THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; factory and premises; removal of end allowances in dispute; Barnard and Barnard v Walker (Valuation Officer); appeal allowed.

RE: Units 11/12 Blackwater Trading Estate, The Causeway, Maldon, CM9 4GG

APPEAL NUMBER:	CHG100335887	
BETWEEN:	Werner UK Sales & Distribution Ltd	Appellant
	and	
	Ms J Moore, Valuation Officer	Respondent
PANEL:	Mr J M Imperato (Senior Member) Mr M Nwosu	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Thursday 17 November 2022	
APPEARANCES:	Mr M Clayton from Altus Group, representing the appellant Mr L Stevens representing the Valuation Officer	

Summary of decision

1 Appeal allowed. The panel determined a revised rateable value (RV) of £402,500 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Units 11/12 Blackwater Trading Estate, The Causeway, Maldon, CM9 4GG, (the ‘appeal property’) had been entered in the 2017 rating list as ‘factory and premises’ at a RV of £462,500 with effect from 1 April 2017.

3 The challenge proposal was submitted by Altus Group on behalf of Werner UK Sales & Distribution Ltd and was received by the Valuation Officer on 4 November 2021. It had been made on the grounds that the RV shown in the

rating list on 1 April 2017 was inaccurate. A revised RV of £387,500 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 18 December 2021 which disagreed with the proposed alteration of the list but stated that the rating list entry was unreasonable based on the evidence and information available. The RV was altered to £437,500 based upon a reduction of the land area included in the assessment.

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 25 February 2022.

6 As Mr Clayton appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved, in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Clayton confirmed that he was instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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).

8 The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

9 The appeal property is a large industrial unit located on Blackwater Trading Estate in Maldon. The present assessment of £437,500 RV is based upon a total significant area of 17,857.08 m^2 at an adopted price of £26 per m^2.

10 This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issues

11 The appellant's challenge submission identified three issues:

- A reduction to the price per m^2 to a relativity of 0.35 for the temporary buildings.
- A reinstatement of allowances which were removed on Check case CHK100167474.
- Land area to be reduced.

12 The first issue had been conceded by the appellant’s representative and the third issue had been conceded by the Valuation Officer.

13 The only remaining issue, therefore, was whether the Valuation Officer had correctly removed the three end allowances previously applied to the valuation of the appeal property: (i) 3% access (ii) 2.2% floor problems (iii) 3% layout.

Evidence and submissions

14 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer’s challenge case decision notice, and appellant’s challenge submission.

15 On behalf of the appellant, Mr Clayton submitted that the three end allowances had been incorrectly removed from the valuation during the check stage when floor areas were agreed. The allowances had been applied in the 2005 and 2010 lists and had been applied to the 2017 compiled list entry. He disputed the Valuation Officer’s reason for refusing to reinstate the allowances, which was based on the subject rent agreed two and a half years post the antecedent valuation date (AVD) of 1 April 2015.

16 Mr Clayton further contended that the Valuation Officer had disregarded well established case law, namely *Barnard & Barnard v Walker (Valuation Officer)* [1975] LVC/231 and *Lamb v Minards (Valuation Officer)* [1973] LVC/345.

17 The panel was requested to reinstate the end allowances of 3% for access, 2.2% for floor problems and 3% for layout and determine a revised RV of £402,500 with effect from 1 April 2017.

18 On behalf of the Valuation Officer, Mr Stevens contended that the end allowances had been correctly removed in light of the subject rent which had not been available when the list was compiled. In accordance with *Lotus and Delta v Culverwell (Valuation Officer)* [1976] RA 141, Mr Stevens submitted that most weight should be placed on the passing rent which was in excess of the RV.

19 In response to Mr Clayton’s reference to *Barnard & Barnard v Walker*, Mr Stevens cited the more recent case of *Martyn Lamb (Valuation Officer) and Go Outdoors Ltd* [2015] UKUT 0366 (LC).

20 Mr Stevens asked the panel to confirm the RV of £437,500 and dismiss the appeal.

Decision and reasons

21 In arriving at a decision, the panel is 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.

22 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).

23 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.

24 The appeal property was subject to a new lease at a rent of £590,000 per annum with effect from 26 September 2017. This was a 15 year term with five yearly rent reviews, stepped for the first 16 months.

25 Mr Stevens cited the leading judgment of *Lotus and Delta* in support of his contention that the subject rent was the key piece of evidence and the reason for the removal of the three end allowances. Mr Clayton disputed the relevance of the subject rent which had been agreed two and a half years after the AVD and which he submitted reflected market growth.

26 The panel was aware that in accordance with *Lotus and Delta*, the subject rent should be the starting point. However, it was also necessary to consider whether significant weight should be attached to the subject rent given the circumstances under which it had been agreed.

27 It was significant to the panel that the subject rent was two and a half years after the AVD of 1 April 2015. It was also the case that the rent was not in effect as at the material date of 1 April 2017. As such, the panel was not persuaded that significant weight should be attached to it. This therefore called into question the Valuation Officer's reliance upon the subject rent in removing the previously agreed end allowances.

28 The panel was assisted by Mr Clayton's reference to *Barnard & Barnard v Walker*. It was established in this case that there must be a presumption that differentials in the old valuation list were correct unless there were exceptional circumstances to justify a different differential in the new list.

29 The panel was not persuaded that Mr Stevens' reference to *Martyn Lamb (Valuation Officer) and Go Outdoors Ltd* added anything further. This was a case in which the Upper Tribunal derived little assistance from a comparison between lists. It did not particularly address the issue of the continuation of end allowances between lists.

30 In further support of the appellant's case, Mr Clayton provided a schedule of comparable assessment evidence. This comprised a number of properties in the same valuation scheme for which end allowances had been carried over from the previous rating list. It was of particular significance to the panel that the end allowances for the neighbouring property, Units 14/15/16 The Causeway, had been removed at the check stage and then reinstated at the challenge stage. The panel considered that the Valuation Officer's decision not to reinstate the subject property's allowance was therefore inconsistent.

31 While it was the case that each rating list was considered afresh, the fact remained that the end allowances had been agreed previously in respect of the 2005 and 2010 lists and had been carried over to the 2017 compiled list. With reference to *Barnard & Barnard v Walker*, there were no exceptional circumstances which led the panel to consider that the allowances were no longer warranted.

32 The panel concluded that the appellant's representative had successfully demonstrated that the valuation of the hereditament was unreasonable, and therefore the appeal was allowed.

Order

33 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 alter the entry in the rating list to rateable value £402,500 with effect from 1 April 2017.

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

Date: 2 December 2022

Appeal number: CHG100335887

Right of appeal:

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.