THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; workshop and premises; unadjusted rate per m^2 in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: 19 Cambridge Road, Weymouth, Dorset, DT4 9TJ

APPEAL NUMBER: CHG100403762

BETWEEN:	Yesss Electrical Supplies	Appellant
	and	
	Mr D Virk, Valuation Officer	Respondent

PANEL: Mrs B Knight (Senior Member), Mr J Percival

CLERK: Mrs L Horne

REMOTE HEARING ON: Friday 21 January 2022

APPEARANCES: Mr J Sweet and Mr R Storr from Altus Group, representing the appellant
Mr K Jones representing the Valuation Officer

Summary of decision

1 Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £30,500 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 is a 2017 rating list appeal. 19 Cambridge Road, Weymouth, Dorset, DT4 9TJ, (the 'appeal property') had been entered in the 2017 rating list as 'workshop and premises' at a RV of £30,500 with effect from 1 April 2017.

5 The challenge proposal was submitted by Altus Group on behalf of Yesss Electrical Supplies and was received by the Valuation Officer on 23 September 2020. It had been made on the grounds that the appellant disputed the accuracy of the RV shown in the rating list on 1 April 2017. A revised RV of £19,000 was proposed with effect from 1 April 2017.

6 A challenge case decision notice was issued on 4 May 2021. This stated that the Valuation Officer considered that the rating list entry was reasonable based on the evidence and information available, and that it would remain at £30,500 RV with effect from 1 April 2017.

7 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 13 August 2021.

8 Mr Storr appeared on behalf of the appellant as advocate, and Mr Sweet as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Sweet's declaration of truth included a statement that he was instructed on a contingency fee basis. He 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 the client's case.

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

10 The appeal hereditament is an industrial property built circa 1976 of steel portal frame, brick elevations and asbestos roof. In 2013 it was reclad at the front and sides. The property has an eaves height of 5.4 metres and a total area of 591.81 m^2; the total significant area is 374.62 m^2. It has been placed into valuation scheme 409807 which is applicable to industrial properties in Granby, Weymouth. The present valuation of £30,500 RV is based upon an unadjusted rate of £60 per m^2.

11 The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it having been overlooked by the panel.

Issue

12 The issue in dispute concerned the unadjusted rate per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice, rental evidence and assessment summaries, and the appellant's challenge submission.

14 Mr Storr contended that the Valuation Officer's unadjusted rate of £60 per m^2 was excessive in consideration of the subject rent and rental evidence of comparable properties. Following a revision of the evidence, he now sought an increased RV of £29,000 based upon an unadjusted rate of £55 per m^2. Mr Jones raised no objection to the revised valuation.

15 On behalf of the Valuation Officer, Mr Jones contended that the unadjusted rate of £60 per m^2 was supported by the subject rent and the rental evidence within the valuation scheme. He requested that the panel dismiss the appeal and confirm the RV of £30,500 with effect from 1 April 2017.

Decision and reasons

16 In arriving at its decision, the panel was 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.

17 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).

18 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.

19 Both parties had cited the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence. The starting point is the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements need to be taken into account when deciding the weight to attach to it.

20 There had been a new lease agreed on the subject property with effect from 17 July 2014 for a period of eight years and seven months. The initial rent of £12,500 per annum (pa) was for a period of one year and seven months (the schedule of condition referred to disrepair) followed by £25,000 pa from 18 February 2016.

21 Mr Sweet analysed the subject rent at £37.26 per m^2 derived from his in terms of main space (ITMS) measurement of 458 m^2. He commented that following the works and a rent review, the rent had stayed the same.

22 The Valuation Officer's analysis of £54.23 per m^2 was based upon a total significant area of 374.62 m^2.

23 As a stepped rent which was agreed nine months before the AVD, the panel had to treat it with some caution. It was a useful starting point, but consideration of other available rental evidence was necessary.

24 In addition to the subject rent, Mr Sweet provided rental evidence for two properties to demonstrate that the current tone adopted for the appeal property of £60 per m^2 was excessive:

21 Cambridge Road, DT4 9TJ

A similar size unit of 510.29 m^2 total area, 435 m^2 ITMS. There had been a new ten year lease agreed with effect from 1 October 2016 at a rent of £25,000 pa. Mr Sweet analysed the rent at £48.01 per m^2 and highlighted the gap between that figure and the unadjusted rate of £65 per m^2. He submitted that this was a very good comparable only two doors away from the appeal property with the same 1970s specification.

The Valuation Officer analysed the rent at £59.86 per m^2, based upon a total significant area of 416.69 m^2. Mr Jones disputed the relevance of the rent which was one year and five months post AVD, and the property which was an unrefurbished unit placed within a different valuation scheme for 1980s and 1990s properties.

23 Cambridge Road, DT4 9TJ

A smaller unit of 321.51 m^2 total area/ITMS. There had been a lease renewal effective from 6 May 2014 at a rent of £15,300 pa. Mr Sweet analysed the rent at £47.59 per m^2, which was below the unadjusted rate of £60 per m^2.

The Valuation Officer analysed the rent at £55.63 per m^2 based upon a total significant area of 281.83 m^2. Mr Jones argued that less weight should be attached to this transaction as it was a lease renewal agreed eleven months before the AVD.

25 In summary, Mr Sweet's evidence in support of an unadjusted rate of £55 per m^2 was based upon his analysis of the subject rent at £37.26 per m^2 and two comparable properties which he analysed at £48.01 and £47.59 per m^2. The panel noted that the Valuation Officer's analysis of the same rents was higher at £54.23, £59.86 and £55.63 per m^2 respectively.

26 In response to a question, the parties explained their different approaches to the analysis of the rental evidence. Mr Sweet confirmed he had used the ITMS figure, whereas the Valuation Officer used the total significant area which was then applied to the ITMS figure.

27 The panel was not persuaded to depart from the Valuation Officer's approach which was used consistently for the analysis of all non-domestic properties in the rating list. This led the panel to reject the appellant's argument that the unadjusted rates were in excess of the rental analysis, which was the main crux of the case.

28 It was also significant that one of the properties relied upon by Mr Sweet, 21 Cambridge Road, was in a scheme applicable to units of 1980s/1990s construction. It was not therefore a relevant comparable for the subject property.

29 The panel turned to the Valuation Officer's rental evidence provided in support of an unadjusted rate of £60 per m^2 for the appeal property:

14A Cambridge Road, DT4 9TJ

A unit of 436.69 m^2 total area/total significant area, subject to a new seven year lease with effect from 1 July 2015 at a rent of £28,860 pa. The rent analysed at £66.13 per m^2 and the property was assessed at an unadjusted rate of £60 per m^2.

Mr Sweet submitted that less weight should be attached to this rent as it was subject to a 3% compound increase per annum, however, Mr Jones stated that this had not been confirmed on the form of return. There was some debate as to whether this information would have been captured. Ultimately there was no compelling evidence presented to the panel to confirm that this was not a true open market rent.

18 Cambridge Road, DT4 9TJ

A unit of 400.73 m^2 total area/total significant area subject to a new ten year lease with effect from 1 August 2016 at a rent of £24,000 pa. The rent analysed at £61.59 per m^2 and the property was assessed at an unadjusted rate of £60 per m^2.

4 Kent Close, DT4 9TF

A unit of 395.38 m^2 total area/total significant area subject to a new three year lease with effect from 1 February 2013 at a rent of £20,530 pa. The rent analysed at £60.21 per m^2 and the property was assessed at £60 per m^2.

Mr Sweet submitted that little weight should be attached to this rent as it had been agreed two years before the AVD.

10 Albany Road, Granby Industrial Estate, DT4 9TH

A unit of 438.02 m^2 total area/total significant area subject to a new letting for seven months with effect from 1 May 2016 at a rent of £31,800 pa. The rent analysed at £68.02 per m^2 and the property was assessed at £60 per m^2.

Mr Sweet argued that little weight should be attached to this rent, as it was for a short period, and had been taken by a company which had a large factory nearby. Mr Jones agreed that less weight could be attached to this transaction.

19B Cambridge Road, DT4 9TJ

A unit of 424.38 m^2 total area (299.40 m^2 total significant area) subject to a new seven year lease with effect from 8 March 2013 at a stepped rent: £15,000 for the first year, £20,000 from 8 June 2014 and £25,000 from 8 June 2015. The rent analysed at £64.28 per m^2 and the property was assessed at £60 per m^2.

Mr Sweet argued that less weight should be attached to this stepped rent. Mr Jones accepted that point, but also highlighted that the subject rent which Mr Sweet sought to rely on was also a stepped rent. Despite the nature of the rent, Mr Jones argued that more weight should be attached to it than post AVD rents. This property was located next to the appeal property and was very similar in size and age.

8-8A Albany Road, Granby Industrial Estate, DT4 9TH

A unit of 686.47 m^2 total area/total significant area subject to a new lease with effect from 1 October 2013 at a rent of £41,730 pa (the term of the lease was not stated). The rent analysed at £57.66 per m^2 and the property was assessed at £50 per m^2.

Mr Sweet stated that the Valuation Officer had not included a large extension in the analysis of the rent. Mr Jones confirmed that he was unaware of the extension, and accepted that this should be factored into the analysis. Given the uncertainty of the analysis, the panel had to treat the rental evidence with caution.

17 Cumberland Drive, DT4 9TB

A unit of 695.05 m^2 (651.73 m^2 total significant area) subject to a lease renewal for a term of 15 years with effect from 1 December 2016 at a rent of £40,462 pa. The rent analysed at £62.76 per m^2 and the property was assessed at £50 per m^2.

30 It was acknowledged by the Valuation Officer that some of the rental transactions carried limited weight. The panel attached most significance to the properties similar in size to the appeal property for which rents ranged from £60.21 to £68.02 per m^2 between February 2013 and May 2016. The rent closest to the AVD analysed at £66.13 per m^2. Those properties had all been assessed at an unadjusted rate of £60 per m^2. The panel was therefore satisfied that the assessment of the appeal property at an unadjusted rate of £60 per m^2 was consistent with similar properties in the locality within the same valuation scheme.

31 In conclusion, the panel determined that the appellant's representatives had failed to demonstrate that the valuation of the appeal property was unreasonable. The valuation of the appeal property at £30,500 RV with effect from 1 April 2017 was therefore confirmed by the panel and the appeal dismissed.

Date: 10 February 2022

Appeal Number: CHG100403762