THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Unadjusted base rate; Appeals allowed in part.

RE: Ground Floor, 63 Vyner Street, London E2 9DQ
First Floor, 63 Vyner Street, London E2 9DQ

APPEAL NUMBERS: CHG100148503
CHG100148471

BETWEEN: James Ince & Sons (Umbrellas) Ltd (represented by JMA Chartered Surveyors) — Appellant

and

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Mrs X Holt (Senior Member)
Mrs C Parkes

CLERK: Ms S Hodgson

ON: 8 June 2022

REMOTE HEARING

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors for the appellant
Mr C Cates of the Valuation Office Agency for the respondent

Summary of decision

1. Appeals allowed in part. The rateable value (RV) is reduced to £22,250 (Ground Floor) and £12,750 (First Floor) both with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditaments was £24,500 (ground floor) and £14,250 (first floor) with effect from 1 April 2017. These were compiled list appeals, so

the material day was also 1 April 2017. The appellant's representative sought a reduction in RV to £10,000 (ground floor) and £5,570 (first floor).

3. The appeal hereditaments were the first and second floors of a building that is in the 2017 rating list as 'factory and premises', located in the East End of London. The hereditaments were originally in the list as one assessment, however, were split into two units that measured 117.83m^2 (ground floor) and 80.02m^2 (first floor).

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

Issue

5. The issue for the panel to consider was the correct RV to be ascribed to the assessments.

Evidence and submissions

6. Mr Bacon 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 Bacon's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Bacon 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.

7. Mr Bacon argued that the respondent had only submitted office buildings as comparable evidence, yet the subject property was a factory and premises. He contended that only factories should be considered as comparable to the subject properties. Mr Bacon submitted comparable evidence for Unit 5 Yorkton Street and Ground Floor Rear of 7 Vyner Street. He contended that these properties supported a base rate of £85 per square metre (psm) for the appeal properties, with a 15% deduction to the first floor. Mr Bacon asked for the RV's to be amended to £10,000 for the ground floor and £5,750 for the first floor.

8. Mr Cates for the respondent argued that as the larger unit had now been split into the two units under appeal today, they were now more attractive to different markets when vacant and to let. He stated the building was a flexible use, light industrial building and could be used as a workshop, studio, or business unit. Mr Cates provided rental evidence of one office building as comparison, Unit 3, Ground Floor, Markian House. Mr Cates asked for the RV's to be confirmed as £24,500 (Ground Floor) and £14,250 (First Floor).

Decision and reasons

9. 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.

10. 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).

11. 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 appeals, the material day is 1 April 2017.

12. The panel considered the evidence submitted by Mr Cates. Unit 3, Ground Floor Markian House had a passing rent of £33,184 effective from December 2016 which Mr Cates had analysed to £352.27 psm. The unit measured 86.2m^2 and was located within a mile of the subject property.

13. The panel reviewed the material within the evidence bundle that included a marketing brochure of the offices at Markian House. It noted that the offices were modern and described as a 'ground floor warehouse conversion'. Comment from the respondent within the evidence stated that comparables could be with 'similar types of industrial units or other lower grade office space'. It was the panel's view that Markian House was significantly different to the subject property and was therefore not truly comparable.

14. The panel then considered the evidence submitted by Mr Bacon. He stated there had been agreements on 9 Yorkton Street at £100 psm and that Unit 5 Yorkton Street had also been in the rating list at £100 psm. It was established that Unit 5 Yorkton Street had been removed from the rating list on 14 January 2022.

15. The parties were not in agreement on the size of Unit 5 Yorkton Street and the premises had not been inspected. Mr Bacon argued that for rating purposes the building was considered to be $168m^2$ on the ground floor which did not include the mezzanine level. Mr Cates argued that it was $377m^2$ which included the mezzanine level.

16. While Yorkton Street was a factory and premises as was the subject property, the panel found it to be larger and did not consider it to be as comparable as 7 Vyner Street.

17. Ground Floor Rear of 7 Vyner Street had been submitted as comparable evidence by Mr Bacon. He had provided a lease for the unit that had commenced in October 2014 with a passing rent of £600 per month and the property measured $86.7m^{2.}$ Mr Bacon had analysed this rent to £83 psm and contended that the subject assessments were identical to this property.

18. The panel considered the rental evidence, and Mr Cates' statement that the unit was in the 2017 rating list at £210 psm and that the scheme had been subject to challenges which did not change the rate.

19. It was the panel's opinion that limited evidence had been provided by the parties to support the respective cases. It did not find that evidence of one rent was sufficient to justify the current RV in the list, when the rent being used was for a modern office building.

20. However, it also was not persuaded that the RV's should be reduced to the level being requested by the appellant. While a lease had been provided in support of 7 Vyner Street, the lease was a periodic tenancy and the term stated was year-to-year, however either party could break the lease with three months' notice. Therefore, the panel did not consider the evidence to be determinative of a reduction to £85 psm for the subject properties.

21. Based on the limited evidence before it, it was the panel's view that the subject properties should not be valued in line with modern offices, yet there needed to be consideration for the change in size of the assessments since they had been split.

22. The panel found that the current valuation was unreasonable, and the following base rates should be applied with effect from 1 April 2017:

    Ground Floor, 63 Vyner Street - £190 psm
    First Floor, 63 Vyner Street - £161.50 psm

    This allowed for the 15% reduction in base rate that both parties had applied in their respective calculations.

23. It was the panel's view that the above adjustment accounted for the reduction in size of the units from the original larger unit which had an RV of £31,500 and was valued on a base rate of £150 psm and reflected the difference with the modern office building rated at £210 psm.

24. Therefore, the appeals were allowed in part.

Order

25. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of Ground Floor, 63 Vyner Street to £22,250 after rounding with effect from 1 April 2017, and First Floor, 63 Vyner Street to £12,750 after rounding with effect from 1 April 2017, within two weeks.

26. 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 2022

Appeal numbers: CHG100148503 and CHG100148471

Right of Appeal:

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.