THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; workshop and premises; comparable properties; main space price; end allowance; appeal allowed in part.

Re: Cantrills Storage, Ollerton Road, Notts NG22 0LF

APPEAL NUMBER: CHG100105726

BETWEEN:	Cargopak Limited	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr S Wood (Chairman)
Ms S Yousef

CLERK: Mrs K Clewer

REMOTE HEARING No. 3 on 16 August 2021

APPEARANCES:

Mr H Pitt of The Altus Group on behalf of the appellant as both advocate and expert witness
Mr P Dodds on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal Allowed in Part; The appeal property's assessment was reduced to £16,750 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. Cantrills Storage, Ollerton Road,Notts,NG22 0LF, had been entered in the 2017 Rating List as workshop and premises at £19,750 RV, effective from 1 April 2017.

3. The appellant's challenge to the Valuation Officer (VO) was made on 20 June 2019. Following this challenge, the RV of the appeal property was amended by the VO to £18,000 RV with effect from 1 April 2017. An appeal to this Tribunal was made, following the VO's Decision Notice.

4. Mr Pitt had supplied the tribunal with an updated valuation due to a mathematical error and a plan showing properties which had been granted end allowances of 12.5% due to access issues. This information was provided after the decision of the VO had been issued and the challenge stage had therefore been completed. Mr Dodds agreed in writing that this information could be placed before the panel.

5. The appeal property was a workshop of portal frame construction built around 1987. It was located on the outskirts of Tuxford just off the A6075. It measured 433.30m2 in size and contained the addition of a portable building a storage container and 1040m2 of hard unsurfaced unfenced land. The valuation of £18,000 RV was based on a main space price of £31.50 per m^2.

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 Pitt 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 Pitt's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

9. Mr Pitt 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 the client's case.

10. 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).

11. The panel therefore considered the “expert” evidence and attached such weight to it as it 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 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.

Issues

13. The issues in dispute were whether the main space price of £31.50 per m^2 was correct and whether the end allowance of 5% for access should be increased to 12.5%.

Evidence and submissions

14. The evidence bundle provided to the panel comprised all the submissions exchanged between the parties as part of the challenge process.

15. Mr Pitt gave an overview of the reasons for the appeal. He submitted that the rents of comparable properties on the same industrial estate supported a revised main space price of £24.50. An allowance of 12.5% for shared access had been granted to a number of comparable properties on the estate and in his opinion the same allowance should be applied to the appeal property rather than the 5% granted by the VO.

16. Having regard to his evidence, Mr Pitt sought a revised RV £13,750 RV for the appeal property.

17. Mr Dodds argued that the appeal property’s assessment was fair and reasonable. He referred to the rents of comparable properties more similar in size to the appeal property and stated that the 5% end allowance for access was sufficient. He therefore asked that the panel dismiss the appeal.

Decision and reasons

18. The issue in dispute concerned the level of value to be adopted for the subject property. The term 'rateable value' is defined in paragraph 2(1), 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".

19. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the amended entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day is 1 April 2017, thus meaning this is the date the panel had regard to physical facts relating to the appeal property and its locality.

20. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    '(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

    (2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

    (3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

21. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property. However, as the appeal property was owned freehold there was no passing rent to assist the panel. The panel therefore turned to the rents of the comparable properties provided by the parties for assistance.

22. Mr Pitt referred to four properties on the same industrial estate in support of his appeal.

23. Unit 24 had been constructed in 2000 and measured 1056.24m^2. It had a passing rent of £33,000 set on 1 January 2014 and 1 January 2016 on a two year lease. Mr Pitt analysed these rents at £27.61 and £27.48 per m^2. The panel considered that whilst this property was in the same locality it was not truly comparable given the much larger size. The panel considered that it likely that the rent would include an element for quantum. It was therefore the panel's opinion that the appeal property would have a main space price higher than this comparable.

24. Unit 5 measured had been constructed in 1987 and measured 924.03m^2. The rent of £20,800 was agreed at a rent review on 1 June 2015. Mr Pitt had analysed this rent to £18.55. Again, this was a much larger property to the appeal property. Whilst the analysed rent was lower than that of Unit 24 the panel considered it likely to be due to the age of the building being older. The appeal property was approximately the same age as this property but given its much smaller size the panel considered the appeal property would have a higher main space price.

25. Unit 100 had been constructed in 2001 and measured 1555.12 m^2. The rent agreed in 2011 for £32,100 was on a stepped arrangement. The panel attached little weight to this comparable as the rent was too far removed from the AVD and did not conform to the rating hypothesis and therefore it could not provide reliable assistance. The property was also much larger in size than the appeal property.

26. A Consult and Unit 6 had been constructed in two parts one in 1971 and the other in 2003. It measured 2210.69m^2. Being over 4 times the size of the appeal property the panel did not consider this to be comparable to the appeal property.

27. The panel turned to the comparable properties presented by Mr Dodds. Whilst it acknowledged these were not on the same estate and were, according to the valuation schemes, in a superior locality they were smaller than the appeal property. The panel considered that although approximately a mile from the appeal property they remained within the same locality.

28. Hadfield CNC was a 1990s building measuring 312.26m^2 . A rent had been set on 1 September 2013 at £16,000. Mr Dodds had analysed this rent to £41.92 per m^2. The panel attached some weight to this rent but considered the appeal property being larger and in a slightly inferior location would attract a lower rent

29. Unit 1 Tuxford Business Park was a 1980s building which measured 295.94m^2. The rent set at £15,000 on 1 August 2014 analysed to £53.60 per m2. The panel again for the reasons above considered the appeal property would attract a lower rental bid than this property.

30. Unit 2 Tuxford Business Park was also a 1980s building measuring 230.81 m^2. The rent set at £6000 on 1 November 2016 had been analysed to £32.86 per m^2. The panel was of the opinion that the appeal property would achieve a lower rent but was cautious of the rent for this property given it was post the AVD and considerably lower than that for other units on Tuxford Business park.

31. The panel attached little weight to Unit 8a Tuxford Business park as this property was significantly smaller than the appeal property measuring £196.72m^2.

32. In terms of the tone of the list the panel noted that the three comparable properties on Ollerton Road being Unit 24, Unit 100 and Unit 5 had been agreed with the VO. The main space prices were £27.52 per m^2, £27 per m^2 and £21.25 per m^2 respectively.

33. Having considered all the comparable properties provided the panel considered that the main space price for the appeal property would sit somewhere between the larger properties on the same estate and those smaller on the Tuxford Business Park. The panel concluded that the rate adopted by the VO of £31.50 per m^2 was therefore correct. In reaching its decision the panel had particular regard to Hadfield CNC and the agreements reached on Ollerton Road properties.

34. The panel then turned to the issue in respect of the end allowance for access. It was clear from the plan of the estate that access would be an issue and the panel noted that a 12.5% allowance had been awarded to unit 36 which was very near to the appeal property. The panel also considered the proximity to the sewerage works to be a further disability. The panel therefore concluded that a 12.5% end allowance was warranted.

35. In view of the foregoing, having consideration of the evidence presented, the panel found the main space price of £31.50 per m^2 to be the correct level of value for the appeal property but that an end allowance of 12.5% was warranted. The appeal was therefore allowed in part.

36. The panel was aware that the RV of the appeal property had been amended on 18 June 2018 to reflect changes to the appeal property. The panel was unable to consider this RV as this was a challenge against the compiled list entry. However, it would be hoped that the VO would adopt the same principles of this decision to the amended RV.

Order

37. Under the provisions of regulations 38(4) and 38(7) 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 show the following:
Cantrills Storage, Ollerton Road, Notts,NG22 0LF
Rateable Value £16,750 effective from 1 April 2017.

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

39. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 10 September 2021

Appeal number: CHG100122979