THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; warehouse and premises; comparable properties; subject rent; appeal allowed.

Re: 12 Airlinks Industrial Estate, Spitfire Way, Hounslow, TW5 9NR

APPEAL NUMBER: CHG100130624

BETWEEN:	Euro Bathrooms Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL: Mrs A Adeola (Chairman)

Mrs A Fielder

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 26 July 2021

APPEARANCES:

Mr A Hair of Altus Group on behalf of the appellant as both advocate and expert witness
Mr L Lanham on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal Allowed; The appeal property's assessment was reduced to £20,750 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 12 Airlinks Industrial Estate, Spitfire Way, Hounslow, TW5 9NR, which was entered in the 2017 Rating List as warehouse and premises at £29,250 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 2 October 2019. An appeal to this Tribunal was made, following the VO's Decision Notice of 22 January 2021.

4. The appeal property, which was valued as Warehouse and Premises situated within Airlinks industrial estate on Spitfire Way. It was occupied by Euro Bathrooms Ltd. The property was originally assessed at £33,250 RV but was reduced as part of the check process to £29,250 RV. The valuation of £29,250 RV was based on an unadjusted main space rate of £105/m^2.

5. Mr Hair, on behalf of the appellant originally proposed a revised RV of £20,000 and disputed the VO's records in respect of the measurements of the appeal property. In an email dated 1 December 2020, Mr Hair stated that to move matters forward, he was happy to concede on areas. As a result, he accepted the measurements and proposed a revised RV of £20,750.

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 Hair 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), his declaration included a statement that he was instructed under a contingency based fee.

9. Within his written statement, Mr Hair 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 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.

Issue

13. The appellant questioned whether the appeal property's current assessment at £29,250 RV was reasonable?

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 Hair gave an overview of the reasons for the appeal. He submitted that the subject property was occupied on an open market letting effective August 2013 at a headline at £22,012 per annum for a term of five years, with a total of two months' rent free granted as incentive in the first year. Calculating the free months to the end of the lease, generates a net effective rent of £21,278 which Mr Hair had analysed to £74.20/m^2. Euro Bathrooms Ltd no longer occupied the premises and the VO had stated that the appeal property was advertised at a rental value of £44,545 per annum as of May 2019.

16. Mr Hair referred to several pieces of rental evidence and gave the prices/m^2 that he had analysed the rents to. He considered that none of these prices supported the £105/m^2 adopted by the Valuation Officer. He also raised concerns regarding the VO's rental information for 22 Airlinks, which he considered to be wrong as it was inclusive of VAT.

17. Having regard to his evidence, Mr Hair sought a revised assessment of £20,750 RV for the appeal property, based on main space rate of £72.50.

18. Mr Lanham argued that the appeal property's assessment was reasonable. He rebutted Mr Hair's evidence and provided submssions that, 22 Airlinks, which was a rent agreed close to the antecedent valuation date and he had analysed it to £110/m2 supported the £105/m2 for the subject and as such, he considered the subject property's RV to be fair and reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

19. 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".

20. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list 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.

21. In reaching its decision, 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.'

22. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. The rent of £22,012 was an open market letting effective August 2013. It was for a term of five years, with a total of two months' rent free granted as incentive in the first year. Mr Hair had analysed this rent to £74.20/m^2 and submitted that this evidence should carry the most weight.

23. The VO had not provided an analysis of the appeal property's rent and had not disputed the analysis provided by Mr Hair, but had submitted that the rent was 20 months prior to AVD. Furthermore, Euro Bathrooms Ltd no longer occupied the premises and the rent in May 2019 was advertised at £44,545 per annum. There was no evidence presented to confirm a letting agreement at this price had taken place, just that the premises had been advertised for this amount, four years post AVD. As such, the panel attached little weight to this argument.

24. The panel accepted that the analysed rent on the subject property supported Mr Hair's view that the current rate adopted was excessive, however, there had been a degree of adjustment to bring it in line with the rating hypothesis and therefore the panel found it necessary to turn to the third proposition and examined rents passing on comparable properties. The panel considered the correct approach in this appeal was to examine the whole 'basket of evidence' before arriving at a reasoned decision.

25. Mr Hair's rental summary detailed the following properties, which were located near the appeal property and valued on the same scheme:

Address	Date of rent	Net Effective Rent per annum	ITMS	Analysed £/m^2	VO Current adopted £/m^2
3 Airlinks	February 2014	£35,400	419.29m^2	£72.58	£100
Unit 3 Victory Way	March 2015	£66,738	1148.66m^2	£56.63	£80.99
Unit 4 Victory Way	July 2013	£77,282	951.64m^2	£78.27	£80

26. Unit 3 Airlinks was an open market letting with a headline rent of £35,400 for a term of 5 years. It was one year prior to the AVD. The VOA did not hold rental evidence or a form of return, so submitted that it could not be certain if there were other factors affecting this rent. Whilst the panel accepted that the VO had not had the opportunity to analyse this rent, it found that there had been time to establish the facts during the challenge exchange and to present other comparable properties.

27. Unit 3 and 4 Victory Way were much larger than the appeal property. The appeal property was 266.54m2 so the difference is size was significant. Furthermore, whilst Unit 4 was an open market, Unit 3 was taken on by the same occupier and as such it is reasonable to conclude that connected parties would negotiate differently to that of a tenant fresh to the scene in accordance with the rating hypothesis. The panel therefore found these two properties to be of little assistance.

28. Mr Hair also referred to International Trading estate which he believed supported a reduced tone. He submitted that the estate was within one mile of Spitfire Way and were also of 1970's construction and in his opinion, very comparable to those properties situated on Spitfire Way, the tone was set at £55/m^2. The VO had not commented on this submission and when asked during proceedings, he was unable to assist the panel.

29. The VO provided one piece of rental evidence, 22 Airlinks Industrial Estate. The VO had analysed this rent to £110.05/m^2, and its adopted value was £105/m^2. This was based on a rent review as of 1 June 2015.

30. There was some dispute between the parties in respect of the rental figure used to analyse 22 Airlinks as Altus Group had represented the occupier of this property and was aware of the rent. The panel was presented with an email exchange, whereby Mr Hair had inspected the form of return for this property. He submitted that there was an error in the rental amount (£43,032), in that it had been entered on the form including VAT and as such had skewered the VO's analysis.

31. Mr Hair submitted that the rent review was settled at £35,860 and as such demonstrated nil increase from the headline rent agreed in 2010.

32. The VO disagreed with the stance, as they had received no evidence to confirm the rent was lower and on the form of return, the appellant had marked the box to confirm there had been an increase. The VO also questioned why Mr Hair was calculating 20% VAT when it would have been 17.5% in 2010. Mr Hair's response to this was that Altus Group were well aware of the rent and stated that he would not provide incorrect information during the exchange and to the Tribunal. He also stated that 20% VAT was used as the rent review was in 2015.

33. Whilst this information was close to the AVD, it was a rent review so carries less weight than an open market new lease. The panel was not provided with

the rental terms to verify both parties' analysis and given the uncertainty regarding the rent amount, the panel attached less weight to this evidence.

34. In conclusion, the panel found it was necessary to attach most weight to the actual rent of the appeal property. Having regard to this rent, which had been analysed to £72.58/m^2, in conjunction with the rental evidence provided for 3 Airlinks and the tonal evidence for International Trading estate, the panel found that this supported Mr Hairs' contention that the current RV was not reasonable.

35. In view of the foregoing, having consideration of the evidence presented, the panel found the appellant's representatives revised valuation at £72.50/m^2 to be fair and reasonable. The appeal was therefore allowed.

Order

36. 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:

    12 Airlinks Industrial Estate, Spitfire Way, Hounslow, TW5 9NR
    Rateable Value £20,750 effective from 1 April 2017

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

38. 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 August 2021

Appeal number: CHG100130624