THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; factory and premises; price per m^2 to be adopted for the various aged buildings within the assessment; comparable evidence; rental evidence; allowances to reflect various factors; appeal dismissed.

RE: 52-60 Sideley, Kegworth DE7 2FJ

APPEAL NUMBER: CHG100342362

BETWEEN	Slack and Parr	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mrs N Yang (Senior Member sitting alone)

CLERK: Mrs A Keohane

REMOTE HEARING 2: Friday 11 February 2022

APPEARANCES: Mr A Chapman of Fisher Hargreaves Proctor on behalf of the appellant, as advocate and expert witness
Mr M Cooper on behalf of the Valuation Officer as advocate and expert witness

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Summary of decision

1. Appeal dismissed. No change was made to the appeal property’s assessment of £250,000 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. In accordance with that Practice Statement, the hearing was conducted remotely via a Microsoft Teams conference call using an audio/video-link.

4. Due to the unavailability of a member, I determined this appeal alone, as provided for under paragraph 11 of the Valuation Tribunal for England's Tribunal Business Arrangements.

5. This is a 2017 rating list appeal in respect of 52-60 Sideley, Kegworth DE7 2FJ (the 'appeal property'), entered in the 2017 rating list as 'Factory and Premises' at £267,500 RV with effect from 1 April 2017.

6. The challenge proposal, submitted by Fisher Hargreaves Proctor (FHP) on behalf of Slack and Parr, was received by the Valuation Officer on 2 July 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £146,500 RV was proposed with effect from 1 April 2017.

7. The Valuation Officer issued a challenge case decision notice on 10 June 2021, which stated that based upon the evidence and information available, the existing rating list entry was considered to be unreasonable. The rating list was amended to £250,000 RV, which reflected an adjustment to the rates applied and the re-instatement of a 7.5% allowance from a previous rating list to reflect a divided or split unit due to the general layout of the site.

8. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was received by this Tribunal against the Valuation Officer's decision on 7 October 2021.

9. As Mr Chapman appeared on behalf of the appellant as both advocate and expert witness, he was asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

10. Mr Chapman declared that he was instructed on a conditional fee basis, however, 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 the client's case. The expert evidence was considered, and I attached appropriate weight to it.

11. The appeal property was a factory and premises that occupied a site of approximately 7 to 7.5 acres and was of 10,374m^2 in total significant area (TSA). The assessment comprised several buildings which had been added piecemeal over time and dated from 1940-1954 up to the 1980s. Car parking was also provided on site. As at 1 April 2017, there were two entrances to the site, one directly from the public road off Sideley and the other from Long Lane. Sideley was a mainly residential road, however, the appeal property was close to the A6 and junction 24 of the M1.

12. The appeal property's site had since been sold to a housing developer and leased back to the appellant at a peppercorn rent until a new purpose-built factory was constructed. In anticipation of this, a 1970s office block was demolished in 2019, however, it remained in situ as at 1 April 2017.

13. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as it being overlooked when I reached my decision.

Issues

14. The disputed issues related to the prices to be applied to the various buildings on the site to reflect their age. The age of the buildings had been agreed between the parties in a telephone conversation of 8 October 2020 when the rating representative accepted the ages shown in the Valuation Officer's survey records. An allowance of 15% (later changed to 10%) was sought by the representative to reflect, layout/split site, access/proximity to residential, mixed ages/piecemeal development, proximity to the nearby sewage works and soakaway drainage issues. The Valuation Officer had incorporated an allowance of 7.5% to reflect site and layout issues.

Evidence and submissions

15. The bundle of evidence before me comprised all of the documents exchanged between the parties as part of the challenge process; the appellant's challenge submission and full supporting information; the Valuation Officer's initial response; the exchanges of evidence between the parties; site and location plans; the Valuation Officer's challenge case decision notice, rental and assessment evidence; photographs and details of the appeal property and those cited as comparable by both parties; and a copy of an amended valuation of £173,000 RV for the appeal property submitted by FHP.

16. Mr Chapman sought permission at the hearing to submit a further revised valuation for the appeal property of £163,000 RV, which reflected his professional opinion of value based upon the same facts. Mr Chapman was asked to clarify why it was much lower than the previous revised valuation submitted by his colleague, and he confirmed that he was unaware that his colleague had done this. After consideration, Mr Chapman explained that he did not agree with his colleague's revised assessment but believed it unreasonable at this late stage in proceedings to defend a much lower assessment. He therefore submitted his proposed valuation but to bring it to the figure submitted by his colleague (£173,000 RV), he reduced the end allowances from 15% to 10%. Mr Cooper confirmed that he had no objection to the inclusion of the revised assessment and therefore I had regard to this when determining the appeal.

17. Mr Chapman gave an overview of the site, which had been occupied since 1917. It had been sold to a house builder and leased back to the appellant at a peppercorn rent whilst a new factory was constructed nearby. Mr Chapman confirmed that he had visited the site prior to its demolition. He stated that as buildings had been added to the site piecemeal over the years, there was an inefficient use of buildings and space. The new factory was only 63% of the size of the appeal property and more efficient, with ease of operation.

18. In support of a reduction in the assessment of the appeal property, in brief, Mr Chapman referred to the following:

    i. Mr Chapman gave an overview of the appeal property's location and he considered that in 2015, junction 24 of the M1 was not such a strategic location.

    ii. Mr Chapman argued that the prices adopted by the Valuation Officer for the varying aged buildings on the appeal property's site were excessive when compared to those adopted in the assessments of his comparable properties. He believed the adopted prices did not reflect the size of the property, its quality, and the fact that a potential tenant would have regard to its suitability for carrying out operations when making a rental bid.

iii. Mr Chapman considered that an end allowance of 10% in total, should be applied in the appeal property's assessment. This was to reflect layout, the fact that it was a split site, location and access, its proximity to residential properties, the mixed ages of the buildings, the position of the nearby sewage works and that around three quarters of the site had soakaway drainage. Its village location preventing its connection to mains drainage.

19. In light of the above, Mr Chapman sought confirmation of his proposed assessment of £173,000 RV with effect from 1 April 2017.

20. On behalf of the Valuation Officer, Mr Cooper referred to the evidence within the challenge decision notice. He considered that the appeal property's assessment of £250,000 RV was correct, reflected the age of the buildings on the site, and that all the necessary allowances had been included in the assessment.

21. Mr Cooper explained that the appeal property had been placed in a scheme which covered large industrial units of over 10,000m^2 in size, within the Leicestershire and Rutland area. Prices within the scheme ranged from £9.00/m^2 to £40/m^2 and these rates were reflective of property sizes, ages, locations and other physical factors.

22. In the case of the subject property, Mr Cooper considered that, having regard to the assessments of other properties within the same scheme and the available rental information, the appeal property had been correctly assessed. He therefore sought dismissal of the appeal.

Decision and reasons

23. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988).

24. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841), the date of the hypothetical rent was 1 April 2015 (the AVD). This common date was used to ensure that every property was treated in a consistent way.

25. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined 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. Having regard to the details of their comparable properties, the parties had argued for the following values to be adopted in the appeal property's rating assessment.

Age of buildings	The representative's £/m^2	The Valuation Officer's £/m^2
Unadjusted rate for 1940s/50s (A4/5)	14.50	21.00
Unadjusted rate for 1960s (A6)	16.25	24.00
Unadjusted rate for 1970s	17.50	25.00
Unadjusted rate for 1980s	22.50	30.00

27. The appellant had provided an analysis, together with photographs of buildings within the appeal property's assessment and corresponding buildings within his comparable properties, to give a comparison of the prices applied. Specific details of 11 comparable properties within the appeal property's scheme were also referred to. Mr Chapman argued that some of the properties valued lower were more superior and of a better quality with better eaves height than the appeal property. These comparable properties were:

Address	Unadjusted Rate £	RV £	Total Area m2
Bostik Ltd, LE4 6BW	14.50	350,000	20,025
Pegsons Ltd, LE67 3GQ	15.00	201,000	13,135
Watling Street, CV10 0TU	16.25	340,000	19,223
Plus Plan (UK) Ltd, LE17 4NQ	17.00	322,500	17,161
Harlow Bros Ltd, LE12 5DD	18.00	189,000	14,116
155 Humberstone Lane, LE4 8HP	18.50	260,000	15,746
Eaton Cooper Bussman, LE12 5TH	19.00	218,000	11,881
80 Scudamore Road, LE3 1UQ	19.25	247,000	14,026
Neal Brothers, LE5 0HL	20.00	267,500	11,468
Elms Depot, LE8 6LG	20.50	322,500	21,561
Ladybird House, LE11 2NR	21.50	270,000	14,062

28. I considered this evidence and found that all 11 properties were larger, having a TSA ranging between 11,468m^2 and 21,561m^2, with Bostick, Watling Street, and Elms Depot, being almost twice the size of the appeal property. I am aware that the rates applied to these properties not only reflected their age and quality but also size and location, some having good road links to the M1, and others being in villages or more rural locations with poorer transport links. Mr Chapman had specifically referred to the Harlow Bros Ltd property, which the photograph showed was of a better quality than the appeal property but valued lower; however, I am mindful that this property whilst being close to the M1, had a more convoluted route to get there and it had been confirmed that the adopted rates reflected this.

29. Mr Cooper had provided rental evidence for comparable properties. The rents had been set between September 2013 and November 2014. Mr Chapman had queried this evidence as he considered that changes had taken place to the properties such as refurbishment of the buildings. However, I considered that the rental evidence was helpful as it related to 1970s, A6 and A4 buildings, and the TSA of these comparable properties was not too different to that of the appeal property. The rent of 141-147 Scudamore Road, a property built in 1978, had analysed to £27.83/m^2, Units 1B(1) 1B(11) 2A 2B The Mill Lane was an A6 building and the rent had analysed to £33.98/m^2. The rent for Unit 1 Dalby Trading Estate, an A4 property, had analysed to £25.37/m^2. Allowing for the distance of this evidence from the AVD, I was still convinced that the rental evidence, did not show the prices applied to the buildings of these ages within the appeal property's assessment to be excessive.

30. The Valuation Officer had also submitted a comparable assessment schedule showing 10 other properties within the appeal property's scheme that had not been referred to by the appellant. These had TSAs of between 10,413m^2 and 11,716m^2 and where applicable, he also provided the details of the prices applied to the different aged buildings within these assessments. From this I noted that Units 1B(1) 1B(11) 2A 2B The Mill Lane had A6 buildings assessed at £24/m^2, 141-147 Scudamore Road had 1970s buildings assessed at £27.50/m^2 and Vacant Shield at Syston had 1970's buildings valued at £25/m^2. The 1980s buildings at 2 New Street and Artform had been valued at £30/m^2. In my view this did not show the prices applied in the appeal property's assessment to be excessive. Also included in the schedule were details of Refresco, Sideley. Whilst this was substantially larger than the appeal property, it was in the same location, had the 1980s buildings valued at a higher level than those at the appeal property and its assessment included a layout allowance of 5%.

31. On balance, I preferred the rental and comparable assessment evidence submitted by the Valuation Officer. Having regard to this, I considered that the prices applied in the appeal property's assessment were not shown to be excessive and were reflective of the fact that the appeal property had good road links with access to the A6 and junction 24 of the M1 motorway. I acknowledge that the scheme related to properties over 10,000m^2 and therefore included properties of differing sizes, ages, locations and with individual physical attributes. It had been confirmed that there was no inbuilt scale within the scheme for quantum, and therefore all factors were reflected in the various prices adopted.

32. Addressing the issue of the allowances to be adopted in the appeal property's assessment. I had regard to the details of 13 properties within the same scheme as the appeal property, provided by the appellant, that had allowances within their assessments to reflect various factors such as, layout, mixed age, access, split site, etc. Mr Chapman had argued for a 10% end allowance in the appeal property's assessment to reflect layout, split site, access, proximity to residential properties, mixed ages, piecemeal development, proximity to sewage works and soakaway drainage. Mr Cooper had applied a 7.5% allowance in the current assessment to reflect split unit and the general layout of the site.

33. Whilst accepting that allowances had been given to other properties to reflect certain factors, I considered that properties had to be viewed individually and on their own merits. The appeal property would therefore have to be affected by the factors mentioned before an allowance could be justified. After considering the evidence, I determined that the 7.5% allowance already included in the assessment was sufficient to reflect the layout of the split site and the piecemeal development. With reference to the other factors, I found the following:

- At the material day in this appeal, the appeal property had two access points to the site, one from Sideley and the other via Long Lane. Both parties had referred to the best locations for properties that required movement of goods and this was within, or close to, 'the golden triangle'. When asked to clarify this, both parties gave a different view of where this area was. I therefore used the location plan provided, which showed that the appeal property had good access to the A6 and M1. I was therefore not convinced that an access allowance was applicable.

- One of the comparable properties outlined in the appellant's evidence had a residential access allowance. Mr Cooper had explained that this property was located in the midst of a housing estate and the aerial photographs confirmed this to be the case. The aerial photographs of the appeal property showed that it was not surrounded by housing to the same extent and therefore I was not persuaded that an allowance was warranted for this factor.

- I was not convinced that a case had been made for an allowance to reflect soakaway drainage nor the appeal property's proximity to the sewage works.

- The prices applied to the buildings on the appeal property's site were already reflective of their age and quality. I therefore considered that applying a mixed age allowance was not appropriate.

34. Having regard to the above I found the appeal property's current assessment of £250,000 RV was not excessive and the subject appeal was dismissed.

Date: 10 March 2022

Appeal Number: CHG100342362