THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; warehouse and premises; rental evidence; comparable assessments; appeal allowed in part.

RE: Unit 44 Yardley Business Park, Miles Gray Road, Basildon SS14 3BZ

APPEAL NUMBER: CHG100186114

BETWEEN:	Fiver London Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

BEFORE: Mr J Rockliff (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 11 July 2022

APPEARANCES: Mr M Clayton of Altus Group (Appellant's representative)
Mr M Williams (for the Valuation Officer)

Summary of decision

1. The appeal was allowed in part, the assessment was confirmed at rateable value (RV) £275,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Unit 44 Yardley Business Park, Miles Gray Road, Basildon SS14 3BZ (the 'appeal property'), which was entered in the 2017 rating list as 'warehouse and premises' at rateable value (RV) £327,500, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Fiver London Ltd made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the valuation officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £200,000 with effect from 1 April 2017.

4. 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, paragraph 11 of those Arrangements also provide that a Senior Member may sit alone to avoid postponing the hearing where a second panel member is unable to sit for any reason. At this hearing the second panel member was encountering technical problems and was unable to join the remote hearing.

5. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the valuation officer had not made any alteration to the rating list in his challenge decision notice.

6. The appeal hereditament comprises a distribution warehouse and premises with an overall area of 14,850.03m^2. It was constructed circa mid 1960s/early 1970s with the majority of the area situated on the ground floor. However, there is some first floor office space. The property is situated just off the A127 which leads to the M25 in the West and coastal towns to the east.

7. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

8. I 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

9. It was therefore appropriate for me to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before me.

10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that I considered all of the evidence presented when coming to my decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked

Issue

11. The base level of value adopted for the appeal property was £30.00/m2. The appellant sought an end allowance of 42% for poor loading, dense site coverage, reduced eaves, low floor loading and shared access.

Evidence and submissions

12. Mr Clayton, the appellant's representative, had submitted evidence which included: a written submission; photographic evidence; a location plan; a map of the comparable properties; the current 2017 assessment; and a revised valuation in respect of the appeal property.

13. Mr Clayton contended that in this appeal the passing rent is the best evidence as it had been agreed a few months before the antecedent valuation date (AVD) of 1 April 2015 and reflected all the disadvantages at the site. He submitted that the rent devalued to 21.52/m^2 in terms of main space (ITMS).

14. Mr Clayton argued that as a distribution warehouse, the property suffered from several major disadvantages which, given a price per square metre of £30, warranted an end allowance of 42% to reflect the rent.

    - The site coverage ratio is also extremely dense at 83.3% with loading only on one side of the building and this is extremely limiting when the standard site to building ratio is in the region of 50% to allow for circulation and loading around the entire building.
    - The eaves height of 6.1 is also substantially below the 12m+ that would be expected for a distribution warehouse, and this restricts the stock that can be stored at the site due to the lack of racking potential.
    - The floor loading capacity is limited due to the structure of the building which reduces the tonnage of stock that can be stored, again reducing the rental bid that would be expected.
    - The access to the site is also poor with the entrance to the unit shared with other occupiers on the estate.

15. Mr Clayton added that the two comparable properties cited by the Valuation Officer were not in the same location as the subject property and had rents which were remote from the AVD, he asked the me to confirm a RV of £200,000 for the appeal property.

16. The valuation officer's representative Mr Williams had provided: details of two comparable properties; a valuation of the properties; a comparable rental summary; and a response to the challenge. Mr Williams gave an oral submission in response to Mr Clayton.

17. Mr Williams argued that the rent on the stepped rent should be regarded as an incentive, the reason being that steps allow the rent to reach the market value at the time the lease is agreed i.e. £320,220, later in the term in this case the 2017 step. As a result of this, he argued that the steps in 2014 and 2016, were not indicative of the 2014 market value or the market value at the antecedent valuation date. On this basis he preferred to rely on evidence of comparable properties. Mr Williams asked the me to confirm the RV of the appeal property at £327,500.

Decision and reasons

18. I had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

19. The term 'rateable value' is defined in 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"

20. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell* (VO) [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

21. Mr Clayton had submitted that the appeal property was held on a leasehold basis with a new letting which was agreed on 31 October 2014 at a rent of £320,220 per annum with a stepped rent incentive at a rent of £200,138 per annum which gives an adjusted rent over the term of £200,138 which devalued to £21.52/m^2 using the ITMS area of 11,792.24m^2.

22. Mr Williams had provided a rental summary for two properties: 1 Hays Network, a property of 16,075.41m^2 which was a similar age, had an adjusted rent of £1,632,108 which devalued to £87.89/m^2 and had an adjusted main space value of £30.00/m^2 and had been agreed in April 2016; 29/30 Berths, Tilbury Freeport, a newer property had an unadjusted rent of £1,776,496 agreed in September 2016 which devalued to £57.90/m^2 and had a base rate of £37.50/m^2. I noted that, whilst the rents were rent reviews and were somewhat remote from the AVD, and the properties were not in the same locality as the subject property, there did appear to be a tone in the area of around £30.00/m^2 for this type of warehouse, however, these properties did not suffer the same level of disadvantage as the subject property.

23. Having regard to the evidence and argument presented to me I found the best guide to RV to be the actual rent on the subject property but adjusted for the initial incentive of a steeply stepped rent for the first three years. The fifteen year lease signed on 31 October 2014 had a rent of £200,138 in years one and two, £240,165 in year three and £320,220 in years four, five and six. There was a rent review scheduled in year six. Averaging the rent over the first six years (until the rent review) gave a figure of £266,850. If the rent is averaged over the full fifteen year term (assuming a continuation of £320,220 for years seven to fifteen) the average rent is £298,872. I found the actual market rent at AVD is somewhere between

£266,850 and £298,872. I have made no adjustment for the lease date being five months prior to AVD. I find it correct to leave the basic rate at £30/m^2 and to calculate a lower figure by way of allowances as follows:

Assessment without adjustments: £344,922

Less allowances:

2.5% Shared access
10.0% Dense site coverage/poor lorry access
5.0% Loading bays on one side only
2.5% Restricted floor strength

Total 20.0%

Rateable value £344,922 less 20% = £275,937

Say £275,500

24. 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 (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

25. 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 amend the entry in the rating list to show a revised assessment of £275,500 RV for the appeal property, with effect from 1 April 2017.

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

Date: 25 July 2022

Appeal numbers: CHG100186114

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.