THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; workshop and premises; tone of the rating list; level of value; valuation schemes; comparable properties; appeal dismissed.

Re: Unit 5 Newcombe Drive, Hawksworth Trading Estate, Swindon, SN2 1DZ

APPEAL NUMBER: CHG100144294

BETWEEN: Oadby Plastics Ltd Appellant

(represented by Altus Group)

and

Mr D Virk Respondent

(Valuation Officer)

PANEL: Mr R White (Senior Member)

Mrs F Higgin

CLERK: Mrs A Sloan

REMOTE HEARING: 10 June 2021

PARTIES PRESENT: Mr B Buchkov (Appellant's representative)

Ms H Moffat (Respondent's representative)

Summary of decision

1. The appeal was dismissed. The panel made no change to the appeal property's existing assessment of £80,000 rateable value (RV), effective from 1 April 2017.

Introduction

2. 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.

3. 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. The hearing was conducted via Microsoft Teams and the panel was satisfied that all parties were fully able to participate in the hearing.

4. Mr Buchkov appeared on behalf of the Appellant in a dual role of 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 of truth included a statement that he was instructed on a contingency fee basis. 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 the client's case.

5. 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

6. The appeal was brought in respect of Unit 5 Newcombe Drive (the subject property). The subject property was a workshop and premises built in 1976. The workshop had been measured at 2,297.71m^2 total significant area (TSA) and was partially heated.

7. This was a 2017 Rating List appeal challenging the compiled list entry. The original entry for the assessment was based on a main space rate of £40/m^2 under a scheme comprising industrial units within the Hawksworth Trading Estate that had been constructed prior to 2000. The scheme had been reviewed following an appeal on another property and the main space rate for the subject property was amended from £40/m^2 to £35/m^2. This resulted in a reduction in RV from £91,500 to £80,000. The proposal was submitted by the Appellant's representative on 21 November 2019, against the 2017 RV assessment of £80,000, seeking a reduction to RV £65,500 based on a main space rate of £30/m^2. The challenge decision notice refusing a reduction was dated 5 February 2021.

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

Issue

9. The facts of the property and its measurements were not in dispute. The sole issue before the panel was the correct main space rate for the subject property. Mr Buchkov sought a rate of £30/m^2, Ms Moffat defended the existing rate of £35/m^2.

Evidence and submissions

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

11. Mr Buchkov relied upon two properties from the Hawksworth Industrial Estate to support his case for a reduction on the subject property. Unit B James Watt Close was let on the open market from 1 November 2014 on a five-year lease. He stated that the rent analysed to a base rate of £21.96/m^2. He considered that this lease, agreed five months prior to the AVD

on 1 April 2015, was useful evidence. He explained that, following discussions with the Valuation Officer (VO), the main space price for this unit was reduced to £30/m^2 and he considered that the subject property, being directly comparable and of very similar size, should be reduced in line with this property.

12. The second property referred to by Mr Buchkov was Unit 12 Bridgewater Close. He stated that this property had let on the open market from 19 June 2014 with no incentives. He had analysed the rent on this property to a main space price of £25.25/m^2. He highlighted that this property was valued on the same scheme as the subject property but was significantly smaller, by almost 1,000m^2. However, he considered that this property reflected the revised base rate agreed on Unit B James Watt Close and supported his case for the same tone to be applied to all units measuring above 1400m^2. Mr Buchkov sought a revised RV of £68,500 for the subject property.

13. Ms Moffat disagreed that these properties were useful comparisons and explained that the valuation scheme in question had been revised following the appeal agreed by Altus Group on behalf of the taxpayer at Unit B James Watt Close. She stated that the revised scheme applied a main space price of £35/m^2 for those units measuring between 1500m^2 and 2500m^2. Units measuring between 2500m^2 and 5000m^2 were valued using a main space price of £30/m^2. She highlighted that Unit B James Watt Close measured 2856.96m^2 (TSA), so fell into a different bracket to the smaller subject property. Ms Moffat also commented on aspects of the lease for Unit B that suggested the property was in disrepair and the lease reflected a lower value for the poor condition of the unit.

14. In respect of Unit 12 Bridgewater Close, Ms Moffat confirmed that this unit was smaller than the subject property, measuring 1,444.73m^2 (TSA). She stated that the VO held contradicting information on the lease for this property and a copy of the lease had been requested from Altus Group, but it had not been provided. She explained that the information supplied by the occupier on the Form of Return suggested the property had been expanded and an extra lease agreed in December 2012 which was outside the Act and expired on 18 June 2014. The VO therefore considered this information to be of little use. The VO had analysed the later rent agreed on Unit 12 from November 2016 and found it to suggest a main space price of £49.05/m^2. Ms Moffat stated this supported her case that the current RV for the subject property was not excessive. In support of her case defending the existing entry in the list for the subject property, Ms Moffat referred to a number of other units.

15. After the hearing had concluded, Mr Buchkov sent an email to the Tribunal seeking to challenge some elements of Ms Moffat's submission. Any preliminary issues or objections to evidence presented by either party should have been raised during the hearing so it was disappointing that this objection was raised after the hearing had ended. However, the panel considered the comments from both parties under the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926.

16. Mr Buchkov referred to comments made by Ms Moffatt concerning one of the properties she relied upon as comparable to the subject property, namely Units 13-14, Isis Trading Estate. He objected to comments made regarding CCTV cameras at this property and also the removal of an allowance for the dividing wall at the premises. Ms Moffat had stated that the RV for this property was increased and the decision notice had not been challenged. Mr Buchkov highlighted than none of these issues had been discussed during the challenge stage for the subject property or application made prior to the hearing for them to be included as new evidence. He also pointed out that Altus Group had been preparing to lodge an appeal on Units 13-14 Isis Trading Estate but were no longer acting for the occupier. He

suggested that Altus Group does not agree with the decision on this property but has no authority to appeal it further.

17. Ms Moffat confirmed that reference was made in the subject property's decision notice to the increase in RV for Units 13-14 Isis Trading Estate, although no mention was specifically made of whether the decision had been appealed. She acknowledged that she had mentioned the CCTV cameras and set out for the panel how this related to the challenge decision on that property.

18. Stage one of the test set out in *Denton* requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. In this case the panel was satisfied that the additional oral submissions on 13-14 Isis Trading Estate did not present a serious or significant breach in directions as it did not have a material effect on the case before the panel. The panel considered the relevance of the unit at Isis Trading Estate in terms of the its comparability to the subject property and whether the decision on that unit was appealed or not was not a matter for consideration in this appeal. Therefore, no sanctions were applied.

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 all 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, the material day was 1 April 2017.

21. The panel noted that Mr Buchkov had stated that Unit 5 Newcombe Drive was owner occupied and therefore no rent was passing on the subject property. Ms Moffat stated the VO's records indicated that the freehold interest was purchased in March 2016 and the unit was re-let on 25 March 2017. She stated that declarations made on the Form of Return related to a 2007 letting. The panel found that, in accordance with *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, the starting point for the valuation should be the rent passing on the subject property. However, in this case, there was no evidence of a useful open market rent agreed close to the AVD of 1 April 2015. Therefore,

the panel considered the subject property must be valued with regard to the rents and tone of the rating list on similar workshops in the locality.

22. The panel was aware that the main space rate applied to the subject property had recently been reduced from £45/m^2 to £35/m^2 and the relevant scheme for the Hawksworth Industrial Estate had been revised (scheme number 355488). Mr Buchkov sought to rely on the comparable properties at Unit B James Watt Close and Unit 12 Bridgewater Close, both of which are located on the same estate as the subject property. He cited the scheme description as '*The value ranges from £27.50 to £60.00 per square metre'* and sought a reduction to £30/m^2.

23. Mr Buchkov had stated in his submission that he did not seek to challenge the values within the scheme for the Hawksworth Industrial Estate, but he disagreed with the bands applied to the tone of values. He stated that the bands had been changed under the scheme from those in place at the start of the 2017 rating list and, were the bands to be returned to those previously set, the subject property would fall into the same bracket as Unit B James Watt Close and be valued at £30/m^2.

24. After considering the parties' submissions in relation to the two comparable properties presented by Mr Buchkov, the panel concluded they did not suggest the existing valuation for the subject property was excessive. Ms Moffat had provided details of the revised quantum brackets and the panel found that Unit 12 Bridgewater Close, much smaller than the subject property at just over 1400m^2, clearly fell into a lower size bracket than the subject property, which fell into the 1500m^2 – 2500m^2 range. Unit B James Watt Close was closer in size to the subject property but still fell above the size threshold of 2500m^2 set out by Ms Moffat and therefore had been valued on a main space rate of £30/m^2.

25. Whilst the panel noted that the comparable properties presented by the VO were not all located on the Hawksworth Industrial Estate, it accepted that the lack of rental evidence on the estate had meant examples had been sought in the wider locality to demonstrate the tone of the rating list.

26. Ms Moffat referred to the following units –

Address	Size	Main space rate
11 Newcombe Drive, Hawksworth Trading Estate	1,925.53m^2	£35/m^2
Unit 1 Athena Business Centre	2,431.79m^2	£35/m^2
Unit 29 Athena Avenue	1,802.29m^2	£35/m^2
Concorde Building Unit C, Stirling Road	2,149.11m^2	£40/m^2
Units 13-14 Isis Trading Estate	1,798.57m^2	£40/m^2

27. Aside from the two units relied upon by Mr Buchkov, the VO had included a further property from Hawksworth Trading Estate. The panel noted Unit 11 was smaller than the subject property (2297.71m^2) but has been valued at £35/m2 as it falls within the same quantum bracket. The panel found this unit, and the two relied upon by Mr Buchkov, demonstrated the scheme had been applied consistently on other units in the same immediate location.

28. The other properties referred to by the VO were located further afield but the panel noted that none measured in excess of 2,500m^2 and all had been valued on a main space rate the same as the subject property or higher. The VO had provided details on these properties, which included new lettings on Unit 29 Athena Avenue and Concorde Building Unit C. The panel found that these properties supported the main space rate applied to the subject property and £35/m^2 did not seem excessive.

29. After considering all of the evidence presented by the parties, the panel concluded that the two properties relied upon by the Appellant's representative did not demonstrate that the scheme for Hawksworth Trading Estate had been applied inconsistently. Mr Buchkov felt that the quantum bands within the scheme should revert to the ranges previously set. The panel considered it was not for the Tribunal to interfere with the VO's scheme, but its task was to decide whether the valuation for the subject property was reasonable.

30. Taking into account the evidence presented by both parties, the panel concluded that the tone of the rating list in the wider locality supported £35/m^2 for the subject property. The scheme had been applied consistently on the subject estate, using the revised bands, and the tone was supported by the valuations on properties of similar size and age in the wider locality.

31. In appeals of this nature the burden of proof rested on the Appellant's representative to prove his case for a reduction. In this case, the panel concluded that Mr Buchkov had failed to produce sufficient evidence to justify his case for a reduction in the level of value. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated, the existing valuation was reasonable and the appeal was dismissed.

Date: 21 June 2021
Appeal number: CHG100144294