THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; warehouse and premises; level of value; rental evidence; comparable properties; end allowance for split/divided unit; appeal allowed in part.

Re: Units 1-3 Highbridge Business Park, Oxford Road, Middlesex UB8 1HU.

APPEAL NUMBER: CHG100298936

BETWEEN:	Arri GB Limited	Appellant
	and	
	Ms D Bunyan	Respondent
	(Valuation Officer)	

PANEL: Mr A Khurram (Senior member) and Mr C Sanford

CLERK: Mrs S Morgan

REMOTE HEARING: Thursday 10 June 2021

PARTIES PRESENT: Mr O Hamblin – Appellant's representative

Mr J Balogun – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £515,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of

Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

4. This appeal was brought in respect of Units 1-3 Highbridge Business Park, Oxford Road, Middlesex UB8 1HU (the appeal property). The appeal property is a warehouse and premises built in 2001. The property has a total area of 6,605m^2 and is located on an established industrial estate with good access and road connections to the motorways.

5. This is a 2017 Rating List appeal and the RV of the appeal hereditament was £595,000 with effect from 1 April 2017. The appellant’s representative sought a reduction to £505,000 RV.

6. The challenge submission was received on 12 August 2020. The grounds for the challenge were the RV ought to be reduced as the basic rate was considered to be excessive and an end allowance should be given for split/divided unit. A Challenge Case Decision Notice was issued on 3 December 2020.

7. Mr Hamblin appeared on behalf of the appellant as an 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 under a contingency based fee.

8. Mr Hamblin also 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 his client’s case.

9. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (VTE) functions – general) of the Procedure regulations 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).

10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before 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.

Issues

11. The appellant’s representative contended that the base rate adopted in the assessment was excessive. He sought a reduction to £77.50/m² whilst the Valuation Officer’s representative contended that £85.00/m² was reasonable.

12. The appellant's representative also sought a 7.5% end allowance for split/divided unit whilst the Valuation Officer's representative contended that no allowance was justified. However, during the hearing, the Valuation Officer's representative conceded a 5% end allowance for split/divided unit.

Evidence and submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges during the challenge process; comparable properties; assessment evidence, site and floor plans, photographs of the appeal property; definition of rateable value and case law.

14. The appeal property had been previously assessed as three separate units before being merged into one property. The largest of the three properties before the merger measured 3,100m^2 and was valued at £85.00/m^2. The property has now doubled in size to 6,605m^2 and is assessed at the same figure of £85.00/m^2. Units 2 and 3 are adjoining and are divided by a solid structural wall. These are located at the front of the site. Unit 1 is located towards the rear of the site and is separated by their exclusive car park.

15. The appeal property has been valued as part of Valuation Scheme 378597. The seven largest assessments in this scheme ranging from 1,069m^2 to 6,605m^2 are all held on a freehold title, including the subject property.

16. The appellant's representative explained that the price range for the freehold properties ranged from £85.00/m^2 to £100.00/m^2. With properties of between 1,000m^2 and 2,000m^2 being assessed at £100.00/m^2, 2,000m^2 to 3,000m^2 at £90,00/m^2 and over 3,000m^2 at £85.00/m^2. There were no properties above 4,000m^2 at that time these properties were originally assessed therefore the matrix did not go any higher. The size matrix was understood to have been increased to 7,500m^2 to accommodate the merger of the three assessments. However, the appellant's representative was of the opinion that the base rate should be reduced to reflect the increased size of the subject property. He recommended that the base price should be reduced from £85.00/m^2 to £77.50/m^2 in line with a neighbouring comparable property, Pizza Express plc, Rockingham Road, Uxbridge. This was a warehouse and premises built between 2000 and 2009 and measuring 6,357m^2. In his opinion, this compared well with the subject property.

17. To support his 7.5% end allowance, the appellant's representative referred to five industrial units in Uxbridge that ranged in size from 946.17m^2 to 15,510.11m^2, where a 5% end allowance had been included in the assessment for split/divided unit. These were, in the main, where two units had been merged into one. He contended that a higher end allowance was justified to reflect the fragmentation of the three merged units for the subject property. He sought a revised rateable value of £505,000 with effect from 1 April 2017.

18. The respondent had placed weight on Nature Delivered Ltd in Springfield Road, Hayes, an older built property of 7,658.67m^2, which was valued at £85.00/m^2 in 2001 and the same in the 2017 list. In relation to Pizza Express plc, this building was replaced as a more modern single unit measuring 6,518.00m^2 with a base rate of £105/m^2. He also stated that it had been placed in a different valuation scheme with values ranging from £75.00/m^2 to £130.00/m^2.

19. The respondent disagreed that the size matrix was altered to accommodate the increased size of the appeal property. He also believed that the appeal property did fit into its current scheme and therefore there was no reason to move it to another scheme. The same base rate had been applied to the appeal property in the 2010 and 2017 lists. He contended that as the appellant's representative had not provided any rental evidence to support a lower figure than £85.00/m^2, no reduction was warranted.

20. In relation to an end allowance, again the respondent contended that as there was no rent on the appeal property it was difficult to justify an end allowance for split/divided unit. As the combined rateable value on the three units was higher than the current rateable value it would appear that an end allowance was not warranted. Furthermore, he would have preferred to have seen evidence of the solid wall which he had requested twice from the appellant's representative, but having given it some further thought, he was prepared to concede to a 5% end allowance for split/divided unit at this point. He therefore sought confirmation of a revised rateable value of £565,000 with effect from 1 April 2017.

21. In response, to the respondent's comments on Nature Delivered Ltd, the appellant's representative, in his submission, had referred to the rent payable on that property in a lease dated 2012. He provided a breakdown of the lease from 2012 through to 2022, showing at the 5th year break a rent which devalued to £64.16/m^2 and at the 10th year break a devalued figure of £69.50/m^2. Although the rent was not particularly reliable, he believed that the rental growth supported the £77.50/m^2 he was seeking for the appeal property. Furthermore, he contended that this property was situated in an arguably better location and therefore the £85.00/m^2 applied to it appeared to be reasonable.

Decision and reasons

22. The main issues in dispute concerned the level of value to be adopted for the appeal property and whether a 7.5% end allowance for split/divide was justified bearing in mind a 5% allowance had already been conceded at the hearing.

23. 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".

24. 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).

25. 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.

26. Reference was made 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, if there was one, was to be 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.

27. The appellant's representative referred to the 4th proposition in the *Lotus and Delta* decision which states that assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can be properly referred to as giving some indication of that opinion.

28. The appellant's representative had proposed a valuation for the subject property based on the base rate applied to Pizza Express plc before its modernisation had taken place. It was accepted that this property was deleted from the list and then brought back at a higher rate due to it being a new build. However, at the relevant date this property was similar in age, type, size and location and was valued at that time at £77.50/m^2. The panel was of the view that this was the best comparable property and in the absence of any reliable rental evidence in the locality, it saw no reason not to apply £77.50/m^2 to the subject property.

29. The appellant's representative had referred to five properties where a 5% end allowance had been given for split/divided unit. He contended that the general rule was a 2.5% allowance per unit and therefore he was seeking a 7.5% end allowance in this case for the merger of three units. The panel had to consider the appeal property based on its own merits and having regard to its physical characteristics, in comparison to those of the comparable properties and examine if an allowance higher than 5% was truly justified. Having considered the matter, the panel was not persuaded to increase this allowance beyond that already conceded by the respondent at this hearing. There was no rent on the appeal property to confirm that a 7.5% end allowance for split/divided unit was warranted. The appellant's representative's argument for a 7.5% allowance was therefore rejected.

30. In view of the foregoing, the panel decided that the base rate should be reduced to £77.50/m^2 in line with the neighbouring property before it was modernised and a 5% end allowance, as conceded by the respondent, to be included in the assessment as set out below.

Floor	**Description**	**Area m^2**	**Price per m^2**	**Value**
Ground	Warehouse	2,117.39	£75.57	£160,011
Ground	Warehouse	376.97	£64.23	£24,213
Ground	Kitchen	3.24	£90.68	£294
First	Office	488.53	£93.00	£45,433
Ground	Staff Toilets	114.01	£77.50	£8,836
Ground	Warehouse	924.32	£77.50	£71,636
Ground	Office	222.87	£93.00	£20,727
Ground	Kitchen	5.29	£93.00	£492
First	Office	251.70	£93.00	£23,408
Ground	Warehouse	1,390.36	£75.57	£105,070
Ground	Office	334.80	£93.00	£31,136
Ground	Warehouse	5.26	£75.57	£397
First	Office	370.80	£93.00	£34,484
	Total area	6,605.54		
Car spaces		85	£235	£19,975
			Sub total	£546,111
End allowance	5% split/divided unit			£27,306
			Total	£518,805
			Say	£515,000

31. Consequently, the appeal was allowed in part, the RV was reduced to £515,000.

Order

32. 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 £515,000 RV for the appeal property, with effect from 1 April 2017.

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

34. 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: Wednesday 30 June 2021

Appeal number: CHG100298936