

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2017 rating list appeal; land used for storage; price per m² in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: Section D1 Heathrow Plant at, Church Road, Cranford, Hounslow, TW5 9RY

APPEAL NUMBER: CHG100145098

BETWEEN: Modebest Builders Limited Appellant

and

Ms D Bunyan, Valuation Officer Respondent

PANEL: Miss S Ballentine (Senior Member)
Mr D Heelas

CLERK: Mrs L Horne

REMOTE HEARING ON: Wednesday 22 September 2021

APPEARANCES: Mr A Hair from Altus Group, representing the appellant
Mr J Little representing the Valuation Officer

Summary of decision

- 1 Appeal allowed in part. The Rateable Value (RV) of the appeal property is altered from £29,750 to £27,000 with effect 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.

- 4 This is a 2017 rating list appeal. Section D1 Heathrow Plant at, Church Road, Cranford, Hounslow, TW5 9RY, (the 'appeal property') had been entered in the 2017 rating list as 'land used for storage and premises' at a RV of £29,750 with effect from 1 April 2017.
- 5 The challenge proposal was submitted by Altus Group on behalf of Modebest Builders Limited and was received by the Valuation Officer on 25 November 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £22,500 was proposed with effect from 1 April 2017.
- 6 The Valuation Officer issued a challenge case decision notice on 30 March 2021, which stated that based upon the evidence and information available, the rating list entry of £29,750 RV was considered to be reasonable and there would be no amendment.
- 7 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 11 May 2021.
- 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), Mr Hair's declaration of truth included a statement that he was instructed under a conditional fee arrangement. 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.
- 9 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).
- 10 The appeal property comprises hard surfaced fenced land used for storage, and two ancillary office units. It is located approximately 2.1 miles from the Hounslow West Underground Station and 1.2 miles from junction 3 of the M4. The total area of the land is agreed at 576 m². The property is assessed on scheme 383362 and the present valuation of £29,750 RV reflects an adopted price of £27.50 per m².
- 11 The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

- 12 The issue in dispute is the price per m² to be adopted in the valuation of the appeal property.
- 13 During the course of the hearing, Mr Hair stated that he had not been able to verify the rental transaction in respect of Land Area D, Phoenix Way, Hounslow, TW5 9NB, as there had not been an opportunity to inspect the form of return. He therefore contended that the evidence was not admissible.
- 14 The clerk advised that the issue of admissibility of evidence was for the panel to determine.
- 15 Mr Little offered to provide the details contained on the form of return over the phone. Mr Hair was in agreement, but requested that the hearing of the appeal be delayed until 3 or 4pm (the hearing of the appeal commenced at 10 am).
- 16 The panel adjourned briefly to consider the issue. In arriving at the decision to proceed, the panel took into account the fact that Mr Hair could have approached the Valuation Officer ahead of the hearing to verify the details contained in the form of return. The parties were advised that the panel would hear submissions regarding the weight which should be attached to the evidence.

Evidence and submissions

- 17 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge; Valuation Officer's challenge case decision notice; and appellant's challenge submission.
- 18 On behalf of the appellant, Mr Hair contended for a revised price of £15 per m² supported by reference to local rental evidence and current tone. He disputed the relevance of the Valuation Officer's rental evidence as one property was located within a distribution park, and two of the transactions were between connected parties. He requested that the panel confirm a revised RV of £22,500 with effect from 1 April 2017.
- 19 On behalf of the Valuation Officer, Mr Little contended that the adopted price of £27.50 per m² was supported by the basket of rental evidence and comparable assessments. He disputed the relevance of Mr Hair's larger comparable assessments, and requested that the panel dismiss the appeal and confirm the RV of £29,750 with effect from 1 April 2017.

Decision and reasons

- 20 In arriving at the decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

2(1) 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.

- 21 In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).
- 22 The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.
- 23 The appeal hereditament is occupied on a freehold basis. In the absence of primary rental evidence, the panel turned to the rental evidence relied upon by the parties:
- 24 In support of an alteration to £15 per m², Mr Hair presented the following:

4 Rubastic Road, Southall, Middx, UB2 5LL

Hard surfaced fenced land of 1,804.72 m². An open market letting effective from April 2015 analysed at £22.07 per m². It had been valued at an adopted price of £27.50 per m², but following a challenge, it had been agreed at £22.50 per m² (the agreement had taken place after the subject appeal had been made).

Mr Hair submitted that this was a superior location to the subject, within an industrial estate with fully surfaced roads and strong access links. It had been placed in the same scheme and original tone bracket as the subject.

While Mr Little agreed that 4 Rubastic Road was similar in specification, he argued that little weight should be attached to it, as it was over three times the size of the subject. He also stated that there was a 5% allowance for access as there were a number of through roads in the locality unsuitable for HGV access.

Plots of Land (A-D) Adj Queens Head, High Street, Cranford, TW5 9PJ

Less than 0.5 miles from the subject, a larger hereditament of 5,996 m². An open market rental transaction dated 1 April 2018 devalued at £10.89 per m²; the adopted value was £15 per m².

Mr Hair acknowledged that this was a post AVD rent for a property significantly larger than the subject. However, he contended that this demonstrated that £27.50 per m² for the appeal property was excessive.

Mr Little submitted that little weight should be attached to this rent which was agreed three years after the AVD for a property ten times the size of the subject.

- 25 In support of the Valuation Officer's adopted price of £27.50 per m², Mr Little presented the following:

Land Area D, Phoenix Way, Hounslow, TW5 9NB

Located 1.3 miles from the subject, a rent from August 2015 devalued at £48 per m². The property was 590.38 m² and valued at an adopted price of £32.50 per m².

Mr Little acknowledged that the analysed rent was high, however he described the property as being of high quality and located on a distribution park. He argued that this demonstrated that £27.50 per m² for the subject was more than reasonable for a property almost identical in size.

Mr Hair disputed the reliability of this rent as there appeared to be buildings included, which would explain why it was out of kilter with the evidence. A further reason for rejecting it as a reliable comparable was due to the fact that it was located within a distribution park and highly sought after space.

359A Staines Road, Hounslow, TW4 5AP

Located three miles south of the subject, a rent from August 2013 devalued at £24.62 per m². The property was 1,173.9 m² and valued at an adopted price of £27.50 per m². Mr Little acknowledged that it was a connected party rent, and cited *Garton v Hunter* for authority that all evidence is admissible.

Mr Hair confirmed that this was a connected party rent and therefore little weight should be attached to it.

Section A Heathrow Concrete & Pumping at Church Road, Cranford, TW5 9RY

A rent was agreed in March 2020 at £15,064; no analysis was provided. The property was 183.60 m² and valued at an adopted price of £27.50 per m².

Mr Little stated that he was unsure why this rental transaction for a smaller unit agreed in 2020 had been included (he had not been involved with the case at challenge stage). He did, however, contend that it supported the adopted price of £27.50 per m² for the appeal property.

- 26 In consideration of the five pieces of rental evidence, the panel decided that the most compelling was that presented by Mr Hair in respect of 4 Rubastic Road. Mr Little had agreed that this was comparable in specification to the appeal property, however, he argued that little weight should be attached to it as it was over three times the size of the appeal property.

- 27 Mr Hair stated that both 4 Rubastic Road and the appeal property had originally been valued at an adopted price of £27.50 per m², despite the difference in size. He argued that if 4 Rubastic Road had been agreed at £22.50 per m², then this demonstrated that the value of the appeal property at £27.50 per m² was excessive.
- 28 The fact that both properties had originally been valued at £27.50 per m², led the panel to determine that Mr Little's argument for attaching little weight to 4 Rubastic Road due to its larger size was not well founded.
- 29 The panel attached less weight to Mr Hair's other rental comparable, Plots of Land (A-D) Adj Queens Head, High Street, as it was significantly larger than the appeal property at 5,996 m² and in a different valuation scheme. The panel noted that the subject scheme was applicable to surfaced storage land less than 4,000 m².
- 30 The panel upheld Mr Hair's argument that less weight should be attached to 359A Staines Road and Section A Heathrow Concrete & Pumping at, Church Road as they were connected party rents. The dates of the transactions were also two years previous and five years post AVD.
- 31 The panel also decided to attach less weight to Land Area D, Phoenix Way. Both parties agreed that it was in a superior location, and the date of the rent was close to the AVD. However, the analysis of £48 per m² was far in excess of any of the rental comparables, and Mr Hair had cast doubt on the analysis, which he contended had also reflected the buildings on site.
- 32 Having determined that the most reliable rental comparable was 4 Rubastic Road at £22.50 per m², the panel then turned to the parties' evidence of comparable assessments.
- 33 Mr Hair presented the following comparable assessments:

12 Brent Way, Boars Head Yard, Brentford, Middx, TW8 8AA

Within the same scheme as the appeal property. A total area of 802.9 m², hard surfaced fenced land valued at £20 per m².

Mr Hair contended that the value of land further into London would be higher than that of the subject in Hounslow.

Mr Little submitted that this was a larger property, and that simply being closer to London did not necessarily mean that the land would be higher in value. Access and transport links were important factors to be considered.

Unit 14A Kew Bridge North Depot, Lionel Road, Brentford, Middx, TW8 9QR

Within the same scheme as the appeal property. A total area of 618.27 m², hard surfaced fenced land valued at £20 per m².

Mr Little applied the same logic as with 12 Brent Way, this was a larger property eight miles away.

Section D2 Heathrow Plant at, Church Road, Cranford, TW5 9RY

Within the direct vicinity of the appeal property, and also hard surfaced fenced land. An area of 7,367 m² has been valued at £7.50 per m².

Mr Hair commented that although significantly larger than the subject, the gap in value between £7.50 and £27.50 per m² seemed “out of kick” for identical land sites situated next to each other.

While close in location, Mr Little disputed the relevance of a property twelve times larger than the subject.

- 34 The Valuation Officer’s comparable assessments comprised three assessments at South East of Ye Old Plough, Church Road, Cranford, TW5 9RY (Yard A, B and D) and two further assessments at Church Road, Cranford (Section B Heathrow Environmental and Section C Heathrow Cranes).
- 35 The assessments ranged between 259.5 m² and 544 m². Mr Little contended that they supported a tone of £27.50 per m² for surfaced land, and £20 per m² for unsurfaced land.
- 36 Mr Hair did not provide any specific comments on the Valuation Officer’s comparable assessments.
- 37 The panel was not persuaded that the Valuation Officer’s comparable assessments could be relied upon as evidence of tone, given the agreement to reduce 4 Rubastic Road from £27.50 to £22.50 per m².
- 38 The panel attached little weight to Mr Hair’s comparable assessments. Two of the three were located some distance from the appeal property in Brentwood, and while Section D2 Heathrow Plant was in the same location, it was significantly larger at 7,367 m². It did not, therefore, assist the panel in arriving at a value for a hereditament of 576 m².
- 39 The panel was satisfied that Mr Hair had demonstrated that the adopted value of £27.50 per m² for the appeal property was excessive. However, the panel considered that his proposed value of £15 per m² was unsupported. As 4 Rubastic Road was the most compelling comparable presented, the panel decided that the agreed revised value of £22.50 per m² was fair and reasonable for the appeal property.
- 40 A revised valuation of £27,000 RV was determined by the panel, based upon £22.50 per m²:

Description	Area (m²)	£/m²	Value
Hard surfaced, fenced land	576.00	£22.50	£12,960
Subtotal			£12,960
Additional items			
Office	220.40	£50.00	£11,020
Office	61.70	£50.00	£3,085
		Total value	£27,065
		Rounded down to £27,000 RV	

- 41 The appeal is therefore allowed in part, and 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).

Order

- 42 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised RV of £27,000 with effect from 1 April 2017.

Date: 11 October 2021

Appeal Number: CHG100145098