THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; compiled list appeal; builders' merchant and premises; level of value; rental evidence; comparable properties; appeal allowed in part.

RE: Jewson Ltd, Fore Street, Exmouth EX8 1HX

APPEAL NUMBER: CHG100506499

BETWEEN: Saint-Gobain Building Distribution Limited — Appellant

and

Ms D Bunyan — Respondent

(Valuation Officer)

PANEL: Mr J M Imperato (Senior Member) and Mr J Rockliff

CLERK: Mrs H Beresford

REMOTE HEARING: Tuesday 15 February 2022

PARTIES PRESENT: Miss T Worthy of Gerald Eve – Appellant's representative

Mr M Ingram – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £50,500 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. In accordance with that Practice Statement, the VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.

5. This is a 2017 Rating List appeal, and the RV of the appeal hereditament was £56,500 with effect from 1 April 2017. The appellant's representative sought a reduction to £40,250 RV.

6. The subject property is a builder's merchant situated in a backstreet location on the eastern side of the main retail area of Exmouth. It occupies a former Gas Works which were originally constructed in the late 1800's. The majority of the buildings are from this period, constructed of red brick and stone. The property was converted in the 1960's and has not had significant improvement in recent years.

7. The challenge submission was received on 30 November 2020. The grounds for the challenge disputed the accuracy of the of the RV in the Rating List on 1 April 2017.

8. Miss Worthy 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), Miss Worthy stated that she was not instructed under a contingency based fee.

9. Miss Worthy also declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body regardless of whether or not the evidence supported her client's case.

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 unadjusted main space rate (UAR) adopted in the assessment was excessive. She sought a reduction to £25/m², whilst the Valuation Officer contended that £38/m² was reasonable.

Evidence and submissions

12. 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; rental evidence; location plans; photographs of the appeal property and comparable properties; an excerpt from the Valuation Office Agency Guidance Manual (guidance manual); and the definition of rateable value and case law.

19. In support of her case, the appellant's representative had looked at comparable builder's merchant assessments in the Exmouth area. She had provided details of six comparable properties and argued that the appeal property should have been valued as a 'BLD 3'

builder's merchant as per the guidance manual, rather than being in a scheme with industrial units.

13. The respondent provided details of three comparable properties in the locality which he believed supported the unadjusted rate of £38/m^2 for the appeal property. He believed that the guidance manual allowed the flexibility for builder's merchants of this standard to be valued in line with local industrial units, he stated that this approach was constant throughout Devon. The respondent therefore sought a dismissal of the appeal.

Decision and reasons

14. The main issue in dispute concerned the level of value to be adopted for the appeal property.

15. 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".

16. 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).

17. 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.

18. Both parties had referred 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 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.

19. The appeal property is an industrial unit of 1,568m^2 built pre 1900 . The main building is a large two-storey property, and the stores are single storey with a variety of roof types both pitched and flat covered with profile sheet/asbestos. The main warehouse storage is constructed from timber, with cross braces and beams. It operates as a builder's merchants supplying tools, materials and construction equipment.

20. The appeal property is held on a Freehold basis. Therefore, there was no rental evidence available for the panel to consider.

21. Miss Worthy contended that the main space rate applied to the assessment at the unadjusted rate of £38/m^2 was excessive. She referred to six other comparable builders' merchants which she believed supported her argument. These included: Bradfords EX13 5PJ, with a UAR of £37/m^2; Jewson's, Bramble Hill EX14 1BW, with a UAR of £32/m^2; Gammon Yard EX17 3BZ, with a UAR of £25/m^2; Travis Perkins Bude EX23 8QU, with a UAR of £25m^2; and Hele Building Supplies EX34 9RA with a UAR of £21.16/m^2.

22. The panel was disappointed that no map had been provided to show the location of these properties in comparison to the subject property. However, the panel was aware that some of these properties were situated a considerable distance from the subject property. The panel noted that in terms of age and type of property Hele Building Supplies EX34 9RA, was the closest comparator, it had also formed part of a former gas works. This property was smaller than the subject property at 771.2m^2 and situated in a rural location. It had a UAR of £21.16/m^2. Due to the distance from the subject property and the fact that these properties were generally smaller than the subject property the panel could only attach moderate weight to this evidence.

23. Miss Worthy had argued that the appeal property should have been valued as a BLM 3 builders' merchant "*Builders' Merchants in back street locations & part of older industrial buildings, often with poor access for large vehicles. No premium above local industrial levels on land or buildings. Often with a small basic trade counter element"* as she believed it fitted this description. Mr Ingram had argued that for properties of this nature the guidance manual had been amended to allow a more flexible approach. "*With regard to sublocation BLD3, there is now additional flexibility as to how these should be data captured. This enables VOA to adopt local industrial prices more easily for this category of Builders' Merchant*". The panel saw no error in Mr Ingram's decision to include the appeal property in a scheme with other industrial units, this was in line with the guidance manual, however it did note that the subject property appeared to be considerably larger than other properties in the scheme.

24. However, the panel did not agree that other properties in this appeal property's scheme supported a UAR of £38/m^2 for the subject property. In particular: Units F & G Mushroom Road Hill was a larger, much newer and far superior unit, situated on an industrial estate, it had a UAR of £47/m^2; Units E3 & E4 Greendale Business Park, were larger, of a newer and far superior build, in a better location and had a UAR of £40/m^2; and Nu-Type Ltd, Weycroft Avenue, Axminster, was similar in size and had a UAR of £37/m^2, however, this property was again a newer, purpose built property which did not have the same disadvantages as the subject property. The panel could not attach significant weight to this evidence as it found these properties were not like for like with the subject property.

25. Former Mill, Silverton Mills, Broadclyst, Exeter was more similar to the subject in terms of age and size at 1378m^2 compared to 1568m^2, it also appeared to have certain disadvantages, this property had a rent close to the AVD of £40,000 agreed in February

2015. The panel noted that this property had a UAR of £31/m^2 which suggested to the panel that the subject was over valued at £38/m^2.

26. Miss Worthy had provided photographs and plans of the appeal property and details of comparable properties in evidence to support her argument that as a builder's merchants, the appeal property is restricted by its layout, the main building i.e., the retail area comprises small rooms which are set on different levels, restricted by steps. She contended that there are also issues with age and obsolescence. She believed vacant and to let a builder's merchants is unlikely to operate out of this type of property when modern equivalents are available. The panel noted that the valuation officer had based his valuation on local industrial tone, however, whilst it found this evidence and argument to be persuasive, it determined that a hypothetical tenant coming fresh to the scene would not be prepared to pay the same level of rent for this property as he would for the newer purpose built comparable properties referred to by the parties.

27. In view of the foregoing, the panel decided that the unadjusted rate should be reduced to £33/m^2, as set out below.

Floor	**Description**	**Area m^2**	**Price per m^2**	**Value**
Ground	Showroom	276.65	£37.64	£10.413
Ground	Store	73.53	£31.37	£2,307
Ground	Store	85.1	£31.37	£2,670
Ground	Staff toilets	7.92	£31.37	£248
Ground	External storage	3.63	£23.53	£85
First	Store	171.03	£20.39	£3,487
First	Office	103.15	£34.50	£3,559
Ground	Store	305.64	£23.53	£7,192
Ground	Store	109.61	£31.37	£3,438
Ground	External storage	73.11	£23.53	£1,720
Ground	External storage	19.66	£22.35	£439
Ground	External storage	116.72	£22.35	£2,609
Ground	External storage	27.5	£23.53	£647
Ground	External storage	16.37	£23.53	£385
Ground	External storage	158.48	£23.53	£3,729
Ground	External storage	19.51	£23.53	£459
Total		**1,567.61**		**£43,387**
	Hard surfaced, fenced land	3298	£3.00	**£9,894**
	Divided or split unit		-0.05%	-£2,664
				£50,617
			say	**£50,500**

28. Consequently, the appeal was allowed in part, the RV was reduced to £50,500 with effect from 1 April 2017.

Order:

29. 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 £50,500 RV for the appeal property, with effect from 1 April 2017.

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

31. 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: 24 February 2022

Appeal number: CHG100506499