THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; factory and premises; level of end allowance for layout in dispute; comparable properties; appeal allowed in part.

RE: T D Cross and Morse Ltd, Shady Lane, Birmingham B44 9EU

APPEAL NUMBER:	CHG100179850	
BETWEEN:	T D Cross Ltd	Appellant
	and	
	Mr D Virk, Valuation Officer	Respondent
PANEL:	Mr S W Chappell (Senior Member) and Ms S Eze	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Friday 6 January 2023	
APPEARANCES:	Ms L Rabbette from Paul Rabbette Ltd, representing the appellant Mr R Burls representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The panel determined a rateable value (RV) of £49,000 with effect from 1 April 2017, based upon a revised end allowance of 5% for layout.

Introduction

2 This is a 2017 rating list appeal. T D Cross and Morse Ltd, Shady Lane, Birmingham B44 9EU, (the ‘appeal property’) had been entered in the 2017 rating list as ‘factory and premises’ at a RV of £54,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by Paul Rabbette Ltd on behalf of T D Cross Ltd and was received by the Valuation Officer on 19 March 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017

was inaccurate. A revised RV of £47,000 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 15 September 2021 which disagreed with the proposed alteration of the list but stated that the rating list entry was unreasonable based on the evidence and information available. The RV was altered to £50,000 based upon an alteration of the floor areas and the addition of end allowances: 7.5% for access and 2.5% for layout.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 14 January 2022.

6 Ms Rabbette 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), Ms Rabbette confirmed that she was instructed under a contingency fee arrangement and she declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's case.

7 The panel 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).

8 The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

9 The appeal property is a 1940's factory unit of brick and steel truss construction, beneath a "sawtooth" north-lit roof. It is situated approximately seven miles north of Birmingham city centre. To the front of the factory is a two-storey building of simple brick construction under a flat roof. At the rear is a single-storey lean-to of brick construction under a flat roof.

10 The present assessment of £50,000 RV is based upon a total area of 5,621.79 m^2 at an unadjusted price of £10 per m^2 and end allowances of 7.5% for access and 2.5% for layout.

11 This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issues

12 The only remaining issue was the level of end allowance to be applied to reflect the poor layout of the appeal property. The Valuation Officer defended the present end allowance of 2.5%, whereas the appellant's representative sought 7.5%.

Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, challenge further exchange, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

14 Ms Rabbette submitted that as a result of the age and nature of construction, the appeal property was disadvantaged by an excessive number of interrupting metal columns, limited eaves height and an internal dividing wall. With reference to a number of comparable properties, she contended that an end allowance of 7.5% more accurately reflected the poor layout of the appeal property. In further support of an increased end allowance, she referred to an offer made by the Valuation Officer at 5% prior to the issue of the challenge decision.

15 Mr Burls confirmed that the challenge decision document had been prepared by a colleague. The case for the Valuation Officer was that the appellant's representative had not demonstrated that a higher end allowance for poor layout was warranted. The majority of the appellant's comparable properties were in a different valuation scheme, and it was submitted that the disadvantages of the construction style were inherently reflected within the base rate.

Decision and reasons

16 In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where 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.

17 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).

18 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 appeal, the material day is 1 April 2017.

19 The appeal property is owner occupied and therefore there is no primary rental evidence for consideration. No other rental evidence was provided by the parties.

20 In support of an end allowance for poor layout at 7.5%, Ms Rabbette provided photographs and layout plans in respect of the following:

Veolia Environmental Service (UK) Plc, Garrison Street, Birmingham B9 4BN

A warehouse with associated office accommodation assessed with an end allowance of 5% for access and 5% for layout. Ms Rabbette submitted that the layout issues were far less severe than at the subject property.

The Valuation Officer disputed the relevance of this property as it was significantly newer than the appeal property and valued according to a different scheme entitled "Birmingham Industrials 85-94 Average."

Unit 3, Garrison Street, Birmingham, B9 4BN

A warehouse unit adjacent to Veolia Environmental Services with an end allowance of 5% for access and 5% for layout. Ms Rabbette submitted that the layout issues were far less severe than at the subject property.

The Valuation Officer disputed the relevance of this property which is valued in a different scheme entitled "Birmingham Industrials Post 1995 Above Average."

317-321 Bromford Lane, Birmingham B8 2SH

A warehouse comprised of a series of buildings which Ms Rabbette considered resulted in more severe layout issues than at the appeal property. It was assessed with an end allowance of 12.5% for layout.

The Valuation Officer stated that this property is valued on two schemes, one of which is the same as the appeal property, “Birmingham Industrials Between 1919-1954 No Refurb”. In his opinion the layout issues were more severe than at the appeal property.

Alistair Mackintosh Ltd, Bannerley Road, Birmingham B33 0SL

A predominantly 1970s multi-bay warehouse unit with associated accommodation. It has been assessed with an end allowance of 5% for access and 5% for layout. Ms Rabbette stated that as the property is of early steel portal frame construction it would not suffer from interrupting columns. In her opinion, the layout issues were more severe at the appeal property.

The Valuation Officer disputed the relevance of this property as it is valued in a different scheme entitled “Birmingham Industrials 71-84 Average”.

21 In support of her reference to comparable properties in different valuation schemes, Ms Rabbette cited a decision of the Valuation Tribunal in *Olympus Distribution Ltd v Virk (VO)* [2021]. A copy of the decision was not submitted, but was summarised by Ms Rabbette as follows:

> *“During this case we presented a range of comparable evidence in the Black Country. The evidence put forward was of differing ages, in different valuation schemes and with a variety of specific layout issues. What the Valuation Tribunal considered was whether the comparables were materially similar in relation to layout issues, and not whether they were the same age or in the same Scheme. In this case the VT agreed with us that a 10% end allowance was due for layout.”*

22 In response, the Valuation Officer confirmed that *Olympus Distribution Ltd v Virk* had not materially altered their opinion and disagreed that considering evidence from very different valuation schemes was appropriate in determining the level of allowance to be applied.

23 The panel was not provided with sufficient detail in order to make a comparison between the facts of the case in *Olympus* and the subject property. It was also the case that decisions of the Valuation Tribunal are not binding on subsequent panels. In the subject appeal, the panel upheld the view of the Valuation Officer that the most relevant comparable properties are those drawn from the same valuation scheme.

24 Comparison with properties in the same scheme means that any allowance reflects that a property is disadvantaged when compared to other similar properties that have been valued at the same rate, or from within the same range. Comparing properties from different schemes is not comparing on a like for like basis as the value applied to these properties has been derived from different evidence. This is demonstrated by the difference in the unadjusted rates: Veolia Environmental at £43 per m^2; Unit 3 Garrison Street

at £55 per m^2; Alistair Mackintosh Ltd at £38.00 per m^2. The appeal property is valued at an unadjusted rate of £10 per m^2.

25 Of the initial comparable properties presented by Ms Rabbette, the panel noted that only 317-321 Bromford Lane, Birmingham B8 2SH had been partially valued according to the same scheme as the appeal property. Both parties were in agreement that the layout issues were more severe than at the appeal property.

26 Ms Rabbette provided a schedule of 39 further comparable properties in her challenge submission. The schedule listed the property address and type, RV, and end allowances applied for access/layout. In respect of layout, the allowances ranged from 7.5% to 12.5%. Photographs and further information had been provided in respect of:

- 23-24 Frederick Street, Birmingham B1 3HE, a late 19th century factory with a 10% end allowance for layout.
- Astra Engineering Products Ltd, Queens Road, Birmingham B6 7LP a 1980's warehouse unit with a 12.5% end allowance for layout.
- Pt 38-45 Hanley Street, Birmingham B19 3SP a 1950/60's warehouse with a 7.5% end allowance for layout.
- 75-80 Alcester Street, Birmingham B12 0PH a factory constructed in the early 1900s with a 2014 extension. This property had end allowances of 5% for mixed ages and 10% for layout.

27 As outlined above, the panel preferred to focus on properties within the same scheme as the appeal property. From the remaining comparable properties scheduled by Ms Rabbette, the Valuation Officer identified five which were valued according to the same scheme as the appeal property, or the scheme for properties from the same period but which had been refurbished:

Units 5-8 Rushey Lane, Birmingham B11 2BL

The Valuation Officer considered that this property was more disadvantaged than the appeal property as it was made up of separate buildings around a comparatively small yard area. It had been assessed with an end allowance of 7.5% for layout and congested site.

Ms Rabbette submitted that the layout issues were comparatively similar and therefore this supported an end allowance of 7.5% for the appeal property.

14-18 Buckingham Street, Birmingham B19 3HT

The Valuation Officer described this as a property made up of several buildings with a very fragmented layout worse than the appeal property. It had been assessed with an end allowance of 8% for access/layout.

Ms Rabbette had questioned whether the end allowance was for both access and layout.

Cole Valley Industrial Estate, Sarehole Road, Birmingham B28 8DT

The Valuation Officer commented that while this property was an irregular shape and suffered some disadvantages, the 10% end allowance for layout appeared to be out of line.

Ms Rabbette disagreed with the Valuation Officer's comments and argued that the end allowance was in line with comparable evidence. She submitted that the layout issues were more severe compared to the appeal property, which supported her request for 7.5%.

57-59 Aston Brook Street East, Birmingham B6 4RR

In the Valuation Officer's opinion this property was significantly fragmented with multiple variations in floor level and more disadvantaged by its layout than the appeal property. It had been assessed with a 10% end allowance for layout.

Ms Rabbette commented that this property suffered from different and more severe layout issues than the appeal property, however it provided useful context.

Welcome House, Glover Street, Birmingham B9 4EP

Described by the Valuation Officer as significantly larger than the appeal property with a sprawling layout of mixed age additions which justified its end allowance of 10%.

Ms Rabbette did not consider the layout to be significantly more disadvantaged and submitted that it supported a slightly lower level of allowance for the appeal property.

28 While the panel had been presented with comparable properties from the same scheme, it was evident that the level of end allowance applied for layout reflected the particular disadvantages of each individual property.

29 The Valuation Officer stated in the challenge decision that an allowance of 2.5% was appropriate to reflect the comparative low eaves height and the disadvantage caused by metal columns.

30 It was a point raised by Ms Rabbette that there had been no reference to the internal dividing wall in the challenge decision. In the challenge further exchange document the diving wall was described by the Valuation Officer as a "fundamental disability which goes beyond that expected for a property of its age." Given that statement, the panel was not persuaded that an end allowance of 2.5% fully reflected all of the layout issues.

31 Ms Rabbette contended that an end allowance of 7.5% for layout was reasonable in view of the of the metal columns, low eaves hight and internal wall and consideration of her comparable evidence. The panel had decided

that Ms Rabbette's comparable properties drawn from different valuation schemes were not relevant for comparison with the appeal property. Of those within the same scheme, Units 5-8 Rushey Lane had a combined allowance of 7.5% for layout and congested site; 14-18 Buckingham Street had a combined allowance of 8% for access and layout; the remaining three with a 10% end allowance were acknowledged to be more severely disadvantaged than the appeal property. Consequently, the panel was not persuaded that the comparable evidence supported an end allowance of 7.5% for the appeal property.

32 The panel was mindful that prior to the issue of the challenge decision the Valuation Officer's proposed end allowance for layout was 5%. Having determined that 2.5% did not fully reflect the disadvantages caused by the layout of the appeal property, and that 7.5% was inconsistent with the allowances applied to properties within the same scheme, the panel determined that a 5% end allowance was fair and reasonable. The revised RV of £49,000 is determined as follows:

Floor	Description	Area m^2/unit	£ per m^2/unit	Value (£)
Ground	Offices	390.18	12.00	4,682
Ground	Reception/entrance	48.83	12.00	586
Ground	Offices	103.35	12.00	1,240
First	Internal storage	152.18	6.50	989
Ground	Warehouse	4,353.03	10.00	43,530
Ground	Canteen	143.80	11.00	1,582
Ground	Loading Bay	261.38	5.00	1,307
Ground	Gatehouse	14.25	10.00	143
Ground	Store	146.70	10.00	1,467
Ground	Office	8.90	12.00	107
Additional features				
Plant and Machinery				143
			Valuation sub-total	55,776
Adjustments made to the sub-total				
Access		-7.5%		(4,183)
Layout		-5%		(2,580)
			Total	49,013

Rounded down to £49,000 RV

33 The panel concluded that the appellant's representative had successfully demonstrated that the valuation of the hereditament was unreasonable, and therefore the appeal was allowed in part.

Order

34 Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list to rateable value £49,000 with effect from 1 April 2017.

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

36 A refund of the paid fee will now be arranged provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 17 January 2023

Appeal number: CHG100179850

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.