THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; factory and premises; unadjusted rate per m^2 in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: STS Defence Ltd, Mumby Road, Portsmouth PO12 1AF

APPEAL NUMBER:	CHG100103762	
BETWEEN:	STS Defence Limited	Appellant
	and	
	Ms D Bunyan, Valuation Officer	Respondent
PANEL:	Mr F J Stuart (Senior Member), Mr P Phelps	
CLERK:	Mrs H Beresford	
REMOTE HEARING ON:	12 April 2022	
APPEARANCES:	Mr O Hamblin from Altus Group, representing the appellant Mr D Alford representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £225,000 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. STS Defence Ltd, Mumby Road, Portsmouth PO12 1AF, (the ‘appeal property’) had been entered in the 2017 rating list as ‘factory and premises’ at a RV of £225,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by Altus Group on behalf of STS Defence Limited and was received by the Valuation Officer on 20 March 2020. It had been made on the grounds that the appellant disputed the accuracy of the RV shown in the rating list on 1 April 2017.

4 A challenge case decision notice was issued on 22 June 2021. This stated that the Valuation Officer considered that the rating list entry was reasonable based on the evidence

and information available, and that it would remain at £225,000 RV with effect from 1 April 2017.

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 21 October 2021.

6 Mr Hamblin appeared on behalf of the appellant as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Hamblin's declaration of truth included a statement that he was instructed on a contingency fee basis. He 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 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

8 The appeal hereditament is an industrial property part of which was built circa 1980's and part of which was built circa 1950s/1960s. It comprises a factory and premises which is predominantly of brick elevations. The total area is 4,496.10m^2. The property is split with the 1950/60's three storey office block making up 1,428.98m^2 of the total area and the 1980s warehouse and production section which makes up the remaining 3,067.12m^2. The property is located on the corner of Mumby Road and Quay Lane in Gosport, approximately seven miles south of Junction 11 of the M27 Motorway, which is close to Fareham.

9 The respondent had not been allowed to inspect the property due the COVID pandemic and the appellant's representative had not responded to more recent emails requesting an inspection.

10 The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issues

11 The issues in dispute concerned the unadjusted rate per m^2 to be adopted in the valuation of the appeal property, whether an end allowance should be adopted for poor access and what relativity should be applied to the first floor production area.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice, rental evidence and assessment summaries, and appellant's challenge submission.

13 Mr Hamblin contended that the Valuation Officer's unadjusted rate of £50/m^2 was excessive in consideration of the subject rent, which he believed was a connected party rent, and rental evidence of comparable properties. He sought an RV of £158,000 based upon an unadjusted rate of £30/m^2 for the older part of the building and £40/m^2 for the 1980s parts of the building. He also sought an end allowance for poor access and a relativity of 0.65 rather than 1 to be applied to the first floor production area as he contended it was used for heavy industry.

14 On behalf of the Valuation Officer, Mr Alford contended that the unadjusted rate of £50/m^2 was supported by the subject rent and the rental evidence within the valuation scheme. He stated that there was no problem with access to the property and believed that a relativity of one 1 correct. He requested that the panel dismiss the appeal and confirm the RV of £225,000 with effect from 1 April 2017.

Decision and reasons

15 In arriving at its decision, the panel was 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.

16 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).

17 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.

18 Mr Alford had cited the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence. The starting point is the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements need to be taken into account when deciding the weight to attach to it.

19 There had been a new lease agreed on the subject property in 2012 for £325,000/pa which was reviewed and increased to £345,000/pa in 2017. Mr Hamblin had argued that this rent was a connected party rent as the property had historically been sold by STS Defence Limited and leased back. He contended that little weight should be attached to this evidence as it was not an open market agreement. Furthermore, he contended that the Valuation Officer had sought an increase in RV after the March 2017 rent review of £345,000, however the Valuation Officer had since retracted the proposed increase. With respect to this argument the panel accepted Mr Alford's explanation that he had been unable to proceed with the proposed increase because he had not been allowed to inspect the property.

20 The panel found that there was no evidence to suggest that STS Defence Ltd had ever owned the appeal property and there was no evidence to support Mr Hamblin's contention that there had been a sale and lease back of the property. It noted that on the form of return submitted by STS Defence in respect of the rent, it was stated that there was no connection with the landlord. As there was no evidence that this was a connected party rent the panel found the rent to be a useful starting point for the valuation.

21 The panel was aware that the appeal property did not appear to be akin to several of the industrial units submitted as comparable properties in photographs provided, it appeared to be of a better quality and whilst Mr Alford accepted that it had been valued as a factory and premises there was a question mark over what the property was used for. Mr Alford suspected it may be clean industrial use but had not been allowed to inspect the property. Mr Hamblin stated that it was used for heavy industry but had failed to provide any evidence to support his argument.

22 Mr Hamblin was of the opinion that the correct way to value the property was with two separate base rates being of £30/m^2 for the older part of the building and £40/m^2 for the 1980s part of the building; he had therefore provided comparable properties of different ages to support his argument. Mr Hamblin believed that the current tone adopted for the appeal property of £50/m^2 was excessive, amongst others he referred to:

Units A C & D Quay West, Quay Lane, Gosport, Hants, PO12 4LJ

A 4,635m^2 warehouse built in 1969. Mr Hamblin argued that this unit compared to the 1960's section of the appeal property. This property had a base rate of £30/m^2.

55 Priory Road, Gosport, Hants, PO12 4LF

This property was built in 1955-1964 and Mr Hamblin believed that it was also comparable to the 1960's section of the subject property in terms of age, location and specification. The only difference being size which was 7,065m2 compared to 1,428m^2 for the older part of the subject and this property had a base rate of £27.50/m^2.

Unit 3 Interchange Park, Robinson Way, Portsmouth PO3 5QD

This unit was built in 1984 and Mr Hamblin argued that this assessment supported a value of £40/m^2 for the 1984 section of the appeal property as, he stated that it is superior to the 1980s section of the appeal property and supported his contention that the base rate of £50/m^2, is excessive.

Fareham Reach / Fareham Trade Park, Gosport PO13 0FP

These units were built 1955-1964 and refurbished in 2000, Mr Hamblin argued they were superior to the subject property but with values in the region of £47.50/m^2 for a similar sized unit.

Unit 3, Fareham Trade Park, Lederle Lane, Gosport PO13 0FE

A newly built 2015 industrial unit of 3,808m^2. This property had been let in August 2015 for £50.73/m^2. Mr Hamblin argued that this unit is superior to the appeal property, in terms of age, specification and location, and supported his argument that both sections of the appeal property should attract a lower base rate than the currently adopted £50/m^2.

23 The panel was not persuaded by Mr Hamblin's evidence of comparable properties it was noted that only a small proportion of the appeal property was of 1950/60's construction and this was mainly offices. The main part of the property which was built in the 1980's did not appear to compare to typical warehouses or industrial units similar to some of the comparable properties which had been submitted. The panel was aware that the comparable newer properties referred to by Mr Hamblin appeared to have assessment unit values in the region of £55/m^2 which supported the current RV for the subject property.

24 The panel turned to the Valuation Officer's rental evidence provided in support of an unadjusted rate of £50/m^2 for the appeal property, in particular the panel noted that City Technology Ltd, Walton Road Portsmouth was a factory and premises of 5,444.92m^2 had a rent agreed 1 December 2015 which analysed to £339,009 giving a base rate of £55/m^2, this property had been built in 1991. The panel found that on balance the Valuation Officer's evidence supported a tone of £50/m^2 for similar properties in the Portsmouth area. As the majority of the property had been built in the late 1980's the panel found the Valuation Officer had acted correctly in applying a single base rate to the larger part of the building and applying the appropriate relativities to the older part.

25 The panel noted that the appeal property was situated in a pleasant location close to a marina and shopping area rather than on an industrial estate. The panel found that the appeal property compared favourably with the evidence of comparable properties provided by both parties and that a hypothetical tenant coming fresh to the scene would be prepared to pay a similar rent for this property as for those cited.

26 Mr Hamblin argued for an end allowance for poor access to the property. The panel found that there was no evidence to suggest that such an allowance should be adopted. It also noted that this matter had not been addressed at the Challenge stage.

27 Finally, Mr Hamblin also argued that the first floor production area which measured 1,352.59m^2 had been valued at 100% of the main space rate. The Valuation Officer has adopted a relativity of 1, whilst Mr Hamblin argued that a relativity of 0.65 should be applied in accordance with the Valuation Officer's 2017 Valuation Scales. The panel did not accept Mr Hamblin's contention that this area was used for heavy industrial purposes as no evidence had been presented to support this and the property did not appear to compare with the industrial units referred to given that the production area was on the first floor of the subject property.

28 In light of the above findings the panel was satisfied that the assessment of the appeal property at an unadjusted rate of £50/m^2 was consistent with similar properties in the locality.

29 In conclusion, the panel determined that the appellant's representative had failed to demonstrate that the valuation of the appeal property was unreasonable. The valuation of the appeal property at £225,000 RV with effect from 1 April 2017 was therefore confirmed by the panel and the appeal dismissed.

Date: 28 April 2022

Appeal Number: CHG100103762