THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; Factory and Premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; comparable assessments; appeal allowed in part.

Re: Aurora Marble Ltd, Green Lea Mills, Huddersfield HD5 9XX

APPEAL NO: CHG100144856

BETWEEN:	Fired Up Corporation Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mr M Hunt (Senior Member) and Dr PAR Thomson

CLERK: Mrs H Beresford

REMOTE HEARING : 11 June 2021

APPEARANCES: Mr J Abbott of Altus Group on behalf of the appellant as advocate and expert witness
Mr M Mattock on behalf of the respondent.

Summary of decision

1. The appeal was allowed in part. The assessment was reduced to £62,750 rateable value (RV) with effect from 28 August 2019.

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.

4. This appeal has been brought in respect of the following: Aurora Marble Ltd, Green Lea Mills, Huddersfield HD5 9XX (the 'appeal property'), which was originally entered in the 2017 Rating List as 'Factory and Premises' at £62,000 RV, effective from 1 April 2017. This assessment had been increased to £74,000 RV with effect from 28 August 2019.

5. The challenge proposal, received by the Valuation Officer on 22 November 2019, sought a reduction in the appeal property's assessment to £55,000 RV (this was later amended to £56,000) with effect from 28 August 2019 based on £11.50/m^2 for the older (A2) parts of the property, £14.00/m^2 for the parts constructed in the 1970's, a 7.5% allowance to reflect the difficulties with access and a 5% discount to reflect mixed age. The Valuation Officer did not agree to amend the valuation in accordance with the challenge proposal, and issued a decision notice to that effect on 20 November 2020. The appellant's representative appealed to this Tribunal on 16 March 2021 on the grounds that the valuation for the hereditament was not reasonable.

6. This is a compiled list appeal and therefore the material day is 1 April 2017.

7. The appeal property is a mixed age industrial property located in a semi residential/industrial locale in Dalton, Huddersfield. Its initial use was bleaching and dyeing wool for the local textile industry. It has an agreed area of 5624.32m^2. The property is situated approximately two and a half miles from the centre of Huddersfield, and four and a half miles from Junction 24 of the M62. The property comprises mixed age buildings, with some dating from pre-1920 with an eaves height of 4.5m, and other structures dating from the 1970s benefitting from an eaves height of 5.5m.

8. Mr Abbott appeared as 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).

9. Mr Abbott's declaration set out that Altus Group was representing the appellant on a contingency-based fee. 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.

10. The expert witness evidence was accepted 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). The "expert" evidence was considered, and the panel attached weight to it as it saw fit.

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 being overlooked by the panel.

Issue

12. Whether the appeal property's current assessment at £74,000 RV was reasonable?

Evidence and submissions

13. Within the challenge documentation and in the oral presentation, it was confirmed that no factual differences existed between the parties. The rating representative contended that the appeal property's 2017 rating list assessment was incorrect and unsupported by the evidence available in the locality. He had supplied a schedule of comparable properties to support this argument. Mr Abbott made the following contentions:

i. The rating assessment is not commensurate with assessments of comparable properties in the same mode and category of use: the appeal property should be valued as three separate survey units due to physical differences in terms of the age, size and specification of each.

ii. Mr Abbott believed that the values on each unit should be adjusted to reflect the evidence of comparable assessments. Properties of this nature had historically been valued to reflect some parts of the property being of different quality to other parts. Originally, the subject property had been valued at £10.19/m^2 for the older part built circa 1905; the lean-to warehouse constructed in 1977 had been valued at £11.21/m^2 and the 1979 steel portal warehouse valued at 13.65/m^2. There had also been an end allowance for poor access (this had been removed in the 2017 rating list). Mr Abbott argued that this approach should be adopted when properties have been constructed in parts over a period of time as it is a logical approach.

iii. In August 2019 the entire site was revalued at £14.00/m^2. This is a higher base rate than the adjoining unit which is smaller and valued at 11.50/m^2: Mr Abbott argued that this 'defies the laws of quantum'.

iv. This method of valuation increased the RV from £62,000 to £74,000 with effect from 28 August 2019 and the property was classified as a non-standard industrial unit. Mr Abbott contended that this classification was usually used where properties had been refurbished to such an extent as to "muddy the waters" between varying aged units. However, Mr Abbott believed that this is not the case with the subject property: the original unit constructed in 1905 (the A2 part) could not be more different in terms of quality, design and specification from the 1970's extensions. Mr Abbott contended that the valuation should revert to a valuation commensurate with local valuation office policy as there had been no refurbishment apart from metal cladding to replace the original roof.

v. Mr Abbott argued that the Valuation Officer's comparable properties, put forward in support of this method of valuation, included properties which appeared to have been refurbished to bring all parts up to the same standard. The comparable properties were in a different valuation scheme to the subject property and were not typical for their age or location. There appeared to be no requirement for separate parts of these buildings to be valued differently; they are one-off properties in some cases situated in residential areas. It is appropriate to place properties of this nature in a non-standard scheme.

vi. Mr Abbott proposed that the 1970's parts of the building should be kept at £14.00/m^2 but the original part of the building should be valued at £11.50/m^2. He had submitted a schedule of properties built prior to 1939, all within a ten mile radius of the subject with base rates of between £10.50 and £11.50/m^2, many of which are in the same valuation scheme as the compiled list entry for the subject property which he argued meant the Valuation Officer must consider them to be similar. £11.50/m^2 is also in line with the adjoining building Green Lea Mills, Cross Green Road, Dalton.

vii. Mr Abbott contended that the adjoining property also benefits from an end allowance for access through a residential area; the same disability is suffered by the subject. Mr Abbott argued that this should be increased to 7.5% for the subject property due to the narrow access and the shared yard. In support of this argument he referred to the assessment of Stafford Mills, George Street, Huddersfield. Mr Abbott also contended for a mixed age allowance to be applied to the subject's assessment for the different ages of building on the site commensurate with Rowley Mills, Penistone Road, Fenay Bridge, Huddersfield, which is in the same valuation scheme as the subject.

14. In summary, and taking a stand back and look approach, Mr Abbott asked the panel to allow his revised valuation of £56,000 RV for the appeal property, based on an unadjusted rate of £14.00/m^2 for the 1970's parts of the building and £11.50/m^2 for the older part with an allowance of 7.5% to reflect the property's awkward access and 5% to reflect mixed age. He asked the panel to confirm an RV of £56,000.

15. In the Valuation Officer's challenge case decision notice, the assessment of the appeal property had been increased to £74,000 RV based on £14.00/m^2. It was stated that having considered the issues raised in the challenge, there was little evidence to show that the appeal property's assessment was excessive. In oral presentation at the hearing and within the decision notice, Mr Mattock referred to the rental evidence for a schedule of comparable properties which had been submitted and which he believed supported an RV of £74,000 for the subject property:

i. Mr Mattock referred to the 2011 passing rent on the subject property of £71,250: this rent had been agreed four years prior to AVD but Mr Mattock believed it should still be taken into consideration as rental evidence as it analyses to £13.47/m^2,which supports the current RV at £14.00/m^2 .

ii. Mr Mattock went on to highlight four non-standard properties for the consideration of the panel. Albany Works, a 1950's building at 2657m^2, had a 2017 rent of £60,000 per annum which analysed to £22.64/m^2. An RV equating to £18.06/m^2 had been adopted. Mr Mattock believed this RV supported £14.00/m^2 for the subject property as the building is older than the 1970's part of the subject property and has an RV in line with the passing rent.

iii. The second comparable property was Unit 16, Northorpe Mill, Wakefield Road, Huddersfield; this was a pre-1900's property, extended and refurbished in 1997, with an area of 2491m^2. The passing rent was agreed on 1 May 2015 at £78,000, close to the AVD. The rent analysed to £36.29/m^2 with an adopted RV of £26.00/m^2.

iv. Mr Mattock went on to refer to Willow Park Business Centre, Willow Lane, Huddersfield, which had an area of 1381.21m^2 and a passing rent of £73,200 agreed on 1 May 2015; this rent analysed to £53.37/m^2 and an RV of £53.00/m^2 had been adopted. Mr Mattock explained that this property was originally built 1955-1964, however, it had been extended and refurbished in 2006. The property was occupied as a brewery with a tap room. Mr Mattock contended that given that it has a much more central location and is a smaller space, it has a higher value in line with analysis. Mr Mattock believed that this comparable supports a level of tone at AVD for non-standard industrial properties in Huddersfield.

v. Finally, Dene House, North Road, Huddersfield was cited: this property had an area of 4033.92m^2 and a rent passing of £72,000 agreed on 1 August 2003, which analysed to £17.85/m^2. The adopted RV was £13.00/m^2 in respect of the 1900 A2 area. This comparable was more mixed in terms of age of construction than the subject property as it has four separate survey units. Mr Mattock argued that in this case the separate parts of the building had been valued differently as they were of different quality, unlike the subject property where he believed the 1970's parts of the construction are too similar to the A2 part of the property to be valued separately.

vi. In terms of 'standard' early 1900's units Mr Mattock referred the panel to two main comparable properties; firstly, Units 34 & 35, Dewsbury Mills, Thornhill Road, Dewsbury. This property had an area of 7,099.21m^2 and a rent agreed of £98,500 which analysed to £13.45/m^2. Mr Mattock contended that this rent supported £14.00m^2 for the subject property as the comparable property had lower eaves. Secondly, Mr Mattock referred to Units 7 - 19, Bottoms Mill, Woodhead Road, Holmfirth, a property of 6,077.84m^2 with an adopted RV of £11.00/m^2. This assessment was also believed to be of a lower quality A2 area than the subject property, with lower eaves so it had a slightly lower value.

16. Mr Mattock considered that the appeal property's current assessment, based on an unadjusted rate of £14.00/m^2, which he explained had been adjusted by 2.5% to £12.98/m^2 for lack of heating, was not shown to be unreasonable. He therefore sought dismissal of the appeal.

Decision and reasons

17. 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;
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> 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".

18. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the AVD.

19. Various extracts of case law had been included within the parties' evidence. Reference was made to the Lands Tribunal decision in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, which provided guidance on the weight to be attached to rental and assessment evidence. The rent was considered as the starting point and more weight was attached to those rents closest to the statutory criteria of rateable value and which were agreed closest to the AVD. Other rents were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. Other comparable assessments were also relevant but to a lesser degree. In light of all the evidence an opinion could be formed on the rental value of the appeal property, the weight to be attributed to the different types of evidence depending on one hand on the nature of the actual rent and, on the other hand, the degree of comparability found in other properties. In those cases where there were no rents available for comparison, a review of other assessments may be helpful, but in such circumstances, it would clearly be more difficult to reject the evidence provided by the actual rent.

20. In the subject case, the tenants occupy the property leasehold at an annual rent of £71,250 with a rent commencement date of 20 July 2011. The panel noted that this rent had been agreed four years prior to the AVD and therefore attached only moderate weight to it.

21. The panel had regard to the evidence of comparable properties submitted by the Valuation Officer, but the panel was not persuaded by these comparable properties as they appeared to have been refurbished to the extent that they they no longer had parts that were of differing quality to each other. The panel also found that these comparable properties, in particular those highlighted by Mr Mattock, were considerably smaller than the subject property so it would be expected that the price per/m^2 would be higher.

22. The panel found the comparable properties submitted by Mr Abbott to be the more compelling evidence. He had submitted a schedule of properties built prior to 1939 all within a ten mile radius of the subject with an RV of between £10.50/m^2 and £11.50/m^2 many of which were in the same valuation scheme as the compiled list entry for the subject property which suggested that the Valuation Officer considered them to be similar. The panel also noted £11.50/m^2 is in line with the adjoining building Green Lea Mills, Cross Green Road, Dalton.

23. The panel found that the reclassification of the property as non-standard was out of kilter with the local method of valuing properties, as this property had not been refurbished to make all parts the same quality. The panel found that the hypothetical tenant coming fresh to the scene would not pay the same rent for all separate parts of this property if they were separated as they were not of the same quality as each other.

24. The panel found Mr Abbott's proposed valuations of £14.00/m^2 for the 1970's part of the property and £11.50/m^2 for the A2 parts of the building to be fair and reasonable. Consideration was given to the level of allowance to reflect access and age of the appeal property. Mr Abbott had sought allowances of 7.5% for poor access and 5% for mixed ages, however the panel held that no allowance should be adopted as these disadvantages had been reflected in the adoption of a lower rateable value, as contended by the Valuation Officer. The panel took account of various considerations in reaching that conclusion, including that the different parts to the unit seemed capable of being operated together with little real difficulty (part of the Valuation Officer's case for a single rate per m^2), and that the

passing rent did not support any further reduction. The panel determined that a rateable value of £62,750 should be adopted; in effect this reflected Mr Abbott's valuation but without the adoption of any end allowance.

Order

25. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £62,750 RV for the appeal property, with effect from 28 August 2019.

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

27. 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 (Alterations 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.

Date: 7 July 2021

Appeal number: CHG100144856