that there was strong enough evidence to support a reduction.

28 Ms Saunders made the following comments regarding the Valuation Officer's comparable evidence:

- Unit 6 Monarch House – good evidence for the estate, but the unit is a third of the size of the subject, so not as useful as some of the other available comparable properties.
- N P Holdings Ltd – this transaction was a renewal rather than a new letting. It appears to support a tone for larger industrial units, but it is much larger than the subject.
- Units A1 and A2 Pandora Business Park – the tenant occupies a large industrial property on a neighbouring site, so there may be a level of marriage value, as indicated by the high analysed rent.
- Unit I, 100 Shaw Road – over 500 m^2 smaller than the subject, so an adjustment for quantum is required.
- R Tindall Fabrications Ltd, Hargreaves Street and Unit 1 Westpoint Industrial Estate – both properties were occupied by R Tindall Fabrications Ltd, and the same rent of £65,000 and effective date of 22 November 2014 have been provided. This indicated that the FOR in respect of Unit 1 Westpoint had been completed incorrectly, as evidenced by the analysis at £109.56 per m^2.

29 For the reasons outlined by Ms Saunders, the panel was not persuaded that the Valuation Officer's rental comparables supported his adopted price of £30.50 per m^2.

30 Ms Saunders had contended that the best evidence was the subject rent, and had therefore adopted a price of £22 per m^2. While the panel was not convinced that £30.50 per m^2 was correct, £22 per m^2 appeared low when viewed alongside the analysis of Ms Saunders' comparables at £26.50, £24.05 and £27.11 per m^2.

31 The panel also found that £22 per m^2 was at the bottom end of the range of values in valuation scheme reference 350666; prices ranged from £21 to £50 per m^2 for properties built between 1970 and 1979.

32 The panel noted that N P Holdings Ltd, a property more than twice the size of the appeal property was valued at £25 per m^2, and the rent effective from 18 February 2014 had analysed at £24.38 per m^2. This was a property

comparable in age, and valued according to the same scheme as the appeal property. In consideration of quantum, the panel decided that the price adopted for the appeal property should be in excess of £25 per m^2.

33 Mr Hargreaves had submitted that quantum had been reflected in the £30.50 per m^2 applied to the appeal property, when viewed alongside Unit 6 Monarch House, the neighbouring property valued at £33.50 per m^2. However, as this was a property a third of the size of the subject, the panel considered that quantum had not been sufficiently reflected.

34 Taking into account all of the rental evidence, the panel decided that a price of £27.50 per m^2 was fair and reasonable, and therefore a revised valuation of £35,750 was determined as follows:

Floor	**Description**	**Area m^2/unit**	**Factor**	**Price per m^2/unit**	**Value**
Ground	Workshop	877.6	1.0	27.50	24,134
Ground	Area under supported floor	186.66	0.7	19.25	3,593
Mezzanine	Store	186.66	0.5	13.75	2,567
Ground	Office	85.26	1.2	33.00	2,814
First	Office	85.26	1.2	33.00	2,814
			Total		35,922

Rounded down to £35,750 RV

35 The appeal is allowed in part, and the appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

36 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £35,750 with effect from 1 April 2017.

Date: 18 December 2020

Appeal Number: CHG100082070