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; workshop and premises; rental evidence; comparable assessments; appeal dismissed.

RE: Units 1-4, Leathley Road Industrial Estate, Leeds LS10 1BG

APPEAL NUMBER: CHG100348135

BETWEEN:	Emis Group plc	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL:	Mr J Rockliff (Senior Member) Mr K Richardson
CLERK:	Mrs H Beresford
REMOTE HEARING ON:	11 July 2022
APPEARANCES:	Mr C Diamond of Altus Group (Appellant's representative) Mr J Butcher (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £116,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 1- 4, Leathley Road Industrial Estate, Leeds LS10 1BG (the 'appeal property'), which was entered in the 2017 rating list as 'workshop and premises' at RV £134,000, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Emis Group plc made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the appellant did not agree with the Valuation Officer's decision to alter the 2017 rating list to £116,000 following the appellant's challenge. The appellant sought a reduction to RV £101,000 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 comprises a workshop and premises with an overall area of 2,865.61m^2. The property was erected in 1975 and is located in Leeds in an industrial park on Leathley Road approximately one mile from Leeds city centre. The location is in close proximity to Junction 3 of the M621 enabling easy motorway access. The surrounding area is predominantly made up of industrial and retail occupiers.

6. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has 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 hearing the evidence 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 all of the evidence presented was fully considered by the panel 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.

Preliminary Issue

10. Mr Diamond had submitted a consent order in evidence, this was considered to be late evidence as it had been submitted less than four weeks prior to the hearing. In considering a breach of the Tribunal's directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an inaccurate calculation of council tax liability and the need to enforce compliance with the rules, directions and orders of the Tribunal.

11. The panel considered that the breach was minor in this case, as the consent order had only been made on 5 July 2022 and could not therefore have been submitted any earlier, the panel also noted that Mr Butcher had made no objection to its inclusion. Therefore, the evidence was admitted, and no sanctions were imposed.

Issue

12. The base level of value adopted for the appeal property was not agreed. The Valuation Officer had adopted £40.00/m^2 in respect of the appeal property, but the appellant sought a reduction to £35.00/m^2 in his revised analysis which amounted to a rateable value of £101,000.

Evidence and submissions

13. The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with the rating representative's expert witness report. The bundle included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges; rental and assessment evidence for comparable properties; photographs of the appeal property; the rating representative's valuation; the definition of rateable value, and the Valuation Officer's challenge case decision notice.

14. Mr Diamond contended that the rating assessment of £40.00/m^2 on the subject property which had been reduced from £44.00/m^2 at the challenge stage in line with an agreement made on 10 and 11, Hudswell Road, Leeds, LS10 1AG was unreasonable. These assessments had an area of 884.90m^2 and 890.87m^2 respectively, which is less than a third of the size of the subject property at 2,865.61m^2. He argued that this is unreasonable because there was no quantum adjustment in the revised valuations, however, there had been in the original 2017 assessments.

15. Mr Diamond also referred the panel to four key comparable properties in rental evidence along with a consent order in respect of 2A & 2B, Elland Way, Leeds LS11 0EY which he submitted supported a base rate of £35.00/m^2 for the subject property. Mr Diamond asked the panel to confirm an RV of £101,000 for the appeal property.

16. In his submission Mr Butcher argued that the comparable properties referred to by Mr Diamond were considerably smaller than the subject property and were not therefore comparable, he also submitted that there were various flaws with the evidence. He referred the panel to a basket of evidence which he submitted were better comparable properties as they were closer in size to the subject property. He also argued that there was no strong indication of quantum as his analysis of properties over 2,000m^2 sit at or above £40.00/m^2. On this basis, he contended that a price of £40.00/m^2 for the subject property in the 2017 list was not unreasonable.

17. Mr Butcher also contended that the consent order relied upon by Mr Diamond related to 2A & 2B, Elland Way, Leeds LS11 0EY a property half the size of the subject property at 1344.98m^2. He submitted that as a consequence of the agreement to reduce this property from £45.00/m^2 to £40.00/m^2 properties within that scheme which had an area of between 2,000m^2 - 5,000m^2 were to be grouped and given a value of £40.00/m^2. Mr Butcher accepted that this property had been built in the 1980's unlike the subject property which had been built in the 1970's, however, he did not consider the difference in properties built in

these periods to be significant. Mr Butcher asked the panel to confirm an RV for the appeal property at £116,000.

Decision and reasons

18. 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 AVD, 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

19. 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"

20. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [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. The panel noted that in this appeal there was no rental evidence for the appeal property which was held freehold.

21. Mr Diamond had argued that smaller properties in the same scheme had a similar base rate, however he believed that there should be a discount for quantum because the larger a property is, the less the price per square metre should be.

22. Mr Diamond referred to four properties which he submitted supported his argument: Yorkshire House, Pottery Road, Leeds, LS10 1AQ was a 1990's build with a new open market letting agreed in 2014, the property had an area of 1477.55m^2 and a UAR of £40.00/m^2; 8, Butterley Street, Leeds, LS10 1AW a new open market letting agreed in 2014, this property measured 1331.54m^2 and in the same scheme as the subject it had a UAR of £40.00/m^2; Gemini Accident Repair Centre 1, Pym Street, Leeds, LS10 1PG was a new open market letting agreed in July 2014 and had an area of 1327.99m^2 was in the same scheme and had a UAR of £40.00/m^2; and Geo Fabrics, Skelton Grange Road, Leeds, LS10 1RD was a lease renewal made in January 2015, it measured 3,900.86m^2 and had a UAR of

£40.00/m^2. The panel did not find this evidence to be persuasive. The comparable properties were significantly smaller than the subject property. Mr Diamond had not provided any evidence of similar sized properties which supported a base rate of £35.00/m^2.

23. The panel noted Mr Diamond's argument that there should be a discount for quantum, but it found that there was no evidence to support that contention. In this particular area the evidence of properties of a similar age, size and character to the subject property supported a UAR of £40.00/m^2.

24. Mr Diamond had also referred to a consent order which had recently been issued in respect of 2A & 2B, Elland Way, Leeds LS11 0EY which had been agreed at £40.00/m^2; the panel could not attach significant weight to this evidence because once again this property was significantly smaller than the subject property at 1344.98m^2 and the panel noted Mr Butcher's assertion that as a consequence of this agreement properties within that scheme which had an area of between 2,000m^2 - 5,000m^2 were to be grouped and given a value of £40.00/m^2.

25. The panel found the evidence of comparable properties presented by Mr Butcher to be the more persuasive. The Valuation Officer had provided a basket of rental evidence for similar sized properties. In particular, he referred the panel to: Geo Fabrics, Skelton Grange Road, Leeds, LS10 1RD was a lease renewal made in January 2015, it measured 3900.86m^2 and had a UAR of £40.00/m^2; and Units 2 And 3, Hunslet Trading Estate, Severn Way, Leeds, LS10 1BL, this property had an area of 2148.90m^2 and a UAR of £44.00/m^2. The panel found this to be compelling evidence which supported a UAR of £40.00/m^2 for the subject property as they were of a similar size, age and location to the subject property.

26. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £35:00/m^2 was warranted and it found the RV of £116,000 to be fair and reasonable. Therefore, the appeal was dismissed.

Date: 25 July 2022

Appeal numbers: CHG100348135

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.