THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeals; factory and premises; rental evidence of comparable properties; assessments placed on comparable properties; appeals allowed in part as the evidence showed that the existing valuations were not reasonable.

Re: Huhtamaki Van Leer, Rowner Road, Gosport PO13 0PR (appeal 1)
Huhtamaki UK, Grange Road, Gosport PO13 9UP (appeal 2)

APPEAL NO's: CHG10014616 (appeal 1) and CHG10014629 (appeal 2)

BETWEEN:	Huhtamaki UK Ltd	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

BEFORE: Mr A Backway (Senior Member) and Mrs C Parkes

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING ON: Monday 16 November 2020

APPEARANCES: Mr O Hamblin of Altus Group (on behalf of the Appellant)
Mr A Demetriou (Respondent's representative)

Summary of decision

1. The appeals were allowed in part as the existing valuations were not reasonable and the entries were reduced as follows:

   I. Appeal 1 to £647,000 Rateable Value (RV) with effect from 1 April 2017; and
   II. Appeal 2 to £442,000 RV, with effect from 31 May 2018.

Introduction

2. These appeals have been brought in respect of the following:

   (i) Appeal 1 – Huhtamaki Van Leer, Rowner Road, Gosport PO13 0PR, which was entered in the 2017 Rating List as factory and premises at £735,000 RV, effective from 1 April 2017.

(ii) Appeal 2 – Huhtamaki UK, Grange Road, Gosport PO13 9UP, which was originally entered in the 2017 Rating List as factory and premises at £610,000 RV, effective from 31 May 2018.

3. The appellant's Challenges to the Valuation Officer (VO) were made on 28 November 2019. Appeals to this Tribunal were made on 31 July 2020, following the VO's Decision Notices of 7 April 2020, in respect of the appeal properties (hereditaments). It was agreed that the hearing of the two appeals should be consolidated.

4. The material day for appeal (1) is 1 April 2017 and for (appeal 2) is 31 May 2018.

5. The appeal hereditaments comprised of factories and premises. The two factories were situated almost adjacent to each other within a mixed use industrial and residential area, approximately equidistant of Gosport 3 miles to the south and Fareham 3 miles to the north. The factories had been constructed in 1979 and 1984, respectively and comprised large production facilities of steel portal framed construction, typical of buildings of their age. Both properties were held on a freehold basis. In respect of (appeal 1) the premises measured 16,256.76 m^2. In respect of (appeal 2) the premises measured 13,976.41 m^2.

6. The factory in respect of (appeal 2) had originally been entered into the 2017 Rating List at £565,000, with effect from 1 April 2017, when it had measured 11,725 m^2. Following expansion of the premises to 13,976.41 m^2, the entry was amended to £610,000, with effect from 31 May 2018. Following the check and challenge process, the entry for (appeal 2) had been reduced by the VO to £490,000 RV, with effect from 31 May 2018. Prior to the reduction, (appeal 1) had been valued at £40/m^2 and (appeal 2) at £50/m^2; following the reduction both properties were now valued at £40/m^2.

7. 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.

8. 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.

9. Mr Hamblin was appearing on behalf of the appellant as both advocate and 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).

10. Mr Hamblin explained that Altus Group was representing the appellant in this appeal on a contingency fee basis. However, 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.

11. The panel have accepted this expert witness evidence 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 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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

13. Whether the appeal properties' current assessments at £735,000 RV (appeal 1) and £490,000 (appeal 2), which were both assessed at an unadjusted main space rate of £40.00/m^2 were reasonable?

Evidence and submissions

14. In a statement which accompanied the Challenge, together with his oral presentation at the hearing, Mr Hamblin gave several reasons as to why he believed that the 2017 assessments were incorrect and excessive, which included:

    i) The appeal properties' assessments were not in line with assessments placed on comparable properties in the locality and those properties within the same valuation scheme.

    ii) The current valuation scheme was applicable to industrial properties in Hampshire over 10,000 m^2 and on the Isle of Wight over 7,500 m^2, of any age. The valuation scheme valued properties between £13.00/m^2 and £75.00/m^2 depending upon size, location and other physical factors. The scheme is wide ranging and so the properties should be valued more closely to assessments within their locality, where the rental evidence derives from. A copy of the scheme was provided.

    iii) Altus Group had recently agreed a reduction from £45.00/m^2 to £35.00/m^2 at the Challenge stage on Oxoid, Wade Road, Basingstoke. Whilst in a different location, it was of a similar size and age.

    iv) The rent passing on Condor Logistics, Limberline Road, devalued to £30.00/m^2. This property was the closest leased premises in the same valuation scheme as the appeal properties, which was also comparable in terms of size and specification age. It was arguably better located than the appeal properties for motorway access. It had been constructed in the 1980s and an Ordnance Survey plan was referred to that showed the premises were not in existence prior to 1980 as stated by the VO.

    v) Mr Hamblin sought a reduction in the unadjusted main space rate applied to the appeal properties to £30/m^2, in line with Condor Logistics. In support of his request for a reduction, he had provided rental and comparable schedules, a schedule of hereditaments placed in the same valuation scheme, photographs of the appeal properties and Condor Logistics and a location plan. Accordingly, he sought revised assessments of £555,000 RV (appeal 1) and £380,000 (appeal 2).

15. In response, in the VO's Challenge case decision notice, and in oral presentation at the hearing, the VO explained that:

i) He considered that less weight should be attached to the three comparable assessments referred to by the representative and more weight be attached to those properties detailed in his rental schedule. In respect of the appellant's representative's comparable properties he made the following comments:

a) Oxoid, Wade Road; whilst this property was of a similar age, it was smaller at 12,685.06 m^2 and situated within Basingstoke, a five-minute drive from the M3. It was located approximately 35 miles from the appeal properties. The location of this property would represent a different rental bid. The rent had also been agreed 14 months before the AVD. This property had been valued at an unadjusted main space rate of £35/m^2.

b) Elstead Lighting Ltd, Newman Lane; this property was located a significant distance from the appeal property, 25 miles away. The property appeared to be a retail warehouse over two floors, rather than being used for industrial production. This property had been valued at an unadjusted main space rate of £35/m^2.

c) Condor Logistics, this property was more similar to the appeal properties in its location around Portsmouth Harbour. The rent passing on this property devalued to £30.23/m^2. He did not accept that the property had been built in 1980; he considered it to be an older property built between 1965 to 1970.

ii) Having compiled the rental evidence of industrial units that are over 10,000 m^2 in Gosport and the surrounding borough, the general tone of these properties was £45-£60/m^2; there was a low rent analysing to £25.95/m^2 (Units 1-2/4 Interchange Park) however, less weight should be attached to it for reasons discussed at paragraph (15) (iii) (e) below.

iii) The VO then turned to his comparable properties, namely:

a) Total Logistics Ltd; it was considered the best comparable in terms of date of letting, age and distance from the appeal property. It was a new lease, that had been agreed in June 2014; ten months prior to the AVD. The rent analysed to £44.52/m^2. The property was located in Havant, which was around 8 miles from the appeal properties. This property was a 1960s build of a similar specification but smaller than the appeal properties.

b) Units 5-6 Barton Park was a new letting in January 2014 for a term of 7 years. The rent analysed to £44.19/m^2. This was a smaller unit at 11,047 m^2.

c) Units 2-3-4-5 Chalcroft Distribution Park was a 1930s industrial of 11,047 m^2 in size. There was a rent review on this property in March 2016 with the rent analysing to £63.13/m^2.

d) Unit 1 Voyager Park was a modern 2016 industrial located around 4 miles from the appeal properties. There was a new letting on this property 13 months after the AVD, with the rent analysing to £56.43/m^2.

e) Units 1-2/4 Interchange Park; there was a new letting on this property. The form of return suggested that the rent had been indexed during its ten-year lease, therefore it was difficult to adjust and analyse reducing its reliability. The rent analysed to £25.95/m^2.

iv) The appeal properties were similar rating assessments that were occupied by the same company, the two properties were located just a short distance from each other and were of a similar age. Therefore, the unadjusted main space rate of £40.00/m^2 applied to (appeal 1) supported the reduced rate of £40.00/m^2 for (appeal 2).

v) In the 2010 Rating List the appeal properties had been valued at differing unadjusted main space rates. However, this was due to the previous large difference in areas of the two premises and quantum being reflected. There was now only approximately 2,500 m^2 difference in the sizes of the two properties so no quantum was warranted.

vi) Mr Demetriou detailed the differing eaves height of the two appeal properties and the comparable properties; a point of which had not been addressed in the Challenge process.

vii) In summary, having regard to the evidence presented, Mr Demetriou contended that the current unadjusted main space rate of £40/m^2 applied to both of the appeal properties was not unreasonable.

Decision and reasons

16. The appeal hereditaments must be valued for the purpose of non-domestic rating on the basis of the rent at which they might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD).

17. Matters that affect the physical state or enjoyment of the properties or the locality were to be taken as at 1 April 2017 for (appeal 1) and 31 May 2018 for (appeal 2).

18. The panel noted that there was no rental evidence in respect of the appeal properties as they were held on a freehold basis. Therefore, the panel had regard to the rents passing on the comparable properties cited by the parties. The panel placed less weight on Units 5-6 Barton Park and Units 2-3-4-5 Chalcroft Distribution Park as they were older properties that had been built in the 1910s and 1930s, respectively. The panel also placed less weight on Unit 1 Voyager Park South as this property was too modern, being constructed in 2016 and therefore in a different market.

19. Accordingly, the panel was of the opinion that there were only two good comparable rents provided, namely Condor Logistics and Total Logistics Ltd. Condor Logistics had a lease renewal on 20 February 2014 for ten years with an analysed rent of £25.12/m^2 (appellant's representative) or £30.23/m^2 (VO). The panel placed more weight on the appellant's representative's evidence regarding the age of this property being a 1980s building of 11,577.66 m^2 in size.

20. The panel had regard to the rent passing on Total Logistics Ltd. The VO stated that Total Logistics Ltd was a new lease that had been set on 1 June 2014 for a ten-year period with an analysed rent of £44.52/m^2. The appellant's representative disputed that it was a new

lease, stating that the occupier, Ciret Ltd, had moved into the premises around 2005, meaning it was a lease renewal. This property was a 1960s building of 9,958.89 m^2 in size. The panel noted that both the appeal properties were somewhat larger than Total Logistics Ltd.

21. The panel accepted that Condor Logistics was the best comparable in terms of size, specification, age and location. After having regards to the photographic evidence, the panel agreed that it was a comparable building to the appeal properties. However, after having regard to the whole basket of evidence, including the rental evidence and assessment evidence, the panel determined that an unadjusted main space rate of £35/m^2 for both of the appeal properties truly reflected all their physical attributes together with their location. The panel acknowledged that an unadjusted main space rate of £35/m^2 had also been agreed in respect of Oxoid and Elstead Lighting Ltd. Whilst these two properties were located some distance away from the appeal properties, they were valued within the same valuation scheme and were of a reasonably comparable size.

22. Accordingly, the appeals were allowed in part and the panel determined an assessment of £647,000 RV, with effect from 1 April 2017 (appeal 1) and £442,000 RV, with effect from 31 May 2018 (appeal 2). Breakdowns of the revised assessments have been shown below/overleaf:

Huhtamaki Van Leer (appeal 1)				
Floor	**Description**	**Area m^2**	**£/m^2**	**Value (£)**
Ground	Warehouse	11,726.18	39.41	462,129
Ground	Production Area	1,716.85	37.66	64,657
Ground	Production Area	269.28	36.75	9,896
Ground	Works Office	372.86	35.00	13,050
Ground	Internal Storage	346.61	35.00	12,131
Ground	Area Under Supported Floor	26.25	24.50	643
Mezzanine	Internal Storage	26.25	17.50	459
First	Office	533.24	42.00	22,396
Ground	Locker Room	172.98	38.50	6,660
Ground	Office	450.64	42.00	18,927
First	Office	585.00	42.00	24,570
Ground	External Storage	9.12	26.25	239
Ground	Gatehouse	21.50	35.00	753
Sub total				636,510
Bike Shed		23.20	10.00	232
Surfaced Open Spaces		150.00	0.00	0.00
Plant and machinery				11,086
Total Value				647,828
Say £647,000 RV with effect from 1 April 2017				

Huhtamaki UK (appeal 2)				
Floor	**Description**	**Area m^2**	**£/m^2**	**Value (£)**
Ground	Production Area	7,842.24	36.75	288,202
Ground	Production Area	21.77	35.00	762
Ground	Production Area	159.89	34.92	5,583
Ground	Locker Room	233.44	38.50	8,987
Ground	Area Under Supported Floor	195.71	24.50	4,795
Ground	Reception/Entrance	55.75	42.00	2,342
Ground	Canteen	99.18	38.50	3,818
Ground	Kitchen	39.72	42.00	1,668
Ground	Office	33.94	42.00	1,425
First	Office	655.30	42.00	27,523
Lower Ground	Internal Storage	319.50	26.25	8,387
Mezzanine	Internal Storage	195.71	17.50	3,425
Ground	Plant Room	350.37	35.00	12,263
Ground	External Storage	22.50	26.25	591
Ground	Gatehouse	9.92	35.00	347
Ground	External Storage	126.39	9.33	1,179
Ground	Area Under Supported Floor	57.54	25.73	1,481
Mezzanine	Internal Storage	57.54	17.45	1,004
Ground	External Storage	1,250	16.00	20,000
Ground	External Storage	2,250	16.00	36,000
Sub total				429,782
Plant and machinery				12,284
Total Value				442,066
Say £442,000 RV with effect from 31 May 2018				

Order

23. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entries for the appeal properties within two weeks of the date of this Order as follows:

(i) Huhtamaki Van Leer (appeal 1) to £647,000 RV, with effect from 1 April 2017; and

(ii) Huhtamaki UK (appeal 2) to £442,000 RV, with effect from 31 May 2018.

Refund of fees

24. 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 (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

APPEAL NUMBERS: CHG10014616 and CHG10014629

Date: 26 November 2020