THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; workshop and premises; rental evidence; weight to be applied to rent passing on the subject property; comparable properties; tone of the rating list; appeal allowed

RE: Unit 119, Street 7, Thorp Arch Estate, Wetherby, West Yorkshire, LS23 7FL ("the subject property")

APPEAL NUMBER: CHG100216576

BETWEEN:	AV Matrix Ltd	Appellant
	and	
	Jo Moore (Valuation Officer)	Respondent

PANEL: Ms C Jones (Senior Member)
Mr S M Hooberman

CLERK: Mrs A Sloan

HEARING: Remote hearing No.1 on 10 January 2023

APPEARANCES: Mr T Munns of Wharfdale Property Management Ltd (for the Appellant)
Mr S Mann (Respondent's representative)

Summary of decision

1. Appeal allowed. The panel reduced the rateable value (RV) to £21,000 with effect from 1 April 2017.

Introduction

2. This appeal was lodged on 14 February 2022 to challenge the Valuation Officer's (VO) decision notice of 27 October 2021, which maintained the existing RV of £25,250. The appellant's representative considered this valuation to be excessive and sought a reduction to £21,000. At the hearing, Mr Mann confirmed that, following a further Check lodged, the RV had been reduced in February 2022 to £25,000 with effect from 1 April 2017.

3. The subject property is a workshop constructed in 1941 located on the Thorp Arch Estate, the site of a former munitions factory. The property has not been refurbished and the accommodation remains unimproved since its construction.

4. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary issues

5. On the morning of the hearing, Mr Mann asked to present the panel with some additional photographs of the subject property and comparable properties referred to in evidence. The tribunal's standard directions state *"There is no need for parties to submit photos and plans to the Tribunal at the two week period, but there should be agreement before the hearing between the parties that any photos and plans submitted to assist the panel on the day are a true representation of the situation at the material day."* The appellant's representative confirmed he had no objection to the inclusion of these photographs, so they were emailed to Mr Munns and the clerk, who then shared the attachments with the panel.

6. During the course of the hearing, Mr Mann referred on a number of occasions to the Valuation Officer's (VO) decision notice having been issued by a colleague and that he had therefore referred to the content in his statement of case. The evidence bundle on file included the VO's decision notice but also additional documents submitted by both parties after the Challenge decision, leading to the original hearing date for this appeal in August 2022. The clerk asked the parties to clarify whether there was an agreement between them to submit these statements of case, as appeals against the 2017 rating list were usually heard just on the original submissions leading to the issue of the decision notice. The parties confirmed that there was nothing new in the submissions and they had agreed to both provide these documents, which set out the issues for the tribunal in a statement of case format similar to those found in 2010 list appeals. The panel was therefore content to hear the appeal on the evidence submitted by both parties.

Issue

7. The issue before the panel was the accuracy of the entry shown in the rating list.

Evidence and submissions

8. Mr Munns was acting in a dual role as both advocate and expert witness for the appellant. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Munns' written submission included a statement that he was not instructed under any conditional fee arrangement. At the hearing, he explained that he was in fact acting for the appellant for no fee and declared that he understood and accepted that his duty was to the Tribunal in giving evidence. Mr Munns stated that his company manages the Thorp Arch Estate and therefore he had first hand knowledge of the properties and rents in the locality.

9. Mr Mann stated he was also acting as both advocate and expert witness for this case. He had inspected the subject property prior to the original listing of this appeal in August 2022.

10. Mr Mann asked the panel to dismiss the appeal and confirm the existing RV of £25,000, with a base rate of £45/m^2. Mr Munns asked the panel to reduce the valuation to £21,000 RV from 1 April 2017, with the base rate reduced to £35.70/m^2. There was no dispute on the subject property's measurement, which was agreed at 592.85m^2.

Decision and reasons

11. The term 'rateable value' is 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".

12. 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. The material day (the date by which physical factors have to be taken into account) was 1 April 2017.

13. Mr Munns relied upon the rent agreed on the subject property. He confirmed that the appellant company had agreed a 2.5 year lease from February 2017 with a stepped rent ranging from £19,000 to £22,500. The lease was renewed in September 2019 for 5 years at £26,000. Mr Munns also provided details of the previous rents agreed on the subject property between 2004 and 2010, involving three different tenants. He highlighted that those rents ranged from £21,500 in 2004 to £23,200 for a lease renewal in 2008, which he argued showed consistency in the value of the subject property. He argued that the rents on the subject property provided the best evidence of value at the AVD of 1 April 2015 and asked the panel to reduce the RV to £21,000 from 1 April 2017.

14. Mr Munns referred the panel to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment 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. Mr Munns contended that the rent agreed on the subject property in February 2017 was the best evidence and other properties should only be considered if the rent on the subject property was considered unreliable.

15. Mr Mann disagreed with this approach. He argued that the rent on the subject property from February 2017 was too far removed from the AVD and better evidence could be found from comparable properties in the locality to demonstrate the tone of values. He also stated that the Upper Tribunal decision *Lamb v Go Outdoors Ltd* [2015] RA/66/2013 superseded *Lotus and Delta*. No extract of this case was provided by Mr Mann, but he referred to paragraph 39. of the decision which stated, with reference to the guidance in *Lotus and Delta*, *"These propositions provide guidance on the usefulness of different types of evidence but they should not be regarded as rules to be followed slavishly. It will be necessary to have regard to relevant evidence of all types, if available, but always with a clear focus on the statutory valuation hypothesis."*

16. As he considered the rents agreed on the subject property to be too far from the AVD, Mr Mann presented rents on additional properties for comparison to the panel. Three properties from the Thorp Arch Estate were referenced to demonstrate the tone of the locality, namely units 366, 370 and 372A. These units were valued at £57.50/m^2 (unit 366) and £60/m^2 (units 370 and 372A). Mr Munns contended that all three of these buildings were constructed in the 1980s and were therefore not comparable in age or quality to the subject property. He provided additional information to the panel to elaborate on this point. At the hearing, Mr Mann appeared to concede that these properties were not the best comparisons but his colleague had included them in the decision notice under appeal, so he had referred to them in his written submission.

17. Mr Munns stated that the Thorp Arch Estate contained around 200 industrial buildings when constructed in 1941-42, with more added over the following years. He questioned why the respondent sought to rely on rents agreed on more modern properties when there was a wealth of rental evidence available on properties of similar age and character to the subject property available.

18. Additional rental evidence was provided by the respondent on four more properties from the Thorp Arch Estate. Mr Mann stated that unit 120 was of similar construction to the subject property and its rent, as a new letting in September 2014, was good evidence that the subject property's valuation based on £45/m^2 was reasonable. He also stated that the May 2014 rent for units 156 and 157 would reflect the unmodernised property as the landlord's improvements were not carried out until October 2019.

Address	Size	Rent effective date	Rent	Unit price
Unit 120, Street 7, Thorp Arch Estate	1160.98m^2	22/9/2014	£44,000	£38.76/m^2
Unit 702 Avenue E West, Thorp Arch Estate	600.00m^2	1/9/2015	£42,600	£45/m^2
Unit 156 and 157 Avenue B, Thorp Arch Estate	771.40m^2	31/5/2014	£26,000	£45/m^2
Unit 613 Avenue D, Thorp Arch Estate	873.80m^2	10/10/2013	£47,500	£45/m^2

19. Mr Mann stated that these properties were larger than the subject property, except Unit 702, and would usually be expected to have a lower base rate due to quantum but these unit prices reflected the superior quality of the properties. Mr Munns contended that these properties were not comparable as, although they were 1940s built, they had all been the

subject of significant capital expenditure by the landlord, which was reflected in the rents agreed.

20. Unit 120 was double the size of the subject property, benefitted from a loading door at dock height and the landlord had spent around £59,000 to improve the office and welfare facilities. Unit 702 is operated as an MOT station, vehicle repair shop and for car sales, with appropriate planning permission. Mr Munns argued this is not comparable to the subject property as it comprises a combination of new build and refurbished buildings with a car display area. The landlord provided a surfaced car park with kerbs and drainage to the value of around £22,000.

21. Units 156 and 157 is a portal framed building attached to the original 1941 structure, which had benefitted from the landlord's capital expenditure of around £44,000 to install a new 4.5m high roller shutter door. Unit 613 is an original 1941 building which benefits from a yard measuring 2,200m^2. Improvements to the office and welfare facilities along with cladding a modern extension to the warehouse cost the landlord around £80,000.

22. In contrast, Mr Munns confirmed that the subject property does not have a large yard, is completely unmodernised from its 1941 construction, has un-plastered walls in the office, no carpets, concrete ceilings, an asbestos roof, single skin brick walls, single glazed windows, little natural light, a wooden sliding access door and restricted ceiling height at 3m. He contended that none of the properties relied upon by the VO were comparable to the subject property. While he had not objected to the inclusion of Mr Mann's photos of the subject and comparable properties, Mr Munns did later raise concerns that the comparable property photographs were not correctly labelled and the image of units 156 and 157 showed the property after the improvement works were carried out, which he considered may be misleading to the panel.

23. After considering all the evidence presented, the panel found that the VO's evidence relied upon properties that were not truly comparable to the subject property. It acknowledged Mr Mann's reference to *Lamb v Go Outdoors Ltd* and found that this judgment did not disregard *Lotus and Delta* but rather reiterated that it provides guidance not mandatory rules. The panel also acknowledged that the rent on the subject property was nearly two years post AVD. However, the rents provided by the VO were not on comparable properties. Whilst they did provide evidence of rents on the Thorp Arch Estate, the rents reflected those properties and the improvements made by the landlord at the tenant's request. Although Mr Mann argued that the landlord improvements would not always be value significant for rating purposes, the panel concluded that rents agreed on those properties would reflect the advantages and disadvantages of the relevant buildings at the time the rent was agreed.

24. The panel placed little weight on units 366, 370 and 372A as it was satisfied that these were more modern buildings of a superior quality, a fact that Mr Mann appeared to concede at the hearing. Units 120, 156 and 157, 613 and 702 were all originally constructed in the 1940s but the panel concluded that the landlord's improvements meant they were of a superior quality to the unmodernised subject property and, therefore, not comparable. While it appeared some of the landlord's improvements were carried out after the rents were agreed, the panel understood that the work to be carried out formed part of the rent negotiations. It appeared from Mr Munns' submissions that there were many examples of unmodernised 1941-42 constructed properties on the estate but neither party had provided details of such buildings or rents for comparison.

25. Despite being agreed some time after the AVD, the panel found that the approach in Lotus and Delta was correct, and the starting point should be the rent passing on the subject property. It concluded that the rent would reflect the quality of the building and the history of lettings did suggest a consistent value. No rents from around the AVD had been supplied on comparable 1941 properties to suggest the rent on the subject property was out of kilter with similar assessments and therefore the panel placed most weight on the February 2017 rent. Mr Munns proposed an RV of £21,000, which was the average rent over the 2.5 year lease and the panel considered this to be reasonable. The appeal was therefore allowed.

Order

26. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for Unit 119, Street 7, Thorp Arch Estate, Wetherby, West Yorkshire, LS23 7FL in the 2017 Rating List to £21,000 effective from 1 April 2017. The Valuation Officer must comply with this Order within two weeks of its making.

27. 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)), provided there is no review of the Tribunal’s decision. The refund will take around six weeks to process.

Date: 6 February 2023 **Appeal number:** CHG100216576

Appeal Rights

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.