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.

RE: Ventura Park Ltd, Apollo, Tamworth B79 7TA

APPEAL NUMBER: CHG100281206

BETWEEN:	Johnsons Cars Limited	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL:	Mr D Gardner (Senior Member) Mr M Bhatti
CLERK:	Mrs H Beresford
REMOTE HEARING ON:	25 August 2022
APPEARANCES:	Miss S Nichols of Colliers International (Appellant's representative) Mr M Harrington (for the Valuation Officer)

Summary of decision

1. The appeal was allowed, the assessment was reduced to rateable value (RV) £14,750 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Ventura Park Ltd, Apollo, Tamworth B79 7TA (the 'appeal property'), which was entered in the 2017 rating list as 'warehouse and premises' at rateable value (RV) £34,000, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Johnsons Cars Limited made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the valuation officer decided to alter the 2017 rating list to £29,000 following the appellant's check and challenge. The appellant had sought a reduction to RV £14,750 with effect from 1 April 2017.

4. 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 sufficient alteration to the rating list in his challenge decision notice.

5. The appeal hereditament has an area of 852.42m^2 and comprises an industrial warehouse unit that has been sub-divided out of a larger factory building. Originally constructed between 1955 and 1964 it is of typical construction for its age and has a steel portal frame with brick walls and corrugated asbestos sheet roof and cladding, it has an eaves height of 3.65m. Lichfield Road industrial estate is a well-established industrial business location one mile West of Tamworth town centre with good links to the A51 and the A5 trunk road for the M42 and M6.

6. The appellant's representative, when appearing as expert witness, stated that she was on a conditional fee arrangement. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), she also stated that she understood and accepted that her first duty was to the VTE in giving her evidence, whether or not the evidence supported her client's case.

7. The panel 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).

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

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

Issue

10. The base level of value adopted for the appeal property was £40.00/m^2. The appellant's representative, Miss Nichols questioned the Valuation Officer's method of valuation as it did not reflect the rent on the appeal property and had been reduced by several end allowances. The appellant preferred a reduction of the base rate to £17.50/m^2. Alternatively, she sought an increase in the end allowances so that the RV of the property would better reflect the rent.

Evidence and submissions

11. 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; a lease; and a revised valuation in respect of the appeal property.

12. Miss Nichols contended that in this appeal the passing rent is the best evidence as it had been agreed close the antecedent valuation date (AVD) of 1 April 2015 and reflected all the disadvantages at the site. She submitted that the rent devalued to 17.50/m^2 in terms of main space (ITMS).

13. Miss Nichols argued that if the base rate was considered by the panel to be correct the property suffered from several major disadvantages which, given a price per square metre of £40, warranted the following end allowances to reflect the rent.

    - The situation of the property is poor, the property cannot be seen from the road which could make it more vulnerable to crime there is also shared access with neighbouring units and HGV access is impossible or extremely difficult – allowance sought -25%
    - It has an irregular and impractical shape of three staggered bays, which have a low eaves height and an asbestos roof – allowance sought for eaves height -6.5%
    - There is extremely limited parking and no external yard – allowance sort for lack of yard -20%
    - Shared toilet facilities with neighbouring unit – allowance sought -5%

14. Miss Nichols added that the comparable properties cited by the valuation officer did not suffer from all of the disabilities and disadvantages that the appeal property did, she asked the panel to confirm an RV of £14,750 for the appeal property.

15. The valuation officer's representative Mr Harrington referred to the challenge decision which included details of comparable properties; a valuation of the property; a summary of comparable rental evidence; evidence of settlements and comparable assessments. He argued that the tone of the list had been established and in the revised valuation he had made adequate end allowances for the disabilities of the appeal property having adopted allowances of -10% for poor access, -2.5% for eaves height and -2.5% for shared toilet facilities.

16. Mr Harrington contended that the rent on the appeal property was an outlier and rental values of other properties in the same scheme supported a base rate of £40/m^2, he also argued that the end allowances sought by the appellant's representative were unwarranted. Mr Harrington asked the panel to confirm the RV of the appeal property at £29,000.

Decision and reasons

17. The panel 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.

18. 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"

19. 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.

20. Miss Nichols had submitted that the appeal property was held on a leasehold basis with a new letting which was agreed on 1 September 2016 at a rent of £15,000 per annum which devalued to £17.50/m^2 using the in terms of main space (ITMS) area of 852.42m^2.

21. In support of this Miss Nichols referred to two comparable properties. The panel noted that, in particular, Bowmer Bond, Apollo, Tamworth B79 7TA, had an area of 1,443m^2 ITMS and was located in part of the same original building as the subject property, had a new ten-year lease that had been agreed on 4 November 2014, at £30,000 per annum which analysed to £18.91/m^2. She argued that the rent on this property would be slightly higher because it fronts onto the main road with improved access and visibility, it is also a more regular, rectangular shape, with better loading facilities than the subject property, therefore a more attractive and practical unit for tenants. The panel found that along with the rent on the appeal property, this was compelling evidence and it attached significant weight to it.

22. Mr Harrington had argued that a tone had been established in the list and he provided detailed settlement evidence of (as he submitted) comparable properties in the same scheme and in other schemes.

23. The panel found that whilst a tone appeared to have been established for the properties referred to, with the exception of Bowmer Bond these properties were not comparable to the appeal property because they were more modern, better located, and/or with better facilities and did not suffer the same disabilities as the appeal property. It was notable that the valuation officer was prepared to grant a number of end allowances, which also supported the submission that the appeal property itself suffered from a number of disabilities, which in the circumstances of this case the panel considered appeared to be fairly reflected in the actual rent.

24. Having regard to the evidence and arguments presented to it the panel found the best guide to RV to be the actual rent on the subject property as it adequately reflected the disadvantages of the property and was supported by the rent on Bowmer Bond which was the best comparable property, it being located in the same building. The panel determined that a hypothetical tenant coming fresh to the scene would not have been prepared to pay a rent any higher than that agreed in 2016, given the characteristics of the subject property which include

awkward location and layout of the property, poor visibility, poor shared access, poor access for HGVs, the age and condition of the building, low eaves height, shared toilet facilities with the neighbouring unit, lack of secure yard and limited parking.

25. Therefore, the panel determined that the correct RV for the subject property would be as follows with a revised base rate of £17.50/m².

FLOOR	DESCRIPTION	AREA (m²)	PRICE (£/m²)	TOTAL VALUE (£)
Ground	Warehouse	843.82	£17.50	£14,767
Ground	Works Office	8.60	£17.50	£151
			Subtotal	£14,918
			Total Value	£14,918
			Say RV	£14,750

26. 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

27. 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 £14,750 RV for the appeal property, with effect from 1 April 2017.

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

29. 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: 20 September 2022

Appeal numbers: CHG100281206

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.