THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; warehouse and premises; end allowance; merged units; dividing walls provided narrow internal access; appeal dismissed the evidence showed that the existing valuation was reasonable.

Re: Units 18-20 Uplands Trading Estate, Blackhorse Lane, London E17 5QJ

APPEAL NO: CHG100089774

BETWEEN:	Sechelle Manufacturing Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

BEFORE: Miss L Moses (Senior Member) and Miss R Punia

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING 1: Friday 11 June 2021

APPEARANCES: Mr A Sparsi of Altus Group (on behalf of the Appellant)
Mrs M Pathmanathan (Respondent's representative)

Summary of decision

1. The appeal was dismissed; the appeal property's assessment remained unaltered at £81,500 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Units 18-20 Uplands Trading Estate, Blackhorse Lane, London E17 5QJ, which was entered in the 2017 Rating List as warehouse and premises at £81,500 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 15 April 2019. The appeal to this Tribunal was made on 11 March 2021, following the VO's Decision Notice of 2 December 2020, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The appeal hereditament was located on Uplands Business Park, which was a well-established industrial estate located to the east of Blackhorse Lane. Blackhorse Lane led directly to Forest Road/Ferry Lane to the south and North Circular Road via Billet Road to the north. North Circular Road led directly to the national motorway network and Forest Road was one of the main routes to the City and West End, which was approximately seven miles to the south-west. The appeal property was directly accessed from Blackhorse Lane.

5. Units 18-19 Uplands Trading Estate and 1st floor 20 Uplands Trading Estate were merged and are known as Units 18-20 Uplands Trading Estate (the appeal property), with effect from 1 April 2017. The appeal property had a total area of 1,329 m^2. Prior to the merger, Units 18-19 had a 5% allowance to reflect the split nature of the premises; however, there was internal connection between the two units. When the assessment was merged the 5% allowance was removed.

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. Mr Sparsi was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

9. Mr Sparsi explained that Altus Group was representing the appellant in this appeal on a contingency fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

10. The panel have 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 Procedure regulations 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). The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

11. A preliminary issue was raised. On 3 June 2021, Mrs Pathmanathan had forwarded the Tribunal office additional internal and external photographs of the appeal property. Mr Sparsi stated that he had no objection to the inclusion of the additional photographs. As no objections were raised, the panel proceeded to hear the appeal having regard to all of the evidence presented.

12. 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 when 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.

Issue

13. Was a 7.5% end allowance warranted to reflect the divided nature of the premises?

Evidence and submissions

14. In a statement which accompanied the Challenge, together with his oral presentation at the hearing, Mr Sparsi gave several reasons as to why he believed that the 2017 assessment was incorrect and excessive, which included:

    i) The appeal property's assessment was not in line with the assessments placed on comparable properties in the locality, taking into account the differences in the physical attributes between the properties.

    ii) Before the merger, the assessment of Units 18-19 benefitted from a 5% allowance to reflect its divided/split nature due to the presence of a dividing wall between the two units. Since the assessment was merged, the 5% allowance had been incorrectly removed. Initially Mr Sparsi contended that the original 5% should be reinstated, plus an additional 5% as there were now two dividing walls (totalling a 10% allowance). However, he subsequently revised his proposed valuation and sought a 7.5% end allowance.

    iii) Mr Sparsi had personally inspected the appeal property and saw that the internal access was inadequate, and an allowance was warranted; the VO had not inspected the appeal property and was solely relying on photographs.

    iv) In support of his application for an end allowance, Mr Sparsi referred to a schedule of comparable property evidence. Some of those comparable properties were mergers of multiple units that had internal access; allowances had still been granted to those units. Accordingly, he contended that the same allowance should be applied to the appeal property's assessment.

    v) To conclude, Mr Sparsi sought a 7.5% end allowance for the divided/split nature of the appeal property, which resulted in an assessment of £75,500 RV, with effect from 1 April 2017.

15. In the VO's Challenge case decision notice and in oral presentation at the hearing, it was also explained that:

    i) After having regard to the photographs provided by the appellant's representative, the VO considered that the access between the units was sufficient and did not warrant an allowance.

    ii) The VO had erroneously applied an allowance to the historic assessment which had been removed at the Check stage.

iii) Allowances to reflect double units were generally only applied if there was severely restricted internal access between the units, or if it could be proved that there was a detrimental impact on the property's rental value.

iv) Location was considered to be an important factor, hence the VO had relied on comparable properties consisting of multiple units which were situated within the same postal area as the appeal property.

v) It appeared the appellant had made alterations to the appeal property to resolve the access issues that seemed sufficient. Hence, the VO was of the opinion that the current valuation was reasonable. Accordingly, Mrs Pathmanation sought dismissal of the appeal.

Decision and reasons

16. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

17. The panel noted that there was no rent passing on the appeal property as it was held on a freehold basis.

18. The panel had to determine whether an end allowance was warranted to reflect the divided/split nature of the appeal property. The appeal property was created when Units 18-19 were merged with Unit 20. Historically, a 5% allowance had been applied to Units 18-19. However, Mrs Pathmanathan contended that the historic allowance had been applied in error and was not warranted.

19. Mr Sparsi accepted that there was internal access between the units. However, the access was narrow and a forklift truck could only just fit through. He considered the internal access inadequate and an allowance was warranted.

20. The panel was of the opinion that a blanket approach was not appropriate when considering allowances. The panel had to consider the appeal property based on its own merits and having regard to its physical characteristics, in comparison to those of the comparable properties and examine if an allowance was truly justified.

21. The panel had been presented with a schedule of comparable assessments, which detailed the appeal property, together with eight other properties. Those eight properties had been granted allowances of between 2.5% and 10% to reflect fragmentation/no access between units and split units. Mr Sparsi had referred to the following two assessments:

i) 15 Argall Avenue, London E10 7QE, which comprised four units. There was access between the units and a 5% allowance had been granted.

ii) Units 44-45 & Unit 29 Fairways Business Park, 4 Lammas Road, London E10 7QT. Whilst a 2.5% allowance had been granted to this property's assessment, there appeared to be access between these units.

22. However, Mrs Pathmanathan pointed out that those two properties were located 1.3 miles from the appeal property in a different postcode area. She placed greater weight on the four

properties in the same postcode area as the appeal property. Whilst those four properties had been granted allowances, it was to reflect the fragmented nature of the premises or the fact that there was no internal access between the units.

23. Having given consideration to the schedule of comparable assessments, the panel agreed with Mrs Pathmanathan and attached greater weight to the comparable assessments in the same postcode area as the appeal property. The panel considered that those four properties were at a greater disadvantage to the appeal property as the units were either fragmented in nature or there was no internal access. This was in contrast to the situation at the appeal property, where the appellant had made alterations and provided internal access. Whilst that access had been described as narrow, it was sufficient to allow a forklift truck through.

24. In appeals of this nature the burden of proof rests on the appellant to provide evidence to confirm that the appeal property was over-assessed. In the appeal before it, the panel concluded that it had not been provided with sufficient evidence to justify an end allowance. Accordingly, the panel confirmed that the current assessment of £81,500 RV, with effect from 1 April 2017 was not excessive.

25. In view of the above findings, the panel dismissed the appeal.

Appeal Number: CHG100089774
Dated: 17nJune 2021