THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; warehouse and premises; land used for storage and premises; it was determined that the appeal property was better described as land used for storage and premises and valued in accordance with such comparable properties; appeal allowed.

Re: Tomsetts Transport Ltd, North Quay, Newhaven, East Sussex BN9 0AB

APPEAL NUMBER: CHG100090702

BETWEEN: Tomsetts Distribution Ltd — Appellant
and
Mr A Corkish (Valuation Officer) — Respondent

BEFORE: Mr AB Jobanputra (Senior Member)

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING 3 : Thursday 13 May 2021

PARTIES PRESENT: Mr S Campbell of Altus Group (on behalf of the Appellant)
Mr S Forbes (Respondent's representative)

Summary of decision

1. The appeal was allowed and the appeal property's assessment was reduced to £84,000 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Tomsetts Transport Ltd, North Quay, Newhaven, East Sussex, BN9 0AB (the appeal property), which was entered in the 2017 Rating List as "warehouse and premises" at rateable value £107,000, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 17 April 2019. The appeal to this Tribunal was made on 15 February 2021, following the VO's Decision Notice dated 15 October 2020, in respect of the appeal property (hereditament). Within the

Challenge decision, the VO proposed to reduce the appeal property's assessment from £107,000 RV to £103,000 RV, with effect from 1 April 2017.

4. This is a compiled list appeal so the material day is 1 April 2017.

5. The appeal hereditament was currently described as warehouse and premises. It comprised of a ground floor warehouse building with first floor offices and a vast amount of land with the whole site coverage of 9,240.76 m^2, the land element taking up 83% of the total area. The appeal hereditament was located in an established industrial area in Newhaven, East Sussex. Tomsetts Transport Ltd had occupied the property since March 1986.

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. As permitted within the Tribunal's Business Arrangements, due to unforeseen circumstances, I heard this appeal alone.

9. Mr Campbell 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).

10. Mr Campbell explained that the 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 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.

11. I 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). I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

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 myself when arriving at the decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Preliminary Issues

13. Mr Campbell raised two preliminary issues. Firstly, Mr Campbell explained that he had not been given the opportunity of inspecting the forms of return (FOR) for the five rents quoted by the VO. The Regulation 17 evidence had been served with the initial response on 17 April 2019, and Mr Campbell had made several attempts to inspect the FORs. Mr Forbes explained that he was not the original caseworker and stated that following the current restrictions in place due to the ongoing Covid-19 pandemic, it had not been possible to allow appellants to personally inspect FORs. Therefore, the VO had been going through the FORs over the phone when requested. Mr Campbell accepted that this was the current practice and he would have been satisfied with this but had not been afforded the opportunity.

14. I took a short adjournment to consider the matter. Within the appeal documentation, I note that Mr Campbell had requested sight of the FORs in writing on 12 October 2020 and again on 14 October 2020, this opportunity was not provided and the Challenge decision notice was issued on 15 October 2020. Furthermore, I have no reason to disbelieve Mr Campbell's statement that he had also requested to view the FORs over the phone on numerous occasions. Accordingly, as Mr Campbell had repeatedly requested sight of the FORs and this had not been forthcoming, I hold the five rents provided by the VO to be inadmissible.

15. Secondly, Mr Campbell objected to an email sent to the Tribunal office by Mr Forbes that day. Attached to the email was a rent review notice in respect of the appeal property. Mr Campbell objected to that late evidence being submitted. I reserved judgment on the late evidence; I decided to consider the matter and give what weight I considered appropriate having regard to the fact that Mr Campbell had been prejudiced by its late service and it had not been provided in a timely fashion.

Issue

16. The correct assessment for the appeal property, with effect from 1 April 2017.

Evidence and submissions

17. Prior to the hearing, I had been provided with an evidence bundle, which comprised all of the documents exchanged between the parties as part of the challenge process.

18. Within the Challenge documentation, the expert witness report, together with his oral presentation at the hearing, the appellant's representative 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 difference in the physical attributes between the properties.
    ii) The assessment appeared excessive when considering the rental evidence in the current valuation scheme and locality. In particular, he referred to the rental evidence in respect of Opp Baltic Saw Mills.
    iii) The appeal property should be valued along with similar properties in valuation scheme 341346. This was because:
        a) The bulk of the assessment (83%) was land used for storage. It was a storage distribution site.
        b) The appeal property's warehouse element had been constructed pre 1980 and was contrary to the current valuation scheme criteria (320390).

iv) The 2010 Rating List appeal on the appeal property had been withdrawn as invalid by the Altus Group, as opposed to a withdrawal due to an acceptance of the valuation method.

v) The proposed assessment of £84,000 RV, with effect from 1 April 2017, had been arrived at in accordance with the values applied within valuation scheme 341346 and was in line with the passing rent.

19. In response, in the VO's initial response, the Challenge case decision notice and in oral presentation at the hearing, the VO explained that:

i) The appeal hereditament was currently valued as warehouse and premises. This was in contrast to the representative's contention that it should be valued as land used for storage and premises, with the buildings as additions.

ii) The representative had provided numerous comparable properties that were valued as 'land used for storage and premises'; however the VO did not consider those to be comparable to the appeal property as they had smaller or more basic premises attached to the land. The appeal property comprised a substantial good quality warehouse with offices and land. There could be a case that the property comprised two assessments valuing the land element and the building in their own right.

iii) The appeal property's assessment had been appealed in the 1995, 2000, 2005 and 2010 Rating Lists. An appeal lodged against its 2010 Rating List assessment had been withdrawn by the Altus Group and the 2005 Rating List appeal had been agreed by Edwin Hill (now part of the Altus Group). None of those appeals had disputed the method of valuation.

iv) An allowance of 20% for access and location had been carried forward to the 2017 Rating List assessment from a previous agreement.

v) The VO believed that the building within the appeal hereditament had undergone a complete refurbishment in 1986. Again, this was not disputed by the Altus Group on the last two rating lists.

vi) The representative had quoted one rent in respect of Opp Baltic Saw Mills; the VO held no details in respect of this rent. However, the range of values shown for properties in the locality reflected their individual characteristics, other circumstances and the bargaining powers of the parties.

vii) Having regard to the comparable rental evidence, the VO found the original main space rate applied to the appeal property to be excessive and had reduced it to £47.50/m^2; which was considered a reasonable figure to adopt for a unit over 1,000 m^2. Accordingly, the VO sought a dismissal of the appeal as the current assessment at £103,000 was reasonable.

Decision and reasons

20. 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.

21. The parties disputed the rent passing on the appeal hereditament. Mr Campbell contended that the rent passing on the appeal hereditament was £86,420 per annum (pa), which had been subject to a nil increase at the 2016 rent review. In support of this statement, Mr Campbell referred me to an email from Steve Tucknott, the Managing Director of Tomsetts Distribution Ltd. In that email it stated that the lease on the appeal hereditament commenced on 29 September 2011 at a rent of £86,420 pa, and it was confirmed that the rent review in 2016 was never accepted or applied for various reasons, leaving the rent at £86,420 pa.

22. In contrast, Mr Forbes contended that there had been a new 10 year lease renewal in respect of the appeal hereditament on November 2011 and a rent review in September 2016 of £97,500. In addition, on the day of the hearing, Mr Forbes had forwarded the Tribunal office an email, which enclosed a rent review notice. That notice stated that a rent review had taken place on 29 September 2016, which had increased the rent to £97,500 pa.

23. On this issue, I found in favour of Mr Campbell. I found that Mr Campbell had been prejudiced by the late service of the rent review notice. I find it unacceptable to provide evidence at such a late stage on the day of the hearing. Moreover, I note that the rent review notice had only been signed by the landlord and not the tenant. In addition, I place weight on the email from the Managing Director of Tomsetts Distribution Ltd, when he confirmed that the rent review in 2016 had not been implemented. Accordingly, I accept that the rent passing on the appeal property, with effect from 29 September 2016 was £86,420 pa. I found this to be relevant evidence in this appeal being a rent on the appeal hereditament set 17 months after the AVD.

24. I placed little weight on the fact that previous appeals had been lodged in respect of the appeal hereditament's assessments in former rating lists and the method of valuation not having been challenged. I also note that Altus Group had not withdrawn the appeal lodged in respect of the 2010 Rating List assessment as it had accepted the method of valuation, rather, it had been withdrawn as invalid.

25. The main issue in dispute related to the correct description for the appeal hereditament, together with the appropriate valuation. The current description was 'warehouse and premises' in accordance with valuation scheme 320390. However, Mr Campbell had contended that, vacant and to let, the appeal hereditament should be valued as 'land used for storage and premises', in accordance with valuation scheme 341346.

26. I turned to valuation scheme 320390, in which the appeal hereditament was currently valued in accordance with. That scheme was applicable to all industrial properties built between 1980 and 1999 in Newhaven, East Sussex. Mr Campbell disputed that this was the correct scheme; he contended that the building had been built prior to 1980, plus it was predominantly land based. Mr Forbes stated that the building at the appeal hereditament had undergone a refurbishment in the 1980s.

27. Valuation scheme 341346, which was the scheme proposed by Mr Campbell, related to fenced surfaced land in urban and suburban areas of Kent and Sussex. It also included fenced surfaced land on all industrial estates in Kent and Sussex. Within the scheme, the land element was valued between £5.00/m^2 and £15.00/m^2, offices were valued at £35.00/m^2 and stores/workshops at £30.00/m^2.

28. I then had regard to the schedule of comparable properties that had been valued in accordance with valuation scheme 341346. The properties were in size order. In particular, Mr Campbell referred me to Jordons Newhaven Ltd, Southerham Wharf, North Quay,

Newhaven. This property had a total area of 20,253.50 m^2 and the land element had been valued at £7.00/m^2. The next property on that schedule was The Old Brickyard, The Broyle, Ringmer, Lewes, which had a total area of 10,178.33 m^2, with the land valued at £7.00/m^2. Mr Campbell pointed out that within valuation scheme 341346, once a property's total area was below 5,000 m^2, the price applied to the land increased to £10.00/m^2.

29. Mr Campbell differentiated his comparable properties to those referred to by Mr Forbes, which he stated were in a different location, smaller, of a modern specification; one with roller shutter doors, one was a Head Office site and one that was currently under appeal.

30. After having regard to the two differing valuation schemes, the properties valued within those valuation schemes, together with the characteristics of the appeal hereditament, I found that the appeal hereditament was better valued in accordance with valuation scheme 341346. I noted that 8,000 m^2 or 83% of the area that made up the appeal hereditament comprised land. I found that the main feature of the appeal hereditament was the vast land element it comprised, with ancillary buildings. Vacant and to let, if a hypothetical tenant was coming fresh to the scene, I found it would be regarded as land used for storage and premises in line with the main driving force of the hereditament. Mr Campbell also confirmed that the appeal hereditament was described as 'land used for storage and premises' on the lease.

31. In arriving at my decision, I also placed weight on the assessment of Jordons Newhaven Ltd, which was a property valued in accordance with scheme 341346 that was located on the same road as the appeal hereditament. The total area of the appeal hereditament was 9,240.76 m^2 and I find that the value of £7.00/m^2 for the land element as proposed by Mr Campbell to be fair and reasonable and in line with the rate applied to similar sized properties. I also find that the rates of £30.00/m^2 for the warehouse and £35.00/m^2 for the office as applied by Mr Campbell were in accordance with valuation scheme 341346.

32. As both parties had applied a 20% access allowance, I found no reason to address this issue.

33. Accordingly, having regard to the above conclusions, I allowed the appeal in full. I found that the current assessment was not reasonable. I determined that the appeal hereditament should be described as land used for storage and premises at £84,000 RV, with effect from 1 April 2017, in accordance with the proposed assessment put forward by Mr Campbell. I found that Mr Campbell's proposed assessment had been arrived at by applying the correct valuation scheme, was in line with the valuation of properties within that scheme, especially the neighbouring property Jordons Newhaven Ltd, and was in line with the passing rent on the property.

Order

34. As a consequence of the above decision, the Valuation Officer is ordered to amend the description of appeal hereditament's 2017 Rating List entry to 'land used for storage and premises and reduce the assessment to £84,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

35. 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 (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). Provided there is no review of the Tribunal's decision, the refund will take

around six weeks to process. This will be arranged by the Tribunal administrative office as soon as possible.

APPEAL NO: CHG100090702

Date: 7 June 2021