THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; Accuracy of Compiled List RV in 2017 Rating List; Workshop and Premises; Warehouse and Premises; comparable properties. Appeals dismissed.

Re: (1) West Side 20 Fitzherbert Road, Portsmouth PO6 1SD

(2) Marshlands Road, Portsmouth PO6 1RX

APPEAL NUMBERS: (1) CHG100084619

(2) CHG100084571

BETWEEN:	(1)	Ahmarra Door Solutions	Appellants
	(2)	DTW Ceramics UK Ltd	
		and	
		Valuation Officer	Respondent

PANEL: Ms L Sharkey (Senior Member)

Mr R White

CLERK: Mechile Hempton

REMOTE HEARING on 16 February 2020

APPEARANCES: Mr O Hamblin of Altus group represented the appellants as Advocate and Expert Witness

The Respondent VO was represented by Mr T Hackett as Advocate

Summary of decision

1. Ahmarra Door Solutions, West Side 20 Fitzherbert Road, Portsmouth PO6 1SD. The appeal was dismissed and the assessment was confirmed at £85,000 rateable value (RV) with effect from 1 April 2017.

2. DTW Ceramics UK Ltd, Marshlands Road, Portsmouth PO6 1RX. The appeal was dismissed and the assessment was confirmed at £54,000 RV with effect from 1 April 2017.

Introduction

3. These are both 2017 Rating List compiled list appeals so the material day is 1 April 2017. The appeals were made following the Valuation Officer's (VO) Challenge Decision Notices issued on 6 July 2020 and 20 July 2020.

4. The panel was informed by Mr Hamblin that the appeal properties are 1950s buildings that sit on the south side of Fitzherbert Road, five miles north of Portsmouth. He had inspected and measured both. Ahmarra Doors's tenure was on a passing rent of £90,000 from July 2008, an open ended agreement without rent reviews. DTW Ceramics held their building freehold.

5. Mr Hamblin 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), Mr Hamblin's declaration of truth included a statement that he was instructed under a contingency based fee arrangement and he understood 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 his clients' cases.

6. 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).

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

8. 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.

9. 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.

10. It was agreed by the parties that they wished to consolidate the hearing of the appeals. A corrected Form of Return (FOR) for the comparable property Units 1-8 Dragon Estate on the Fitzherbert Road industrial estate was entered into evidence together with Mr Hamblin’s rebuttal for each appeal by agreement of the parties.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary Issue

12. Mr Hackett provided evidence of two appeals from the Fitzherbert Road industrial site which had been withdrawn by Mr Hamblin. He had received them on 15 February 2021 which was why he had not been able to raise the matter earlier. After some discussion Mr Hamblin agreed to the withdrawal information being admitted as evidence as they had been referenced in his original challenge submissions and he had been the representative for them.

13. The panel accepted the withdrawal evidence as the parties had agreed to its inclusion. The hearing proceeded.

Issue

14. The issue before the panel was to determine the correct unadjusted main space rate to be applied to the subject property assessments.

Evidence and submissions

15. Mr Hamblin explained that the majority of the larger units in the valuation scheme 312735 were held freehold. His best piece of rental evidence and the one on which he placed most weight was for Units 1-8 Dragon Estate, Fitzherbert Road, an open market letting in November 2016 which analysed to £39.37 per m^2. Both appeal properties were valued at main space of £45 per m^2 and it was his contention that they should be valued at £40 per m^2 in line with his comparable property.

16. He could not place weight on the rent for West Side 20 Fitzherbert Road as it dated from seven years before the antecedent valuation date (AVD) and he had an email from his client stating that no lease existed – the VO had accepted that this was an unreliable piece of evidence in their Decision Notice. Equally, the VO had accepted that their rental evidence for East Side 20 Fitzherbert Road was between connected parties and had retracted this evidence.

17. His assessment of the VO's comparable property C3 Oak Park Industrial Estate, which had been specifically cited in the Ahmarra Doors appeal, was that it was in a different valuation scheme for industrial properties built before 1970, and in a different locality. This scheme's value range of £45 to £80 per m^2 was greater than the scheme range for the appeal properties as the units were built later and one would expect them to be of a superior construction, hence able to command a higher value. He had obtained a copy of the lease for C3 Oak Park Industrial Estate and the lease showed that it had been rented to Redlake Power Ltd and since converted to use as an Electricity Substation; the grant of the change of use would be reflected in the rent and therefore this comparable property was not reliable.

18. He asked the panel to confirm a revised RV £75,500 with effect from 1 April 2017 for the Ahmarra Doors appeal and a revised RV £48,000 with effect from 1 April 2017 for the DTW Ceramics appeal, based on a main price of £40 per m^2.

19. Mr Hackett said that Mr Hamblin was relying on one piece of rental evidence on Units 1-8 Dragon Estate but this property was approximately 119% larger than the DTW Ceramics property and 43% larger than the Ahmarra Doors property. Sterling Beds in Fitzherbert Road, in the same scheme as the appeal properties, was a pre 1970s industrial unit with an unadjusted main price of £50.20 per m^2 and a total area of 1055 m^2. It was smaller than DTW Ceramics by 237 m^2 and 919 m^2 smaller than Ahmarra Doors, which for comparison purposes made the main price of £45 per m^2 on the two appeal properties not unreasonable and more reliable as evidence than Units 1-8 Dragon Estate, which was twice the size of the Sterling Beds assessment. He took the fact that no appeal had been made on the Sterling Beds assessment was an acceptance of its value.

20. The VO also referred to the recent withdrawal notice for Executive Windows, a factory and premises on the Fitzherbert Road industrial development of 608 m^2 and with an unadjusted main price of £55 per m^2 and the withdrawal notice received for Coastline Building Products, a workshop and premises on Fitzherbert Road, 799 m^2 and with an unadjusted rate of £53 per m^2; the withdrawal of these two appeals by the representative were, in Mr Hackett's opinion, acceptance of their value. Sterling Beds, Executive Windows and Coastline Building Products were all closer in size to the appeal properties than Units 1-8 Dragon Estate, and as such, their main price above £50 per m^2 made for more compelling evidence that the appeal properties were valued correctly.

Decision and reasons

21. The panel found that there was an absence of rental evidence close to the antecedent valuation date on which to examine whether the current main price of £45 per m^2 applied to the appeal properties was reasonable. DTW Ceramics was held on a freehold basis and Ahmarra Doors was held on an agreement that both parties acknowledged was unreliable for evidential purposes.

22. The VO's rental evidence for East Side, 20 Fitzherbert Road was retracted as it was between connected parties and therefore not good evidence; the lease for C3 Oak Park Industrial Park was in a different valuation scheme from all the other rental evidence and contained permissions for change of category of use from factory and premises to which the leaseholder duly availed itself by converting the building into an electricity substation. Therefore, the panel agreed with Mr Hamblin that this rental evidence was not useful in that it was in a different valuation scheme with different parameters set on age and value.

23. The panel was presented with information for appeals on smaller properties in the same scheme as the appeal properties, with a main price above £50 per m^2, which either were not pursued or withdrawn from the appeal process; this information was not in itself decisive but did provide guidance that the existing price per m^2 for the appeal properties was not excessive.

24. Mr Hamblin had one piece of rental evidence for a much larger warehouse, Units 1-8 Dragon Estate, which the panel considered dated too far from the AVD to be of service in supporting the case that the representative made. At nineteen months post AVD, its reliability as sound rental evidence was compromised. Further, this rental evidence devalued to £45 per m^2 less a 5% allowance for being a multiple unit which gave an adjusted figure of £40 per m^2 main price. The appeal properties were single units. Therefore, the panel was not persuaded that the rental evidence for Units 1-8 Dragon Estate assisted them as the rental analysis included an allowance for an inherent disability that was not present in the appeal properties.

25. Ultimately, the onus of proof rests with the appellants' representative and the panel's conclusion was that there was insufficient evidence presented to alter the existing £45 per m^2 applied to the main price of the appeal properties. The appeals were dismissed.

Date: 23 February 2021

Appeal numbers: (1) CHG100084619

(2) CHG100084571