THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; land used for storage and premises; value attributed to land, warehouse and office accommodation; allowance for fragmentation; comparable assessments; appeal allowed in part as the evidence showed that the existing valuation was not reasonable.

RE: Deco House, Halifax Road, Hipperholme, Halifax, West Yorkshire HX3 8BW

APPEAL NO: CHG10015187

BETWEEN: Deco-Pak Ltd Appellant

and

Mr C Sykes (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 C Diamond of Altus Group (on behalf of the Appellant)
Mr J Hirst (Respondent's representative)

Summary of decision

1. The appeal was allowed in part as the existing valuation was not reasonable and the entry was reduced to £88,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Deco House, Halifax Road, Hipperholme, Halifax, West Yorkshire HX3 8BW, which was originally entered in the 2017 Rating List as 'land used for storage and premises' at £108,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 17 December 2019. The appeal to this Tribunal was made on 18 May 2020, following the VO's Decision Notice of

6 April 2020, in respect of the appeal property (hereditament). This is a compiled list appeal, so the material day is 1 April 2017.

4. The appeal hereditament was currently valued as land used for storage and premises. The premises consisted of warehouse and office accommodation; however, land comprised the vast majority of the assessment. The valuation of £108,000 RV was based on valuing the land element at £4.00/m^2. However, following the check and Challenge process, the VO reduced the assessment to £91,500 RV, which reflected a lower value attributed to the land element of £3.25/m^2.

5. Prior to the tribunal hearing, the VO had reviewed the case and offered a further reduction to £90,000 RV, effective from 1 April 2017. The reduction was the result of the VO agreeing with the appellant's representative's area of land at 16,063.00 m^2. However, the appeal still required hearing as there were other matters that remained in dispute. The appellant's representative had no objections to the panel being forwarded a copy of the VO's revised assessment.

6. 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.

7. 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.

8. Mr Diamond was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain whether a success related fee was 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 Diamond 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 will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

10. 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.

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 it having been overlooked.

Issue

12. Several issues remained in dispute, namely:

i) the correct description for the appeal property;
ii) the correct rate at which the land should be valued;
iii) the correct rate to be applied to the warehouse accommodation;
iv) the correct rate to be applied to the office accommodation; and
v) whether or not an allowance was warranted for fragmentation.

13. Within the Challenge documentation, the appellant's representative had also sought an additional 5% allowance to reflect the shared access. However, this point was not pursued at the hearing; the appellant's representative accepted that such an allowance was not warranted.

Evidence and submissions

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

i) The assessment of the appeal property of £108,000 RV shown in the 2017 Rating List, with effect from 1 April 2017 did not represent the rental value of the hereditament under the rating hypothesis at the Antecedent Valuation Date (AVD) of 1 April 2015.

ii) The rating assessment placed on the appeal property was not in line with assessments placed on comparable properties in the locality, taking account of the differences in physical attributes between the properties.

iii) As the appeal property was held on a connected party rent, there was no reliable rental evidence in respect of the premises to determine an appropriate assessment.

iv) Reference was made to Alumex Works, a workshop and premises, which had a rent set on 25 October 2013 that analysed to £11.05/m^2. Having regard to this evidence, it was considered that the warehouse element within the appeal property's assessment should be valued at an unadjusted main space rate of £11.50/m^2.

v) A 5% allowance was warranted to reflect the fragmented/piecemeal nature of the premises. There was no interconnection between the buildings.

vi) The main point of contention was the value applied to the land element in the assessment. The land should be valued at £2.75/m^2 in line with the assessment placed on AW Lumb & Co. It was considered incomprehensible that the assessment next-door to the appeal property had one-third of the land area but that land had been valued at a cheaper price per m^2. A stand back and look approach should be used to ensure that a sensible assessment was determined.

vii) The assessment had been incorrectly valued as land used for storage and premises, this should be changed to warehouse and premises with additional land.

viii) The VO had applied a rate of £30.00/m^2 to the office accommodation over the ground and first floors, which was considered excessive having regard to the accommodation itself, overall use of the site and quantum. It was not a portable building but a standalone permanent structure. It was considered that the offices should be valued at a 20% uplift from the unadjusted main space rate applied to the warehouse, with a further 20% uplift to reflect quality.

ix) In support of a reduction, the appellant's representative had also provided a rental and comparable summary, photographs of the appeal property, together with photographs and details in relation to properties that had been cited for comparable purposes.

x) To summarise, having regard to the evidence he had presented, Mr Diamond sought a revised assessment for the appeal property of £75,500 RV, effective from 1 April 2017.

15. In the VO's Challenge case decision notice, it was stated that having considered the issues raised in the Challenge, the VO disagreed with the proposed list alteration. The statutory definition of rateable value was referred to, together with the six propositions as set out in the Lands Tribunal case of *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

16. In oral presentation at the hearing and within the decision notice, it was also explained that:

i) The rent passing on the appeal property was between connected parties.

ii) Alumex Works was valued as a workshop and premises with ancillary land and had been valued in accordance with a different valuation scheme to the appeal property. It was much smaller than the appeal property, having buildings covering 2,054 m^2 and land covering 2,325 m^2.

iii) No evidence had been provided to demonstrate that an allowance to reflect fragmentation was warranted; just because other properties had an allowance did not automatically mean that the appeal property warranted one. Each case had to be considered on its own merits.

iv) It was considered that the appeal property was correctly described as land used for storage and premises as the land was the predominant and most valuable feature of the property.

v) A rental and assessment summary were provided.

vi) To summarise, the VO sought a reduced assessment of £90,000 RV, with effect from 1 April 2017.

Decision and reasons

17. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it 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). The panel placed little weight on the rent passing on the appeal property as it had been set between connected parties.

18. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

19. There were several issues in dispute in this appeal. The panel addressed each in turn starting with the correct description for the appeal property. The current description was 'land used for storage and premises'. However, the appellant's representative stated that the appeal property should be valued vacant and to let, as such it should be valued as 'warehouse with ancillary land'. After having regard to the aerial view photographs and details in relation to the appeal property, the panel determined that it was correctly described as 'land used for storage and premises'. The VO had explained that 90% of the area that made up the appeal hereditament comprised land and the land element equated to 60% of the value. As such, the panel determined that the most valuable element of the appeal property was the land element. Accordingly, the panel held that the appeal property had been correctly described as 'land used for storage and premises'.

20. Secondly, the panel addressed the correct rate to be applied to the land element within the appeal property's assessment. The VO had reduced the original assessment of £108,000 RV to £91,500 RV, which incorporated a reduced rate applied to the land element from £4.00/m^2 to £3.25/m^2. It was this rate that the VO was defending. The appellant's representative sought a lower rate at £2.75/m^2. In support of the lower rate, the appellant's representative had referred to the assessment placed on AW Lumb & Co, the neighbouring property, in which the land area measured one-third of that at the appeal property, however it had been valued at the lower rate of £2.75/m^2. Reference was also made to Land at Former Yew Tree Garage and Rand & Asquith, both of which were situated in the locality with the land elements in their assessments having been valued at £2.75/m^2 and £2.50/m^2, respectively. The appellant's representative questioned, how the appeal property's land that was three times larger should be valued at a higher rate than the comparable properties he had cited.

21. In response, the VO explained that whilst Land at Former Yew Tree Garage and Rand & Asquith were both 'land used for storage and premises' that were in the vicinity of the appeal property, they were much inferior type premises that were situated on a back road location. The panel also found that AW Lumb & Co was not valued as land used for storage and premises, as such the land was not the driving factor within its assessment.

22. The panel then drew its attention to the rental and assessment summary as provided by the VO, which detailed the appeal property, plus five other properties described as 'land used for storage and premises'. All five comparable properties were situated within the Calderdale and Kirklees areas. All five of the comparable properties listed had land values of £3.25/m^2.

23. Accordingly, the panel placed more weight on the assessment summary provided by the VO which detailed five similar properties. As such, the panel confirmed that the current value for the land applied to the appeal property's assessment of £3.25/m^2 was not excessive.

24. Thirdly, the panel addressed the correct rate that should be applied to the warehouse element. The current assessment had valued the warehouse element at an unadjusted rate of £13.50/m^2, and it was this value that the VO was defending. The appellant's representative was seeking a lower rate for the warehouse element of £11.50/m^2. In support of the lower rate, the appellant's representative referred the panel to Alumex Works. This property measured 2,135.14 m^2, it had a rent passing with effect from 25 October 2013, which analysed to £11.05/m^2.

25. The VO had not presented any evidence in support of the current warehouse rate of £13.50/m^2. However, the panel was not persuaded that the current rate applied to the

appeal property's warehouse element was excessive after having regard to one rent that had been set 18 months prior to the AVD on a much smaller property that had been valued in accordance with a different valuation scheme. Accordingly, on the sparsity of evidence provided, the panel found no justification to reduce the value of the warehouse element within the appeal property's assessment.

26. Fourthly, the panel considered the correct value to be attributed to the office accommodation within the appeal property's assessment. The VO was defending the current value at £30/m^2, whereas the appellant's representative was seeking a reduced rate valuing the office element at 20% uplift on the unadjusted main space rate applied to the warehouse, plus a further 20% uplift to reflect quality.

27. In appeals such as this, the burden of proof rested on the appellant. However, on this point, the panel found that it had been presented with no substantial evidence to demonstrate that the current rate of £30.00/m^2 applied to the office accommodation was excessive, the VO had explained that this was the standard rate applied and insufficient evidence had been presented to prove otherwise.

28. Finally, the panel considered the request for an allowance to reflect fragmentation. The appellant's representative sought a 5% allowance, which he had solely applied to the buildings' element in his proposed valuation. The VO did not consider that sufficient evidence had been provided to suggest that such an allowance was warranted.

29. The panel noted that the appeal property had been constructed in a piecemeal nature resulting from numerous buildings of varying construction. The offices and warehouses were divided and there was no interconnection between any part of the assessment. The panel accepted that each case had to be assessed on its own merits and just because a particular property benefitted from such an allowance did not automatically mean the same allowance was warranted to the appeal property. However, the panel appreciated that the fragmented layout of the appeal property would put it to some disadvantage when a hypothetical tenant was considering a rental bid. As such, the panel accepted that a 5% allowance was warranted, which it applied to the buildings' element within the valuation.

30. Accordingly, the appeal was allowed in part as it was considered that the existing assessment of £91,500 RV was unreasonable. The panel determined that the appeal property should be valued at £88,000 RV, with effect from 1 April 2017. A breakdown of which has been shown overleaf.

Floor	Description	Area m^2	£/m^2	Value (£)
Ground	Warehouse	1,324.15	12.51	16,565
Ground	Warehouse	441.37	13.14	5,800
Ground	Warehouse	302.50	13.14	3,975
Ground	Warehouse	94.43	13.76	1,299
Ground	Timber Shed	40.00	7.04	282
Additional features				
	Ground floor Portable Building	169.68	30.00	5,090
	First Floor Portable Building	169.68	30.00	5,090
				38,101
Less 5% fragmentation				1,905
				36,196
Plus	Hard Surfaced Fenced Land	16,063.00	3.25	52,205
Total Value				88,401
Say £88,000 RV with effect from 1 April 2017				

Order

31. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £88,000 with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

32. 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 NO: CHG10015187

Date: 30 November 2020