THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; workshop and premises; comparable properties; subject rent; not bound by VOA scheme; appeal allowed.

Re: Unit B R/O 174 High Street, Barnet, Herts EN5 5XP

APPEAL NUMBER: CHG100152588

BETWEEN:	T&T Group Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

BEFORE: Dr J Johnson (Senior Member sitting alone)

CLERK: Mrs C McAvoy

REMOTE HEARING No.4 on 20 October 2021

APPEARANCES:

Mr M Evans of Altus Group on behalf of the appellant as both advocate and expert witness
Ms A Earl on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal allowed; the appeal property's assessment was reduced to £14,000 Rateable Value (RV) with effect from 1 June 2017.

Introduction

2. This appeal has been brought in respect of the following: Unit B R/O 174 High Street, Barnet, Herts EN5 5XP which was entered in the 2017 Rating List at £25,750 RV, effective from 1 June 2017.

3. The appeal property was one of three units created following a split of a 1995 built industrial unit situated behind a retail parade on High Street in Barnet. It

was a single storey warehouse situated on a small congested site. It had an area of 235.31m^2 (in terms of main space).

4. Following the split, on 1 June 2017, the appeal property was entered into the list as Workshop and Premises. All three units have since been demolished and the appeal property was removed from the rating list on 22 June 2020.

5. The appellant's Challenge to the Valuation Officer (VO) was made on 2 January 2020. Mr Evans, on behalf of the appellant, disputed the rateable valuation on the grounds that the current rate of £88.56/m^2 was unreasonable. The appellant's representative originally proposed a rateable value of £10,750 but this was later revised to £14,000 based on £55/m^2.

6. An appeal to this Tribunal was made, following the VO's Decision Notice of 1 March 2021 not to uphold the proposal.

7. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two Members of the Tribunal, including at least one Senior Member. However, the arrangements also provide that a Senior Member may sit alone to avoid a postponement of the hearing where a second Member of the Tribunal is unable to sit.

8. In respect of this hearing, another Member of the Tribunal was unable to sit. I am therefore satisfied that, in order to avoid a postponement of the hearing, I am authorised by the Tribunal Business Arrangements to hear and determine this appeal sitting alone.

9. 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.

10. 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.

11. In accordance with that Practice Statement, the hearing of this appeal was conducted remotely via Microsoft Teams conference call using audio/video-link. For the avoidance of any doubt, I was satisfied that those present at the hearing were able to fully participate in the proceedings.

12. Mr Evans 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), his declaration included a statement that he was instructed under a contingency based fee.

13. Within his written statement, Mr Evans 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.

14. I 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).

15. I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

16. 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 before coming to my decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

17. The issue was whether the adopted price per square metre was reasonable.

Evidence and submissions

18. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the check and challenge process.

19. Mr Evans gave an overview of the reasons for the appeal. In summary, he submitted that the rating assessment on the appeal property was not in line with the assessments on comparable properties in the locality, considering the differences in the physical attributes and the economic factors. He referred to his analysis of the rent of the appeal property and for the neighbouring properties, Unit A and Unit C R/O 174 High Street, Barnet, Herts EN5 5XP.

20. Mr Evans questioned the comparability of the VO's rental evidence, given the physical differences and localities. He submitted that, in his opinion, he considered that the appeal property had been valued on a broad-brush approach as it had been placed in a scheme which contained borough wide non-estate Barnet industrial stock. He submitted that it was a scheme which essentially includes anything that does not fit into other schemes and as a result the appeal property had been valued alongside purpose-built properties of higher specification and location. He referred to properties contained within the scheme to support his assertion of the scheme's broadness. He referred to Workshop Left 32, Henry Road, Barnet, Herts and 997-1003 High Road, London, providing their valuations and photographs to demonstrate their higher quality.

21. He also relied on neighbouring assessments for units at Brake Shear House. Brake Shear House was the adjoining building encompassing most of the site behind the High Street and was split into individual units. He submitted that the units were valued at half the rate of comparable age assessments on the borough wide scheme but were of comparable size to the appeal property. The units were valued at £55/m^2.

22. Having regard to his evidence, Mr Evans sought a revised assessment of £14,000 RV for the appeal property, based on a rate of £55/m^2.

23. Ms Earl relied on two properties in which she deemed comparable and supportive to the appeal property's adopted rate.

24. Unit 2 David House was let for £23,000 per year on a new six-year lease with effect from 1 February 2016 less than a year post AVD. It was shown in the list as Warehouse and premises and had a total significant area of 170.39m^2. The VO had analysed the rent to £133.14/m^2.

25. Queens Parade Close was let for £35,000 per year on a 15-year lease agreed in 2011, with a rent review effective from 1 February 2016, which increased the rent, and the VO analysed this to £109.32/m^2.

26. Ms Earl rebutted Mr Evan's rental evidence and submitted that Brake Shear House was older than the appeal property. She submitted that the rate applied to the subject property was reduced from the £105/m^2 (this being the scheme's unadjusted rate) to £88.56/m^2 to account for the disabilities faced by the hereditament (lack of central heating and poor access). She did not agree that it was just a shed of a property, but rather a property which had fallen into disrepair, pointing out that she recognised that the landlord was unlikely to improve it being aware that it was to be demolished. She submitted that the VO attributed no weight to the appeal property rent given that it was too far removed from the rating hypothesis. It was agreed over three years after the antecedent valuation date, it was a short lease (two years) and, therefore, she submitted it was outside the Landlord and Tenants Act 1954, meaning the tenant had no rights for continued occupancy.

27. Ms Earl argued that the appeal property's current assessment of £25,750, based on an adopted rate of £88.56/m^2 ,was reasonable. She therefore sought dismissal of the appeal.

Decision and reasons

28. In considering this appeal, I had regard to the term 'rateable value' as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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".

29. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the list entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day is 1 June 2017, this being the date the appeal property entered the valuation list. This is the date in which I had regard to physical factors relating to the appeal property and its locality.

30. In reaching my decision, I had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

'(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the

actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

31. Bearing these six propositions in mind, I acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. It was let to the appellant in June 2018 on a two-year lease for £11,500 per annum inclusive of building insurance. Based on an area of 235.31m^2 (in terms of main space), Mr Evans had devalued the rent to £43.77p/m^2.

32. I accepted that the analysed rent on the subject property supported Mr Evans view that the current rate adopted appeared excessive, however, I accepted Ms Earl's comments that the subject rent was agreed three years post AVD and was a short term let, it therefore required adjustment to bring it in line with the rating hypothesis.

33. I therefore found it necessary to turn to the third proposition and examined rents passing on comparable properties. I considered the correct approach in this appeal was to examine the whole 'basket of evidence' before coming to my reasoned decision.

34. Ms Earl, on behalf of the VO, relied on rental evidence from Unit 2 David House, Queens Road, Barnet, EN5 4DJ and 4 Queens Parade Close, London, N11 3FY to support the current assessment. Both the properties were valued within the same scheme as the appeal property (353090). The scheme had an unadjusted rate of £105/m^2, and the properties presented as comparable were valued at £102.38/m^2 and £92.14/m^2 respectively. New lettings carry more weight than rent renewals given that they are closer to the rating hypothesis. 4 Queens Parade Close was a rent renewal and in a different locality, so I attached little weight to this item of evidence, but I did find it supported Mr Evans' contention that the appeal property was being valued alongside properties in different localities.

35. Unit 2, David house was a new letting but it was necessary to consider that it was part of a well-established commercial estate which comprised office and industrial accommodation with the units being well located with good parking, access and high 21ft eaves. This was shown in the list as Warehouse and premises and was valued at £92.54/m^2 while the appeal property was valued at £88.56/m^2. I considered the fact that the although the scheme had an unadjusted rate of £105/m^2, it was valued at a reduced rate of £88.56/m^2 after considering the lack of central hearing and poor access. However, this does not appear to consider the properties location and quality.

36. Mr Evans submitted that the appeal property was a simple clad shed construction and exhibits severe access and locality disabilities and should not have been valued on the valuation scheme (353090). He considered that

as this scheme was for non-estate Barnet industrial units built in 1994 to 2000 borough wide, the property's age had been the only consideration.

37. I was provided with two other properties within the scheme, Workshop Left 32, Henry Road, Barnet, Herts and 997-1003 High Road, London. I accepted that these assessments further demonstrated that the scheme contained a broad type of property within differing localities and therefore I concluded that the appeal property was being valued on a tone set on a scheme for properties which were not directly comparable. I was mindful that the valuation schemes were created by the Valuation Office Agency in order to look at properties in a particular location of a similar age and size but as this was a 'catch all' scheme it appeared that age was the main consideration. In this case, I believed it was also important to consider the location of the property rather than be restricted by a valuation scheme. I was not confined to the range detailed in the scheme as it has no force in law and does not limit me in determining a rateable value in accordance with the statutory provisions.

38. Having considered all the evidence presented, I was persuaded that the broad approach had resulted in the appeal property, which had a poor location, poor access and was of a lesser quality, being valued excessively. The age of the property appeared to be the main comparator for valuation.

39. I was aware that the property is to be valued in a state of reasonable repair but even with this assumption, the property was still of lesser quality to that of the comparable properties presented.

40. In accordance with Lotus and Delta, the subject rent is the starting point and as the comparable properties presented were not directly comparable in terms of location and quality, I found it necessary to attach some weight to the subject rent. I also had regard to the assessments of neighbouring units at Brake Shear House valued at £55/m^2. Whilst these properties were older, they were of similar size to the appeal property and were within the immediate locality. I found that these assessments, together with the rental evidence on the appeal property, supported that the locality would be less desirable to a hypothetical tenant.

41. In conclusion, considering all the relevant factors, given the quality of the appeal property and the location, I found it reasonable to conclude that a hypothetical landlord would achieve a lesser rent to that of the properties presented within scheme 353090. Having regard to the subject rent together with the assessments of units at the adjoining Brake Shear House, I found that Mr Evans proposed rate of £55/m^2 to be reasonable. Accordingly, the appeal was allowed.

Order

42. Under the provisions of regulations 38(4) and 38 (7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to:

Unit B R/O 174 High Street, Barnet, Herts EN5 5XP

Rateable Value £14,000 with effect from 1 June 2017 to 22 June 2020.

43. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

44. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process).

Date: 5 November 2021
Appeal number: CHG100152588