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 NUMBERS:	CHG100154715; CHG100152211; CHG100154701
RE:	23 Kingsland Grange, Woolston, Warrington, WA1 4RW 28 Kingsland Grange, Woolston, Warrington, WA1 4RW 29 Kingsland Grange, Woolston, Warrington, WA1 4RW (together, the "subject hereditaments")

BETWEEN:	Grange Packing Solutions Ltd	First Appellant
	and	
	United Commercial Trading (UK) Limited	Second Appellant
	and	
	The Valuation Officer	Respondent

SITTING:	*remotely via Microsoft Teams conference call*
ON:	Tuesday 23 November 2021 at 10:00 hours
BEFORE:	Mr AV Clark (Vice President)
CLERK:	Mr W Hamilton IRRV(Dip) A.Inst.Pa
APPEARANCES:	Ms E Draycott of Altus Group for the Appellants Mr K Collins of Valuation Office Agency for the Respondent

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DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeals are allowed-in-part.

2. I am satisfied that –

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

   (2) the correct rateable values, with effect from 1 April 2017, are –

      (i) for 23 Kingsland Grange, £120,000,

      (ii) for 28 Kingsland Grange, £97,500, and

      (iii) for 29 Kingsland Grange, £123,000.

3. A copy of my valuations for the subject hereditaments 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. These appeals have 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 appeals challenge the Respondent's decisions of 5 March 2021 that the Appellants' proposals (also known as a "challenge" under the "check, challenge, appeal" framework) were not well-founded.

6. The Appellants' proposals sought an alteration to the 2017 non-domestic rating list on the grounds that the rateable values for the subject hereditaments were incorrect.

Consolidation

7. These three appeals, being geographically close and raising common themes in arguments, were listed for a hearing on the same day. At the commencement of the hearing, the parties' representatives agreed to the matters being consolidated and heard before me as one, noting key differences as appropriate.

8. The parties' representatives confirmed that any evidence in relation to one appeal, was already part of the evidence in respect of the other, therefore I was satisfied that there were no issues regarding the admissibility of evidence consequent to my having consolidated the hearing of the three appeals pursuant to the general power at Regulation 6 of the Tribunal's Procedure Regulations.

Remote hearing

9. 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.

10. 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. There was one minor technical issue during the course of the hearing consequent to it being heard remotely, which was resolved within a few minutes. During that interruption I paused the proceedings whilst the issue was resolved. I also provided for a short adjournment for a comfort break during the hearing.

11. For the avoidance of any doubt, I am satisfied that those present were able to fully participate in the proceedings.

Appellant's representative

12. Ms Draycott, a member of the Royal Institution of Chartered Surveyors, appeared on behalf of the Appellants as advocate and expert witness. At the commencement of proceedings, I confirmed that I has read Ms Draycott's written declarations that she was instructed under a contingency based fee, a type of success-related fee arrangement. In the declarations, Ms Draycott stated that she understood and accepted that her duty was to the Tribunal in giving her evidence, that she would comply with this duty, and the requirements of her professional body, regardless of whether or not the evidence supported the Appellants' cases. Ms Draycott also confirmed this orally prior to commencing her submissions and evidence.

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

    (1) the appeals were 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).

14. I therefore considered Ms Draycott's expert evidence and attached such weight to it as it saw fit.

Relevant Law

The non-domestic rate

15. 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").

16. 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").

The material day

17. 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. So far as is relevant for these proceedings, Regulation 3 of the MD Regulations provides –

> ***3 Material day for list alterations***
>
> *(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.*
>
> *(2) Where the determination is with a view to making an alteration to correct an inaccuracy in the list on the day on which it was compiled, the material day is the day on which the list was compiled.*

Decision

18. 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.

19. The subject hereditaments are located on an industrial estate, mainly constructed between 1970s and 1980s.

20. 23 Kingsland Grange is a warehouse and premises comprising of a detached building on steel portal frame construction with profile metal cladding and a roof. The property consists of warehouse space and office accommodation over two floors and measures 3,900.05m^2 in area. It is held on long-leasehold basis, which is not arm's length. Nevertheless, the passing rent is £195,000 per annum effective from the lease renewal on 7 February 2018. 23 Kingsland Grange is currently shown in the 2017 non-domestic rating list with a rateable value of £137,000, calculated by reference to an adopted base rate of £39/m^2.

21. 28 Kingsland Grange is a workshop and premises comprising of a detached building on steel portal frame construction with profile metal cladding and a roof. The property consists of warehouse space and office accommodation over two floors and measures 2,608.51m^2 in area. It is held freehold. 28 Kingsland Grange is currently shown in the 2017 non-domestic rating list with a rateable value of £104,000, calculated by reference to an adopted base rate of £40.73/m^2.

22. 29 Kingsland Grange is a warehouse and premises comprising of a detached building on steel portal frame construction with profile metal cladding and a roof. The property consists of warehouse space and office accommodation over the ground floor and measures 3,547.24m^2 in area. It is held on long-leasehold basis, which is not arm's length. Nevertheless, the passing rent is £176,540 (net of VAT) per annum effective from March 2012. 29 Kingsland Grange is currently shown in the 2017 non-domestic rating list with a rateable value of £140,000, calculated by reference to an adopted base rate of £48/m^2

23. The crux of the dispute between the parties turns on the appropriate base rates to applied to the subject hereditaments in the calculation of the rateable values. There is no dispute over the areas adopted or the relativities used in respect of different areas. The Appellant contends a base rate of £29.25/m^2, £30/m^2 and £29.25/m^2 for 23, 28 and 29 Kingsland Grange respectively. This would result in revised rateable values of £103,000, £77,000 and £105,000, again respectively.

24. The general picture provided by the parties indicated that the market for warehouses in the Warrington area was sluggish to 2013 with some limited growth thereafter.

25. I was referred by the parties to multiple proposed comparable assessments of nearby hereditaments. In particular,–

    (1) 19 Kingsland Grange, a new letting on 15-year lease from 1 July 2015 at a rent of £241,648 per annum, which analyses to a base rate of £62.76/m^2;

(2) 2-4 Chesford Grange, a new letting on a 10-year lease from 1 July 2014, which analyses to a base rate of £31.88/m^2;

(3) 10 Chesford Grange, new letting on a 5-year lease from 17 October 2013, which analyses to a base rate of £29.40/m^2;

(4) 11 Chesford Grange, renewal letting on a 7-year lease from 29 February 2016, which analyses to a base rate of £22.61/m^2;

26. In summary, I consider that in order to determine the correct level of value attributable to the subject hereditaments, it is necessary to look at the estate as a whole.

27. In looking at the estate as a whole and having regard not only to the rents quoted above but the entire basket of evidence I am satisfied that the subject hereditaments have been overvalued by the Respondent. He has not fully reflected those rents in his valuations nor has he had due regard to the relative sizes or nature of the subject hereditaments.

28. In view of the above conclusions, I am satisfied that the Respondent's valuations for the subject hereditaments are not reasonable. Accordingly, I allow all three appeals in part.

Order

29. The Tribunal orders –

(1) the Respondent shall alter the entries in the 2017 non-domestic rating list to show it the subject hereditaments revised valuations as set out in the appended valuations, with effect from 1 April 2017; and

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

Refund of appeal fee

30. Further, in view of the above decision, the appeal fees shall be refunded.

Appeal Number:	CHG100154715; CHG100152211; CHG100154701	**Issued:**	22 December 2021

Appendix: The Tribunal's valuations

23, Kingsland Grange, Woolston, Warrington, WA1 4RW

Floor	Description	Area m²	Price per m²	Value
Ground	Warehouse	916.87	£34.13	£31,293
Ground	Production area	644.22	£34.13	£21,987
Ground	Area under supported floor	243.15	£23.89	£5,809
Mezzanine	Production area	236.03	£17.06	£4,027
Ground	Warehouse	267.70	£34.13	£9,137
Ground	Area under supported floor	137.68	£23.89	£3,289
Mezzanine	Production area	137.68	£17.06	£2,349
Ground	Office	400.84	£38.50	£15,432
Mezzanine	Production area	407.89	£17.06	£6,959
Ground	Workshop	152.38	£35.00	£5,333
Ground	Office	15.87	£42.00	£667
First	Office	167.84	£42.00	£7,049
Second	Office	171.90	£42.00	£7,220
	Total	**3,900.05**		**£120,550**
	wef 1st April 2017		**Say**	**£120,000**

28, Kingsland Grange, Woolston, Warrington, WA1 4RW

Floor	Description	Area m²	Price per m²	Value
Ground	Workshop	2,138.18	£38.00	£81,251
Ground	Office	104.25	£45.60	£4,754
Ground	Mess/staff room	67.42	£41.80	£2,818
Ground	Internal storage	30.24	£38.00	£1,149
Ground	Internal storage	36.18	£38.00	£1,375
First	Office	31.19	£45.60	£1,422
First	Internal storage	201.05	£24.70	£4,966
	Total	**2,608.51**		**£97,735**
	wef 1st April 2017		**Say**	**£97,500**

29, Kingsland Grange, Woolston, Warrington, WA1 4RW

Floor	Description	Area m²	Price per m²	Value
Ground	Office	268.32	£42.00	£11,269
Ground	Warehouse	1,631.04	£34.13	£55,667
Ground	Warehouse	71.69	£34.13	£2,447
Ground	Production area	1,576.19	£34.13	£53,795
	Total	**3,547.24**		**£123,178.98**
	wef 1st April 2017		**Say**	**£123,000**