THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; compiled list entry; reasonableness of the rateable value; factory; price per square metre disputed; whether there should be an end allowance for the presence of Japanese Knotweed; appeal allowed in part.

RE: Greencore Group PLC, Amsterdam Road, Hull HU7 0XS

APPEAL NUMBER: CHG100088380

BETWEEN:	BBF Hull Ltd	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent

PANEL:	Mr A N Backway (Chairman) Mrs M J Cole
CLERK:	Mr D Mulgrew
HEARING:	Remote hearing No.4 on 16 April 2021
APPEARANCES:	Mr C Webster (Altus Group) (Appellant's representative) Mr M Williams (Respondent's representative)

Summary of decision

1. Appeal allowed in part. The rateable value was reduced to £595,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of Greencore Group PLC, Amsterdam Road, Hull (the "appeal property"), which was entered in the 2017 rating list as 'factory and premises' at rateable value £620,000, effective from 1 April 2017.

3. The appellant had made a proposal to the Valuation Officer on the grounds that the entry shown in the rating list on 1 April 2017 was wrong and that it should be reduced to rateable value £550,000. However, no alteration was made to the rating list by the Valuation Officer.

4. In accordance with regulations[1], an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

5. The President of the 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 relevant legislation[2]. The VTE may determine the form of any hearing.

6. Therefore, in pursuance of the relevant regulation[3] 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.

7. 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 item of evidence, should not be construed as it having been overlooked.

Issues

8. The dispute concerned the rateable value of the appeal property. It had been assessed by the Valuation Officer at £23/m^2, but the appellant sought a reduction to £21.50/m^2. Additionally, the appellant sought an end allowance of 5% because of the presence of Japanese Knotweed.

Evidence and submissions

9. The appeal to this Tribunal included correspondence between both parties and the evidence which they had exchanged. Amongst other things it included:

    - The challenge proposal containing valuations, photographs, comparable assessments, and legal arguments.

[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.
[2] 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).
[3] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

- The Court of Appeal's decision in *Network Rail Infrastructure Ltd v Williams and Waistell* [2018] EWCA Civ 1514.

- The Royal Institution of Chartered Surveyors' (RICS) information paper, Japanese Knotweed and residential property.

- The Valuation Officer's initial response to the challenge which included rental and comparable assessment evidence.

- The challenge decision from the Valuation Officer which expanded on the initial response and provided further evidence exchanges, and the statutory definition of rateable value.

- An expert witness report on behalf of the appellant providing more detail on the arguments and comparable evidence, including summaries of case law, plans and further photographs.

10. Mr Webster had made the appeal because the Valuation Officer had not altered the assessment in the way requested through his challenge submission and later dialogue. He believed the decision of the Valuation Officer paid no regard to the requirement to maintain and manage the Knotweed to a degree that mitigated its potential risk to the actual hereditament.

11. Both parties' representatives appeared in a dual role of advocate and expert witness.

12. Mr Webster, when appearing as expert witness, has stated that he is on a contingency fee basis. However, he also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

13. The panel has accepted this 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).

14. 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.

Decision and reasons

15. The term "rateable value" is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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".

16. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

17. The appeal property is a food factory on an estate with other industrial properties. It was built in 2000 and extended in 2004. It had a total area of 25,122m^2 over ground, first and second floors, with some smaller mezzanine storage facilities. As its use was in food production, some areas were uplifted in value for chilled and cold-store space.

18. Mr Webster's first argument concerned his proposed end allowance for Japanese Knotweed, an invasive species which is fast growing, and which causes damage to property. When Knotweed is removed it becomes controlled waste and incurs costs associated with statutory obligations. Mr Webster's argument was that an end allowance was warranted. In explaining his rationale, he gave the example of two properties. He said that if only one suffered from Knotweed, then the hypothetical tenant would take the one without this problem. If the property suffering from Knotweed was taken, the hypothetical tenant would want an allowance for it. In his opinion, they would not have the same value.

19. Mr Webster said Knotweed was a natural hazard and caused a diminution of value. He argued that as the Valuation Office Agency made allowances for properties of poor quality, subsistence, or natural hazards, like flooding, then an allowance should be made for the presence of Knotweed. He believed Knotweed was a natural hazard because it needs to be continually controlled and monitored, since it grew underneath properties damaging foundations

and walls. He stated it was an ongoing management problem to control the infestation.

20. In the Court of Appeal's decision in *Network Rail Infrastructure Ltd v Williams and Waistell* [2018], at paragraph 32, it was stated that the continuing nuisance for Knotweed reduced market value. At paragraph 55 it was described as a natural hazard. Paragraph 76 stated that there was diminution in market value reflecting the ongoing possibility of a future return of the Knotweed, even after appropriate treatment.

21. Mr Webster also highlighted key parts of the RICS information paper, Japanese Knotweed and residential property. He stated that Knotweed had not been considered before and he had gone for a 5% allowance believing this was reasonable.

22. However, Mr Williams argued that the RICS information paper stated at paragraph 4.7.3 that, in some circumstances, Knotweed may have no adverse affect on value. He had personally viewed the property and noted that Knotweed was spreading along the boundary fence. He stated that it was 90 metres from the building. In his view, no allowance was warranted because under the Wildlife and Countryside Act 1981 it was a freeholder responsibility. As rateable value concerned the rental value, it was his opinion that a landlord would not take a reduced rent knowing that he would have the additional costs of controlling the Knotweed.

23. Referring to the Upper Tribunal's decision in *Thomas and Davies (Merthyr Tydfil) Ltd v Denly (VO)* [2013] RA40, he argued it was accepted that 5.64 multiplied by the rateable value is a reasonable amount to establish uneconomic repair. In view of this Mr Williams considered the Knotweed issue at the appeal property reasonable to repair. He considered it had no impact on rental or rateable value.

24. The panel accepted Mr Williams' argument that it was a landowner responsibility. Therefore, as the hypothetical tenant would know the landlord was obliged to control the Knotweed, the panel was not persuaded that any end allowance was warranted.

25. Mr Webster's second argument concerned the base price of £23/m^2 adopted by the Valuation Officer; he considered it to be too high. In reaching that conclusion, he had had regard to the 2010 rating list value (£22/m^2) and that other industrial units on the same estate had either stayed the same in the 2017 rating list or had slightly reduced. He also noted that other food factories in the area had been reduced by 10%.

26. During the hearing, Mr Williams stated he had some sympathy with the fact that the appeal property's rateable value was the only one on this estate and the neighbouring estate that had increased between the 2010 and 2017 rating lists. He was also mindful that the rental evidence he had provided ranged from £15.17/m^2 to £25.38/m^2. In giving his expert opinion, he stated it would

be appropriate to reduce the assessment of the appeal property back to £22/m^2.

27. On the estate on which the appeal property was located, the panel noted the values of two properties were showing parity (no fall or increase between the two rating lists) and two others had had small reductions between lists. However, the panel was mindful that the starting point for any 2017 rating list entry must be evidence which relates to the AVD, rather than from the previous rating list, as this was sourced from an entirely different pool of rental information. The rents passing were considered afresh at a revaluation when the Valuation Officer sought to establish a tone of values. The whole point of a revaluation was to re-assess the demands of the hypothetical tenant, and movements in the market leading to changes in rents.

28. Nonetheless, the panel was satisfied that the appeal should be allowed in part, with the basic price per square metre being reduced to £22/m^2. This was because there was no rental evidence provided to support any increase, or reduction. Additionally, there was insufficient evidence to support any value of £21.50/m^2.

29. The panel's decision resulted in the following revised valuation:

Floor	**Use**	**sqm**	**£/sqm**	**£**	**ITMS% factor**
Ground	Reception	144	26.40	3,802	1.2
	Ancillary Office	312.9	24.20	7,572	1.1
	Offices	377.16	26.40	9,957	1.2
	Workshop	301.5	25.41	7,661	1.155
	Plant Room	29.35	21.45	630	0.975
	Warehouse	1409.6	22.00	31,011	1
	Works Office	25.2	21.45	541	97.5
	Chill Store	77.8	24.67	1,919	1.1213
	Chill Store	420.4	24.67	10,371	1.1213
	Internal Storage	426.2	22.52	9,598	1.0238
	Production area	3298.6	25.30	83,455	1.15
	Ancillary office	9.6	23.60	227	1.0725
	Workshop	8.9	21.45	191	0.975
	Internal Storage	16.3	22.52	367	1.0238
	Ancilllary Office	17.8	23.60	420	1.0725
	Internal Storage	215.1	22.52	4,844	1.0238
	Production area	943.7	25.30	23,876	1.15
	Chill Store	17.5	24.67	432	1.1213
	Production area	204.9	22.52	4,614	1.0238
	Production area	227.4	23.10	5,253	1.05
	Chill Store	127.7	24.67	3,150	1.1213
	Internal Storage	39.5	22.52	890	1.0238
	Production area	359.9	24.67	8,879	1.1213
	Ancillary Office	27.3	23.60	644	1.0725
	Chill Store	183.5	24.67	4,527	1.1213

	Internal Storage	84.9	21.40	1,817	0.9726
	Area under supported floor	56.7	15.02	852	0.6825
	Production area	137.4	24.67	3,390	1.1213
	Workshop	24.1	24.67	595	1.1213
	Chill Store	182.5	24.67	4,502	1.1213
	Internal Storage	1195.7	24.67	29,498	1.1213
	Production area	3105.3	25.30	78,564	1.15
	Workshop	69	22.52	1,554	1.0238
	Internal Storage	48.2	22.52	1,085	1.0238
	Internal Storage	519.1	21.45	11,135	0.975
	Plant Room	257.2	21.45	5,517	0.975
	Workshop	202.1	21.45	4,335	0.975
	Works Office	25.3	21.45	543	0.975
M1	Internal Storage	56.7	10.73	608	0.4875
Ground	Production area	42.8	22.52	964	1.0238
	Internal Storage	19.7	21.45	423	0.975
	Laboratory	27.1	24.20	656	1.1
	Internal Storage	1268.5	21.45	27,209	0.975
	Chill Store	319.5	24.67	7,882	1.1213
	Cold Store	45.3	26.81	1,214	1.2188
	Production area	184	24.67	4,539	1.1213
	Internal Storage	845.1	21.45	18,127	0.975
	Ancillary Office	76.3	24.20	1,846	0.975
	Internal Storage	58.81	22.00	1,294	1
	Internal Storage	45.6	22.00	1,003	1
	Internal Storage	507.9	21.45	10,894	0.975
First	Offices	1102.46	26.40	29,105	1.2
	Chill Store	71.3	16.03	1,143	0.7288
	Internal Storage	313.5	13.94	4,370	0.6338
M1	Ancillary Office	115.13	22.00	2,533	1
Second	Canteen	973.35	24.20	23,555	1.1
	Ancillary Office	858.16	24.20	20,767	1.1
	Plant Room	66.4	8.58	570	0.39
	Ancillary Office	63.4	24.20	1,534	1.1
	Locker Rooms	1434.16	24.20	34,707	1.1
	Plant Room	531.9	8.58	4,564	0.39
Ground	Bin Store	26	15.68	408	0.7125
	Smokers area	43.3	15.68	679	0.7125
	Security Office	15	24.20	363	1.1
	Production area	604.1	24.67	14,903	1.1213
	Canopy	278.1	3.06	851	0.1389
Total Buildings				584,928	
P&M				12,567	

Total inc P&M				597,495	
End Total				**597,495**	
Rateable Value		**£595,000**			

30. The appeal was therefore allowed in part.

Order

31. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £595,000 with effect from 1 April 2017.

32. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fee

33. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date: 28 April 2021

Appeal number: CHG100088380