THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Local Government Finance Act 1988; gym and premises; analysis of rental evidence; rate per m^2 in dispute; the panel held that the appeal property's current rateable value was not unreasonable; appeal dismissed.

RE: Unit G04 Export Building, 1 Clove Crescent, London E14 2BA

APPEAL NUMBER: CHG100531109

BETWEEN: Crookfit Limited T/A F45 Training — Appellant
and
Mr A Ricketts (Valuation Officer) — Respondent

PANEL: Ms C J Jones (Senior Member)
Ms J Morton

CLERK: Mrs A Keohane

REMOTE HEARING 3: Wednesday 15 February 2023

APPEARANCES: Mr S Carter of Altus Group on behalf of the Appellant as advocate and expert witness
Mr K Abbaas on behalf of the Respondent, as advocate and expert witness

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Summary of decision

1 Appeal dismissed. The panel made no change to the existing rateable value (RV) of Unit G04 Export Building, 1 Clove Crescent, London, E14 2BA, (the 'appeal property').

Introduction

2 This is a 2017 rating list appeal brought in respect of the appeal property, which had been entered into the rating list as 'Gym and Premises' at £55,500 RV with effect from 21 December 2019, based on a rate of £225/m^2.

3 The challenge proposal was submitted by Altus Group on behalf of the Appellant and was received by the Valuation Officer (VO) on 18 December 2020. It had been made

on the grounds that the RV shown in the rating list was wrong. A revised assessment of £25,750 RV was proposed, based on £105/m^2. During the challenge process, this was revised to £40,500 RV based on £165/m^2 and again to £39,500 RV, based on £160/m^2.

4 The VO issued a challenge case decision notice on 30 March 2022, which stated that, based upon the evidence and information available, the current rating assessment was considered to be reasonable.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal, received on 27 July 2022, was made on the grounds that the valuation for the hereditament was not reasonable.

6 The appeal property is a gym and premises situated within the office complex of 1 Clove Crescent and has a net internal area of 246.89m^2. A regular bus service operates in the locality, which gives access to Canary Wharf and Stratford. East India Docklands Light Railway Station is nearby, which provides access to the city and underground network at Bank, Canary Wharf and Stratford**.**

7 Mr Carter appeared on behalf of the Appellant as advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Carter declared that he was instructed on a conditional fee basis. He understood and accepted 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 the evidence supported the client's case.

8 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. The panel therefore considered the "expert" evidence and attached such weight as it saw fit.

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 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.

Preliminary Issue

10 In submitting the appeal. Altus Group had included a document titled Supporting Evidence Statement. Within this was a summary of the evidence discussed and exchanged during the challenge process, the document also indicated that it did not include any new evidence. Mr Abbaas raised objection to the document being admitted, as there was no provision within the regulations that allowed such a document, unless it had been served on the VO prior to the completion of the challenge. Mr Carter considered that the objection to this document should have been raised earlier when the appeal was submitted to the Tribunal.

11 Mr Abbaas also expressed concern that the document contained new evidence in respect of the rent of the subject and a change in view of the appeal property's mode and category of occupation at the material day, which throughout the challenge

process had been accepted to be a gym and premises. Mr Carter had included in the document a statement that the property was in use as a pilates studio. The document also referred to case law that had not previously been mentioned. Mr Abbaas believed that Mr Carter was attempting to vary procedure by stealth.

12 In deciding what was admissible, the panel considered the above issues in light of the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926. Stage one required determination of the significance and seriousness of a breach; if the breach was neither, then relief should usually be granted. At stage two consideration must be given to why the failure and default occurred; if the defaulting party had good reasons for the non-compliance, relief should usually be granted. Finally, at the third stage, regard must be had 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 incorrect liability and the need to enforce compliance with the rules, directions, and orders of the Tribunal.

13 When dealing with appeals, the panel was aware that it was not unusual for some rating representatives to submit such a supporting document to assist the Tribunal, although there was no legislative requirement to do so. If such a document did not contain new evidence, no objection to its inclusion was raised by the VO. The panel clarified the issues with Mr Carter and ascertained whether his reference to the appeal property as a pilates studio was a means of introducing new evidence, as a formal procedure existed for the submission of such, and it had not been followed. Mr Carter asserted that he did not dispute the appeal property's mode and category of occupation as a gym and premises. He also now accepted the rent for the appeal property as quoted by the VO.

14 The panel considered the Supporting Evidence Statement and the comments of the parties and decided that a significant breach had not occurred. As Mr Carter had confirmed his acceptance of the appeal property's rent and that there was no dispute over its mode and category of occupation, the panel decided to admit this document, omitting any reference to the property being in an alternative mode and category of occupation. It did not consider the inclusion of case law to be new evidence. In the panel's opinion the acceptance of this document would not prejudice Mr Abbaas.

Issue

15 The issue was the level of value applicable in the appeal property's assessment. The rating representative argued for an assessment of £39,500 RV, reflective of a rate of £160/m^2. The VO maintained that the existing entry of £55,500 RV, based upon £225/m^2 was not unreasonable.

Evidence and submissions

16 The bundle of evidence submitted comprised the documents exchanged between the parties as part of the challenge process, together with the Appellant's representative's Supporting Evidence Statement. The bundle included: a copy of the challenge submission; the Valuation Officer's initial response to the challenge; location plans; photographs of the Export and Import Buildings; the appeal property's current valuation; the rating representative's revised valuation; the Valuation Officer's Decision; an edited extract of the lease; and the Linked-in profile of Mr Crook, the owner of the business. Various higher court authorities were also referred to.

17 Mr Carter confirmed that the basis of the challenge was the analysis of the appeal property's rent and the application of Section 5a of the Valuation Office Agency's (VOA) Rating Manual. As the appeal property had been new at the date it was entered in the rating list, no rental evidence existed around the AVD. Mr Carter had been unable to find any relevant comparable properties within the immediate locality, and whilst the VO had referred to another gym in the nearby Import Building, he questioned its comparability as it was substantially larger at 1174m^2, had an untested assessment and was run by a major operator.

18 Mr Carter accepted the rent of the appeal property was £62,000 per annum (pa) with a rent free period of 20 months in total, as set out on the Form of Return (FOR). Mr Carter outlined his reasons for disagreeing with the VO's analysis of this rent. He stated that it had recently been agreed with the VOA that rent free periods of up to 18 months should be analysed over the initial five-year period of a lease. Having adopted the VO's approach of assuming three months of the rent free period was for fit-out, Mr Carter rejected the VO's addition of 20% to reflect fit-out, as he considered this to be double counting. He had analysed the 17 months' rent free period to the five-year rent review which gave an effective rent of £44,433 pa, equating to £179.97/m^2.

19 Mr Carter had used the Retail Price Index published by the Office of National Statistics (ONS), which he considered to be the most accurate way of establishing an AVD rent for a new build property in the absence of rents around that time. Applying this gave an adjusted rent of £39,273 pa, which equated to £159.07/m^2, which he considered supported his revised assessment of £39,500 RV based on £160/m^2.

20 Within the decision notice, the VO had made reference to the Rating Manual and in particular Section 5a which covered values to be applied in the Greater London area for wet and dry gyms. Mr Carter argued that if he had to place the appeal property within one of the bands set out therein it would be band 2, which carried values of up to £200/m^2. In his view, this did not show the application of £160/m^2 in the appeal property's assessment to be wrong.

21 Mr Abbaas stated that within the challenge process, the rating representative had provided several figures purported to be the appeal property's rent. Proposed valuations had changed, reflecting revised rates per m^2, based on the analysis of those rents. The full lease had not been provided, only an edited extract.

22 The FOR provided by Mr Crooks confirmed the appeal property was leased at £62,000 pa for a 10-year period commencing in October 2019, on full repairing and insuring terms. A 20 month rent free period in total was included and the FOR confirmed that three months of this was for fit-out. The VO had allowed for this and adjusted for the remaining 17 month rent free period but over the full 10 year term of the lease. This resulted in an adjusted rent of £53,216.67.

23 Mr Abbaas considered that in accordance with case law, the cost of fitting out had to be acknowledged to ascertain the value to the existing occupier as confirmed within *Scottish and Newcastle (Retail) Ltd v Williams (VO)* [2000], and *Poplar Assessment Committee v Roberts* [1922]. He also pointed out that within *Townley Mill v Oldham Assessment Committee* [1936], it was held that '*The function of rating valuation is to*

ascertain the value to the existing occupier because that is the basis of comparative liability between himself and other occupiers'.

24 Mr Abbaas stated that it was well established practice (in accordance with Practice note 1:2017 – Sports and leisure centres [private]) that 20% was added to reflect the sum required to convert the shell unit into a gym. Adding 20% of the headline rent (£12,400) to the appeal property's adjusted rent gave a figure of £65,616.67 which equated to a rate of approximately £266/m^2.

25 As this rental devaluation reflected values as at 2019, some adjustment was required to tone it back to the AVD. Mr Abbaas considered there would have been some growth between these two dates and therefore, the lower rate adopted in the appeal property's assessment of £225/m^2 was not unreasonable.

26 Mr Abbaas referred to another gym at Unit G07, Import Building, which ran parallel to the subject. The Import Building was modernised in 2017 and had assessments based on £275/m^2. The subject property's building was modernised in 2019, with assessments based on £225/m^2. Mr Abbaas considered that a hypothetical tenant would expect to pay less rent for a 2017 property; therefore, the lower level of value adopted for the more modern appeal property was not excessive.

Decision and reasons

27 The appeal hereditament must be valued for the purposes of non-domestic rating on the basis of the rent at which it might reasonably have been expected to let from year to year on a number of assumptions detailed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (the AVD). Matters affecting the physical state or enjoyment of the property, or the locality were to be taken at the material day, which for the purposes of this appeal was 21 December 2019, the date the property was entered into the rating list. One of the factors to be given consideration under Schedule 6 para 2(7), was the mode and category of occupation of a property. In the case of the appeal property, this had been agreed by the parties as a gym and premises.

28 There was a paucity of evidence in relation to comparable properties in the locality. The panel noted Mr Carter's comments in relation to the comparability of the gym at Unit G07, Import Building. Whilst accepting that this property was substantially larger than the appeal property, the panel found some merit in the VO's argument that it was not unusual for a more modern property, such as the appeal property, to attract a higher value. The panel noted that the assessment of appeal property was based on a lower rate than that of Unit G07.

29 Both parties had taken the rent of the appeal property as the starting point in its valuation, as outlined in the Lands Tribunal decision of *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA141. The dispute concerned the analysis of this rent and whether a 20% uplift should be applied to reflect fit-out costs. Mr Abbaas had confirmed that this was usual practice as set out in the Rating Manual, and Mr Carter argued that it was double counting, as a three month, rent free period had already been taken for fit-out.

30 On balance, the panel preferred the VO's analysis of the appeal property's rent and the inclusion of the 20% uplift to the headline rent to reflect fit-out. In deciding this, it considered that having regard to the length of the rent free incentive and fit-out period, and the fact that it was a new build shell which would require significant expenditure to make it suitable for occupation as a gym, it was more reasonable for the rent to be analysed over a longer period, in effect, the full term of the lease. The panel could see no reason to depart from the Rating Manual by removing the 20% uplift. It accepted that three months of the rent free period had been taken for the fit-out but the panel considered that the end result of the fit-out, would have a positive and upward effect on the rental potential of the appeal property.

31 Mr Carter argued that substantial alterations had not taken place to facilitate the use of the appeal property as a gym and that it did not contain fixed equipment. Mr Abbaas, however, queried this as he had obtained a brochure which demonstrated that the property had the usual gym equipment. The panel could not consider the extent of the fit-out of the property due to the lack of fit-out costs or photographs of the interior of the building showing the facilities/equipment it contained.

32 There was some discussion at the hearing over the fact that the appeal property had been entered into the rating list less than three months after the commencement of the lease, in effect within the fit-out period. Mr Carter queried whether the property had been capable of beneficial occupation at that time. In the absence of any evidence addressing this aspect, or internal photographs of the appeal property at the material day, the panel could not consider this point further.

33 An extract of the VOA Rating Manual was included for wet and dry gyms in the Greater London area. Mr Carter had indicated that the appeal property could fall within band 2, which carried a maximum rate of £200/m^2. The panel considered that the appeal property's analysed rent suggested that a gym in the appeal property's locality would achieve a higher price per m^2 than shown in band 2 and therefore it was persuaded that the appeal property was better valued in accordance with its rent.

34 Having determined that the VO's analysis of the appeal property's 2019 rent should be adopted in this case, adjustment was then needed to take this back to the AVD. Mr Abbaas had suggested there had been some growth in the market between the two dates but had not provided any evidence of the level of that growth. Mr Carter had submitted information from the Retail Price Index published by the ONS, which he had used to establish market changes. To test the rate adopted in the appeal property's assessment, the panel used the appeal property's adjusted rent of £65,616 and the information from the ONS as quoted by Mr Carter. The estimated 2015 rent this produced when analysed equated to a rate of £235/m^2. This did not show the appeal property's assessment of £55,500 RV based on £225/m^2 to be excessive.

35 Ultimately, the onus was on the Appellant's representative to demonstrate that the appeal property's existing assessment was unreasonable. On balance, the panel had not been persuaded that he had done so. Consequently, the subject appeal was dismissed.

Date 14 March 2023
Appeal Number CHG100531109

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.