THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; workshop and premises; rental evidence; comparable assessments; appeal dismissed.

RE: 4 The Interchange, Wested Lane, Swanley, Kent BR8 8TE

APPEAL NUMBER: CHG100091511

BETWEEN:	Wika Instruments Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL:	Ms J Routledge (Senior Member) Ms J Barnes
CLERK:	Mrs H Beresford
REMOTE HEARING ON:	19 July 2021
APPEARANCES:	Mr S Campbell of Altus Group (Appellant's representative) Mr J Balogun (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £106,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 4 The Interchange, Wested Lane, Swanley, Kent BR8 8TE (the 'appeal property'), which was entered in the 2017 rating list as 'workshop and premises' at RV £106,000, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Wika Instruments Ltd made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £94,500 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal hereditament comprises a workshop and premises with an overall area of 1,380.2m^2 and an eaves height of 6.7m. Interchange Park is situated in Swanley, Kent, adjacent to junction 3 of the M25 London Orbital Motorway and with direct access to Junction 1 of the M20. Unit 4 forms part of a terrace of industrial/warehouse units built circa 1980 and refurbished in 2008. The appeal property has a steel portal frame construction with part brick and part profiled metal cladding.

6. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. 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).

8. 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.

9. 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.

10. 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.

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 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.

Preliminary Issue

12. Mr Balogun had objected to the introduction, by Mr Campbell, of a revised rental analysis based on an amended rent of £113,000 which had been agreed on 24 March 2015 and which had only come into the possession of Mr Campbell at a later date. However, after a short adjournment to allow Mr Balogun to read the revised analysis he stated that he no longer objected and agreed to proceed with the hearing.

Issue

13. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £75.00/m^2 in respect of the appeal property, but the appellant sought a reduction to £68.50/m^2 in his revised analysis which amounted to a rateable value of £97,500.

Evidence and submissions

14. The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with the rating representative's expert witness report. The bundle included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges; rental and assessment evidence for comparable properties; photographs of the appeal property; the rating representative's revised valuation; the definition of rateable value, and the Valuation Officer's challenge case decision notice.

15. Mr Campbell contended that the rating assessment of £75.00/m^2 on the subject property is not in line with its passing rent of £113,000 per annum which was agreed on 24 March 2015 very close to the antecedent valuation date (AVD) of 1 April 2015. Mr Campbell had initially believed that there had been no increase at this review date and that the rent had remained at £100,000. However, in light of the new information he had revised his initial analysis from £66.50/m^2 to £68.50/m^2 in terms of main space (ITMS). This analysis included a 3-month rent free period as this was a lease renewal and there had been no need for a new fit out of the appeal property.

16. He also contended that the rateable value appeared to be excessive when considering the rental evidence in the same valuation scheme and the locality. In particular, he referred to new rental agreements made close to the AVD which he believed supported his case. Mr Campbell asked the panel to confirm an RV of £97,500 for the appeal property.

17. In his submission Mr Balogun argued that the properties on Interchange park had been refurbished in 2008 and, at this time and in respect of the 2010 rating list, the RV for the appeal property had been agreed at £72.00/m^2. On this basis, as there had been an agreement, he believed that as rents had increased between the two lists, an increase to £75.00/m^2 for the 2017 list was not unreasonable.

18. Mr Balogun contended that less weight should be attached to the comparable properties cited by the appellant's representative as they were not on the same industrial estate as the appeal property and had not been refurbished to the same standard as Interchange Park.

19. Mr Balogun also contended that the rental analysis submitted by Mr Campbell was unreliable, he had changed his analysis on several occasions, originally stating that there had been no increase in the rent. The rental agreement was a rent review and not an open

market agreement, furthermore it had not been evidenced by the submission of a copy of the lease. Mr Balogun asked the panel to confirm an RV for the appeal property at £106,000.

Decision and reasons

20. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD, 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

21. 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”

22. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

23. The panel noted that there was rental evidence for the subject property, and they were aware that the agreement of £113,000 per annum had been reached close to AVD on 24 March 2015. The panel did dwell on this submission, however, it found that it could only attach moderate weight to this agreement as it was a rent renewal and not a new rental agreement made on the open market. Furthermore, no lease had been provided to support Mr Campbell’s argument.

24. Mr Campbell had argued that other properties in the same scheme had a lower base rate, however, the panel were unable to attach significant weight to this evidence as Mr Campbell had referred to properties which whilst in the same scheme were situated on different industrial estates and had not been refurbished. Furthermore, 2, Gateway Trading Estate, London Road, Swanley BR8 8GA, at 1,097.81m^2 had an analysed rent of £62.02/m^2, was older than the subject property. 1, Moreton Industrial Estate, London Road, Swanley BR8

8TE which had an analysed rent of £68.38/m^2 was smaller at 779.9m^2. Whilst the panel accepted that these properties had new rental agreements made on 16 December 2015 and 14 January 2014 respectively, it did not find these comparable properties to be persuasive evidence.

25. The panel found the evidence of comparable properties presented by Mr Balogun to be the more persuasive. The Valuation Officer had provided a schedule of rental evidence for Interchange Park for the periods either side of the valuation date of 1 April 2015. The panel found that all of the properties were of a similar size, age and character and did not support an argument for a reduced valuation for the appeal property, they had been refurbished and were situated on an estate with security. The panel noted that the tone of the list should not be set by one rent in isolation, it must look at a basket of evidence.

26. In particular, 5, The Interchange, Wested Lane, Swanley, Kent, BR8 8TE, was a new letting agreed on 1 January 2012. The panel noted that this property was similar in size to the subject at 1,578.61m^2 with a rent which analysed to £75.96/m^2. Pt 6 & 7, The Interchange, Wested Lane, Swanley BR8 8TE, at 1,907.06m^2 was a new letting agreed on 23 July 2012 with an analysed rent of £75.63/m^2 and a further agreement at review on 1 July 2017 which analysed to £86.95/m^2. Pt 6, The Interchange, Wested Lane, Swanley BR8 8TE was slightly smaller at 1,248.15m^2, this was a new letting on 18 March 2013 which analysed to £71.63/m^2.

27. Whilst the panel was aware that the 2010 rating list and 2017 rating list were separate entities it noted that in respect of the 2010 rating list there had been an agreement on the subject property with Altus Group along with other properties on Interchange Park at £72.00/m^2. The fact that rents had risen since the 2010 list, a contention which was not disputed by Mr Campbell, was evidenced by the comparable evidence provided by the Valuation Officer, in that the rent on Pt 6 & 7, The Interchange, Wested Lane, Swanley BR8 8TE, had risen from £154,000 in July 2012 to £170,836 in July 2017. The panel attached moderate weight to the £72.00/m^2 agreement and found that a tone of £75.00/m^2 for properties in the size range 1,067m^2 to 2,500m^2 on Interchange Park was correct.

28. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £68.50/m^2 was warranted. Therefore, the appeal was dismissed.

Date: 3 August 2021

Appeal numbers: CHG100091511