THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; warehouse and premises; end allowance sought for quality of build; appeal allowed in part.

RE:	Riverdale Waste Plc, Gateshead NE11 0RQ ("the subject hereditament")
APPEAL NUMBER:	CHG100530402

BETWEEN:	Darren Fisher	Appellant
	and	
	Valuation Officer	Respondent

SITTING:	Remotely via Microsoft Teams Conference Call
ON:	17 July 2023
PANEL:	Mr D Winters (Presiding Senior Member) Ms S Yousef (Senior Member)
CLERK:	Mr S Fletcher IRRV (Hons)
APPEARANCES:	Ms J Corney of Knight Frank (Appellant's representative) Dr M Proudlock of Knight Frank (Appellant's witness) Mr O Ridley (Respondent's representative)

DECISION and STATEMENT OF REASONS

Summary of decision

1. Appeal allowed in part. The subject hereditament's assessment was reduced to £69,000 with effect from 1 April 2017.

Introduction

2. The appeal process began with a challenge made by the appellant's representative on 17 December 2020 in respect of the Valuation Officer's (VO) compiled list entry of the subject hereditament at £94,500 rateable value

(RV) with effect from 1 April 2017. The appellant's representative proposed a revised assessment of £54,000 RV from that date based on an allowance to the main space rate of 50% to reflect poor build quality.

3. The respondent issued a challenge case decision notice on 21 March 2022, which stated that based on the evidence available, the existing rating list entry of £94,500 RV was unreasonable and determined a revised entry of £80,500 RV with effect from 1 April 2017. The revised RV accounted for a 20% allowance to the main space rate to reflect poor build quality. The appellant's representative appealed that decision to this Tribunal on 11 July 2022 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was a warehouse and premises of steel portal frame constructed by the appellant in 1999. It was occupied by the appellant on a freehold basis and located at Team Valley, Gateshead, a premier industrial estate in the northeast of England.

5. Ms Corney appeared on behalf of the appellant as both advocate and expert witness. Dr Proudlock 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), Ms Corney's declaration of truth included a statement that she was not instructed under any conditional fee arrangement. Dr Proudlock declared that he was not instructed under any conditional fee arrangement. Ms Corney and Dr Proudlock both declared that they understood and accepted that their duty was to the Tribunal in giving their evidence and they would comply with this as well as the requirements of their professional body regardless of whether or not the evidence supported the client's case.

6. 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.

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

Issue

8. The main space rate for the subject hereditament of £54 per m^2 was not disputed by the appellant's representative. Therefore, the issue for the panel to ascertain was if, and if so to what extent, an end allowance was applicable to the main space rate of the subject hereditament due to the quality of its build.

Evidence and submissions

9. Arguments and factual evidence for both the appellant and respondent were subsumed into a combined evidence bundle. This comprised of documentation exchanged between the parties as part of the challenge process, the appellant's challenge submission, the respondent's challenge decision notice, assessment evidence and photographs of comparable properties and agreements for other properties between the appellant's representative and the VO.

10. Both parties had submitted further evidence in the form of comparable hereditaments which they had agreed to accept as late evidence. The Tribunal admitted the late evidence as it was provided in accordance with the Tribunal's Practice Statement for 2017 rating list appeals.

11. Prior to the hearing, the respondent's representative submitted to the Tribunal a final revised list entry of the subject hereditament with effect from 1 April 2017, giving an allowance to the main space rate of 20% due to build quality, 2.5% due to lack of heating and 2.5% due to lack of insulation. His assessment was as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Production Area	1343.00	40.04	53,744
Ground	Works Office	173.90	54.00	9,391
First	Works Office	166.90	35.10	5,858
ADDITIONAL FEATURES OF PROPERTY INCLUDED IN THE VALUATION				
	Hard Surfaced, Fenced Land	2983.00	2.50	7,458
	Plant and Machinery	-	-	1,349
			Valuation sub-total	77,830
			Say RV	**77,500**

12. The appellant's representative had proposed a revised RV based on a 50% allowance to the main space rate. This included a 10% uplift to the adjusted main space rate for offices. Her assessment was as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Production Area	1343.00	26.32	35,347
Ground	Works Office	173.90	29.70	5,164
First	Works Office	166.90	29.70	495
ADDITIONAL FEATURES OF PROPERTY INCLUDED IN THE VALUATION				
	Hard Surfaced, Fenced Land	2983.00	2.50	7,458
	Plant and Machinery	-	-	1,349
			Valuation sub-total	54,273
			Say RV	**54,000**

Decision and reasons

13. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

14. 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 antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

15. 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 hereditament, the material day is 1 April 2017.

16. Ms Corney sought a 50% allowance to the main space rate based on the quality of build of the subject hereditament. She described it as a bespoke industrial unit of steel portal frame construction which comprised single skin walls and a roof. The building contained no heating or insulation. It was constructed by the owner occupier which transported recycled paper. Access was at the rear of the site into eight openings through the rear yard. She contended that the premises was completely different to any other post 1990 industrial building on the site of which even the most basic were constructed using breeze block or brick, which the subject was not. She argued that the building did not provide the basic requirements for industrial buildings which dramatically limited the market for use of the property, and such limited demand should be reflected in the rating assessment.

17. Dr Proudlock, a partner in industrial lettings at Knight Frank since 2004, appeared as expert witness. He stated that he had extensive knowledge of Team Valley and understood the needs of tenants and occupiers at the site. He described the subject hereditament as very different to a typical 1990s unit as it lacked composite cladding and the security of block walls. The subject had zero thermal performance which the requirement of was a staple expectation for most tenants requiring a warehouse for the storage and distribution of products. He stated that the difference between a single skin property and one with double cladding was significant as the latter was usually pressurized. It was his expert opinion that a limited number of tenants would consider the subject hereditament, and it was an outlier on Team Valley as it did not share the functionality and performance of other warehouses on the site.

18. Ms Corney described Team Valley as the northeast’s premier trading estate. It was adjacent to the A1 and a short drive from Newcastle city centre. As such, the highest quality industrial units were built there, as landlords could expect to receive a good return. She referred to comparable hereditaments to the

subject in VOA (Valuation Office Agency) Scheme 34065 which contained industrial properties constructed post 1990 at the Team Valley location. 3 Princes Park comprised of brick through the whole elevation, was secure and insulated. It was a similar size to the subject hereditament and shared the same unadjusted main space rate. Its offices were valued at a 10% uplift to the adjusted main space rate which Ms Corney stated was typical for offices ancillary to warehouses at Team Valley. Valuations for Unit 5 Queensway Court, 1 Dukesway and Man Truck & Bus were provided as examples of typical builds of high specification. She argued that the subject hereditament was such an outlier in terms of variation when compared to those properties it warranted a significant allowance to its main space rate.

19. Ms Corney provided examples of agreements made with the VO to demonstrate circumstances where end allowances were applied to properties of significantly inferior quality which were within the same VOA Scheme. Unit S312-313 Foster Court was an industrial building located in Team Valley which had its RV reduced from £198,000 to £100,000 accounting for poor build quality when compared to comparable properties in its Scheme. Shieldfield Centre was offices located in Newcastle-upon-Tyne which had its RV reduced from £130,000 to £60,500 also accounting for poor build quality. ADM Pressings, Scotswood Road was an industrial unit located in Newcastle-upon-Tyne which shared many similarities to Reece Group, Scotswood Road and an allowance was agreed due to its significantly poorer quality build in comparison.

20. Ms Corney relied on other post 1990 industrial units at Team Valley which, whilst larger than the subject hereditament and with a higher value main space rate, demonstrated a differential between build quality. She stated there was a 35.7% differential between prime high specification post 1990 industrial buildings such as Unit 4 and Unit 6 Queens Park which were of superior construction, and those such as Units Z244 & Z273 Dukesway which were of a lesser quality. She also provided current rental evidence for Unit 1 Queens Court North, which she determined as a high specification industrial unit post 1990, and an average of her determined typical post 1990 industrial units which analysed to £74.64m^2 and £49.82m^2 respectively, a difference of 49.82%. Ms Corney argued that the subject hereditament was of markedly poorer quality than those typical post 1990 units.

21. Addressing the proposed allowance for the offices, Ms Corney argued that a 10% uplift was applicable to her adjusted main space rate in accordance with the valuations of other warehouses with ancillary offices at Team Valley.

22. Mr Ridley had provided comparable assessment evidence which he considered demonstrated that the main space rate of £54m^2 for similar properties in size and age in Team Valley was appropriate. He agreed that an allowance was applicable to the warehouse based on its inferior build quality compared to other warehouses in the locality. However, he believed the 50% reduction as sought by the appellant to be excessive.

23. Mr Ridley addressed the properties that had been given allowances by the VO for quality as provided by Ms Corney. He did not consider ADM Pressings to be a reliable comparator, and thus support a similar reduction to the subject hereditament, as it was significantly larger and located in Newcastle-upon-Tyne. He stated that Shieldfield was offices located in a tertiary area in Newcastle-upon-Tyne and therefore not comparable. S312-313 Foster Court, although located at Team Valley, was significantly larger than the subject.

24. The respondent considered a line adjustment to the main space rate of 20% to be reasonable. An allowance was also given accounting for the lack of heating and insulation for 2.5% each, respectively. The respondent did not consider any further allowance to be appropriate given it was a secure property and being utilised for storage. Given the subject hereditament's location at Team Valley, the respondent considered it would still attract a rental premium based on its desirable location. Mr Ridley was asked to explain the valuation of the office space which he replied he had no specific knowledge of apart from there may have been a differential between the ground floor and first floor offices based on quality.

25. The panel appreciated that making an appropriate adjustment to the main space rate was not a straightforward exercise due to the bespoke nature of the subject hereditament. It was agreed by both parties that no properties located at Team Valley were directly comparable. The photographs and descriptions provided of other warehouses and premises demonstrated to the panel that the subject hereditament was of a vastly inferior build quality.

26. The panel considered the expert evidence of Dr Proudlock and concluded that in the real world, any prospective tenant would of course consider the limitations of the property when making their rental bid. The panel determined the level of allowance applied by the respondent produced an unacceptably low-end result. It felt the respondent had chosen an allowance to appease the appellant which it considered was unduly conservative. The panel considered that a greater allowance was warranted given the disadvantages of the build and the resulting impact on a hypothetical tenant's bid. Ms Corney had provided examples of allowances awarded by the VO for properties, albeit not directly comparable with the subject hereditament, with reference to build quality some of which were up to 50%. The panel was mindful that those allowances could have accounted for factors unique to those hereditaments, and therefore did not definitively indicate a similar reduction for the subject. The panel also considered the prime location of the subject as a factor against the appellant's representative's proposed allowance.

27. The panel attached weight to the differential of 35.7% between Units 4 and 6 Queens Park and Units Z244 & Z273 Dukesway as provided by Ms Corney. All units were located at Team Valley and the panel found the figure to be reliable evidence of a differential between similar properties of a significantly different build quality. Accordingly, it determined a 35% allowance to the main space rate of the subject hereditament to be reasonable. In the absence of any explanation for the respondent's applied rate for the offices, the panel applied a 10% uplift to the main space rate in accordance with evidence from

the appellant's representative which demonstrated a similar practice was adopted for warehouses with ancillary offices at Team Valley.

28. Having regard to the evidence the panel allowed a reduction to the main space rate of 35% for the build quality and lack of heating and insulation at the subject hereditament. The revised assessment for the compiled list entry with effect from 1 April 2017 as determined by the panel was as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Production Area	1343.00	35.10	47,139
Ground	Works Office	173.90	38.61	6714
First	Works Office	166.90	38.61	6714
ADDITIONAL FEATURES OF PROPERTY INCLUDED IN THE VALUATION				
	Hard Surfaced, Fenced Land	2983.00	2.50	7,458
	Plant and Machinery	-	-	1,349
			Valuation sub-total	69,104
			Say RV	**69,000**

29. The panel therefore allowed the appeal in part as it considered the respondent's valuation of the subject hereditament unreasonable, but not to the extent as sought by the appellant.

Order

30. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £69,000 RV with effect from 1 April 2017. The respondent must comply with this order within two weeks of its making.

31. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date: 7 August 2023

Appeal number: CHG100530402

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.
