VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556]; the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]; Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269];

APPEAL NUMBER: CHG100145255

RE: 16A Anglia Parkway South, Ipswich, IP1 5QP
(the "subject hereditament")

BETWEEN:	Reboot Leisure Ltd	Appellant
	and	
	The Valuation Officer	Respondent

SITTING: *remotely via Microsoft Teams conference call*

ON: Tuesday 23 November 2021 at 15:45 hours

BEFORE: Mr AV Clark (Vice President)

CLERK: Mr W Hamilton IRRV(Dip) A.Inst.Pa

APPEARANCES: Mr P Emerick of Altus Group for the Appellant (Advocate)
Mr C Strong of Altus Group for the Appellant (Expert Witness)
Mr L Stevens of Valuation Office Agency for the Respondent

DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is allowed-in-part.

2. I am satisfied that –

   (1) the rateable values shown in the 2017 non-domestic rating lists for the subject hereditaments is not reasonable; and that

(2) the correct rateable value for subject hereditament is £265,000 with effect from 23 June 2017.

3. A copy of my valuation for the subject hereditament is appended to this decision and statement of reasons.

Introduction

4. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings. I gave proper judicial consideration to all the evidence and arguments put forward in the course of the proceedings whether or not it is fully set out in this statement of reasons.

Background

5. This appeal has been brought pursuant to Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] (the "ALA Regulations"). The appeal challenges the Respondent's decisions that the Appellants' proposal (also known as a "challenge" under the "check, challenge, appeal" framework) was not well-founded.

6. The Appellants' proposal sought an alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the subject hereditament is incorrect.

Remote hearing

7. On 29 July 2020, the President of the Tribunal issued the COVID-19 Variation of Practice Statement. In that statement, the President has determined, for the purposes of Regulation 6(3)(g) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations"), that the form of any hearings before the Tribunal would include "remote hearings". Specifically, the President states that this is to include the use of Microsoft Teams conferencing software. Further, the President directs that remote hearings would be the default until such time as it is safe for the Tribunal to return to normal practice.

8. In accordance with that Practice Statement, I conducted the hearing of the appeal remotely via Microsoft Teams conference call. I attended the hearing by way of video-link, as did the Clerk to the Tribunal and the representatives for both parties.

9. At the commencement of the hearing, during my opening statement, there was a short technical issue, whereby one of the Appellant's representatives disconnected from the hearing. This was promptly resolved, and I recovered the points made at the point of the disconnection. For the avoidance of any doubt, I am satisfied that those present were able to fully participate in the proceedings.

Appellant's representative

10. Mr Strong, a member of the Royal Institution of Chartered Surveyors, appeared on behalf of the Appellant as expert witness with Mr Emerichk as advocate. At the commencement of proceedings, I confirmed that I had read Mr Strong's written declaration that he was instructed under a contingency based fee, a type of success-related fee arrangement. In this declaration, Mr Strong stated that he understood and accepted that his duty was to the Tribunal in giving his evidence, that he would comply with this duty, and the requirements of his professional body, regardless of whether or not the evidence supported the Appellant's case. Mr Strong also confirmed this orally prior to commencing his submissions.

11. Noting the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), I nevertheless accepted his expert witness evidence on the above basis because –

    (1) the appeal was not complex;

    (2) to do otherwise would be contrary to the requirements to deal with cases proportionately, avoiding unnecessary formality and ensuring parties are able to participate in proceedings (provided by Regulation 3 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations")); and

    (3) it was nevertheless permissible whether or not it would be admissible in a civil trial (provided by Regulation 17(2)(a) of the Tribunal Procedure Regulations).

12. I therefore considered Mr Strong's expert evidence and attached such weight to it as it saw fit.

Relevant Law

<u>The non-domestic rate</u>

13. Part III of the Local Government Finance Act 1988 (the "Act") makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act (which is commonly referred to as the "rating hypothesis").

14. For these proceedings, it is not necessary to set out all the provisions but suffice it to say that the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

<u>The material day</u>

15. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the "material day". The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (the "MD Regulations") provides for determining the material day. It is not necessary to set out the provision in full but suffice it to say that the material day for the purpose of the present appeal is 23 June 2017, being the date the subject hereditament came into existence.

Decision

16. The parties' representatives took me through their respective submissions and evidence orally at the hearing. I carefully considered the parties' respective submissions, together with the legislative tests set out above. I am grateful to the parties' representatives for their submissions.

17. The subject hereditament is an indoor trampoline centre and premises within a retail warehouse unit, created out of a split of Unit 16 into three separate hereditaments. The subject hereditament measures 4,429.31m^2 in area. Planning permission for a change of use was granted in May 2016, permitting the subject hereditament to be use as D2 (Leisure) or A1 (Retail). The subject hereditament is held on an 8.5-year lease commencing on 3 March 2020. The lease provides for a three-month rent-free period, followed by 30 months at a rent of £265,781 per annum, increasing to £532,035 per annum. A further rent review effective 29 September 2020 increased the rent to £564,599 per annum.

18. The crux of the dispute between the parties turns on the appropriate base rate to applied to the subject hereditament in the calculation of the rateable value. There is no dispute over the areas adopted. The subject hereditament was entered into the 2017-non-domestic rating list at a rateable value of £332,500 with effect from 23 June 2017, based upon a base rate of £75/m^2. The Appellant contend that a base rate of £45/m^2 is more appropriate, which would result in revised rateable value of £199,000.

19. The Respondent's representative contends that the subject hereditament has been valued in line with the passing rent, but with an adjustment to reflect the time passing since the antecedent valuation date.

20. I was referred by the parties to multiple proposed comparable assessments of similar hereditaments, including other trampoline centres in Slough, Enfield, Elstree, Colchester, Norwich and Ragley. These vary greatly in rents – ranging from £35/m^2 to £57/m^2 – and appear to be in different market localities. Whilst in the same mode and category of occupation as the subject hereditament, I therefore placed little weight on these in the basket of evidence, given their distance from the subject hereditament.

21. The remaining evidence in the basket of evidence relates to the Units 16B and 16C Anglia Parkway South, which were also formed out of the split that created the subject hereditament. Both units remain retail units. Unit 16B is let on an

8.5-year lease from 13 April 2017 at a rent of £260,000 per annum, but with an initial 24-month rent-free period. This rent analyses to a base rate of £35.76/m^2. Unit 16C is let on an 8.5-year lease from 28 March 2017 at a rent of £295,792.25 per annum, but with an initial 9-month rent-free period. This rent analyses to a base rate of £38.44/m^2. The rent on the subject hereditament therefore appears out-of-kilter with the retail units in the immediate locality.

22. Whilst the actual rent passing on the subject hereditament provides a starting point t I am also conscious of the rents passing on the adjoining hereditaments. It appears to me that the subject hereditament is somewhat overrented although conversely the adjacent hereditaments are benefitting from a lower rent than would otherwise be expected. However, the basket of evidence does not justify a rent of £75/m^2 at the antecedent valuation date.

23. In view of the above, I am satisfied, on balance, that the Respondent's valuation of the subject hereditament is not reasonable. Accordingly, I adopt a base rate of £60/m^2 and allow the appeal-in-part.

Order

24. The Tribunal orders –

(1) the Respondent shall alter the entry in the 2017 non-domestic rating list to show the subject hereditament with a rateable value of £265,000, as set out in the appended valuation, with effect from 23 June 2017; and

(2) the Respondent shall comply with this order within two weeks.

Refund of appeal fee

25. Further, in view of the above decision, the appeal fee shall be refunded.

Appeal Number: CHG100145255 **Issued:** 22 December 2021

Appendix: The Tribunal's valuation

16A, Anglia Parkway South, Ipswich, IP1 5QP

Floor	Description		Area m²	Price per m²	Value
Ground	Ground floor sales		4,429.31	£60.00	£265,759
		Total	**4,429.31**		£265,759
	wef 23rd June 2017			**Say**	**£265,000**

Appeal Number: CHG100145255 **Issued:** 22 December 2021