THE VALUATION TRIBUNAL FOR ENGLAND

*2017 rating list appeal; factory and premises; rental evidence; weight to be applied to the rent passing on subject property and comparable assessments; eaves height; mezzanine; services to property; rental analysis; appeal allowed in part.*

RE: 2 Stonehill, Huntingdon, Cambridgeshire, PE29 6ED ("the subject property")

APPEAL NUMBER: CHG100537285

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| BETWEEN: | Centrado Trading Limited | Appellant |
| | and<br>Jo Moore<br>(Valuation Officer) | Respondent |

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| PANEL: | Mrs A E Fielder (Senior Member)<br>Mr S M Hooberman |
| CLERK: | Mrs A Sloan |
| HEARING: | Remote hearing No.1 on 10 November 2022 |
| APPEARANCES: | Mr E Gutt of Colliers International (for the Appellant)<br>Mr A Singh (Respondent's representative) |

## Summary of decision

1. Appeal allowed in part. The panel reduced the rateable value (RV) from £134,000 to £115,000 with effect from 1 April 2017.

## Introduction

2. This appeal was lodged to challenge the Valuation Officer's (VO) decision notice of 5 January 2022, which reduced the entry in the valuation list from £146,000 to £134,000 from 1 April 2017. The appellant's representative considered this valuation to be excessive and sought a reduction to £105,000, including allowances for the poor layout and intercommunication across the property, obsolete service plant, excessive and poor-quality office space and low warehouse eaves height.

3. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked

## Preliminary issue

4. The day before the hearing, Mr Singh sent some emails to the Tribunal, copied to Mr Gutt, containing internal photographs of the subject property and 1 Blackstone Road, which was mentioned in the evidence bundle as a comparable property. On the morning of the hearing Mr Gutt responded with additional photographs of his own showing the subject property’s office space on the mezzanine floor along with a hand drawn plan of the area.

5. As the parties were in agreement to include the photographs, the panel considered them along with the evidence bundle provided when the appeal was lodged.

## Issue

6. The issue before the panel was the accuracy of the entry shown in the rating list.

## Evidence and submissions

7. Mr Gutt was acting in a dual role as both advocate and expert witness for the appellant. He confirmed that he was appointed on a contingency fee basis but declared that he understood and accepted that his duty was to the Tribunal in giving evidence.

8. The panel accepted the 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). 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 at issue before it.

9. Mr Singh stated he was also acting as both advocate and expert witness for this appeal. The panel was supplied with the evidence exchanged following the proposal to alter the valuation list and the VO’s decision notice concluding the challenge discussions. Mr Singh asked the panel to dismiss the appeal and confirm the existing RV of £134,000. Mr Gutt asked the panel to reduce the valuation to £105,000 RV from 1 April 2017.

10. The subject property is a 1980s industrial unit which was originally constructed to an ‘L’ shape but subsequently extended to form a ‘U’ shaped building. Mr Gutt contended that the shape of the building was a disadvantage and most ratepayers in the market for this type of accommodation would prefer an open plan rectangular building. He stated that the extended part of the building had no natural light and there was poor access between the different components. Mr Gutt also contended that the property was disadvantaged by low eaves height (5.75m) and stated that warehouse occupants usually look at cubic space for storage capacity.

11. Both parties agreed that the subject property has an unusually high proportion of office space for this type of building. The offices in this case were located on a mezzanine floor and Mr Gutt confirmed they had been put in place by a previous tenant, but the appellant

company had rented the unit with those tenant alterations in place. The parties had differing opinions on the quality of the mezzanine office accommodation. Mr Gutt stated his client had never occupied two thirds of the office space and it was poor quality. Mr Singh relied on the evidence given by a colleague at the hearing in 2019 for the appeal against the 2010 list entry, where the property had been inspected in August 2019 and was stated to be quality accommodation that was fully utilised.

12. Mr Gutt also contended that the services at the property were obsolete. He highlighted that the VO was including an uplift for air conditioning and heating but these services within the subject property were coming to the end of their life. Whilst not a disrepair issue, he contended they should not be valued in the same way as a modern system.

13. The main issue argued by Mr Gutt was the weight to be applied to the rent passing on the subject property. The appellant company and the landlord, both professionally represented, had agreed a new six-year lease from February 2015 on a full repairing and insuring (FRI) basis. The lease agreed the first year at half rent (£69,375) then years two and three at £125,000 per annum. The rent was not increased at the three-year rent review and therefore remained at £125,000 for the rest of the six-year term.

**Decision and reasons**

14. 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”.*

15. 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. The material day (the date by which physical factors have to be taken into account) was 1 April 2017.

16. Mr Gutt referred the panel 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.

17. Neither party had provided rents on similar properties in the locality for comparison.

18. The subject property's rent was agreed just two months before the AVD and required little adjustment. Mr Gutt had analysed the rent over both a three-year term, to the first review date, and the six-year term, arriving at £100,000 and £110,000 respectively as an adjusted rent. He therefore considered £105,000, being between these two figures, was reasonable. The panel noted that the actual rent was therefore well below the existing entry in the list at £134,000 RV. His calculation at £100,000 and £110,000 was not provided.

19. Mr Singh, under questioning, could not give an explanation of how the VO had arrived at an adjusted rent of £113,000 and why the VO had valued the property at £134,000 RV. He stated that the excess amount of office space in the subject property, representing some 25% of the available space, had skewed the valuation when compared to other similar units with less office space. He maintained that the adjusted rate of £38/$m^2$ was correct and in line with the settlement on 6 Blackstone Road. This property was on an adjacent street to the subject property, of similar size, and had been agreed with a main space price of £40/$m^2$ with the appellant professionally represented. Mr Singh considered more weight should be given to settlement evidence now that the 2017 rating list was coming to a close. However, the panel did not find that one agreement demonstrated a tone, and it placed most weight on the rent agreed. The panel considered the rent on the subject property to be the best evidence, particularly as it was effective from February 2015, which was very close to the AVD. Further, the rent was close to the statutory terms as it was in respect of a new letting on a FRI basis.

20. An appeal against the subject property's entry in the 2010 list had been heard by the Tribunal in 2019. Mr Gutt had made much the same arguments on that occasion, but the panel found that the February 2015 rent was too far removed from the AVD for that list (1 April 2008) to carry weight. The panel's decision on that occasion was that a 5% allowance should be given for layout, but the other disadvantages did not warrant any reduction in the valuation.

21. In this appeal against the 2017 list entry, the rent was agreed very close to the AVD and therefore provided strong evidence of the open market value of the subject property on 1 April 2015. The panel found that the rent would reflect any disadvantages and was therefore good evidence of value for rating purposes. Therefore, there was no justification for an end allowance of 25% as proposed in Mr Gutt's valuation.

22. In conclusion, the panel found that the rent agreed on the subject property was the best evidence in this case. It was agreed between professional representatives close to the AVD, was on a FRI basis and would have reflected any disadvantages at the property. There were no other rents with which to compare, and the panel therefore found that the valuation should be based on the actual rent agreed. Neither party had provided the panel with a breakdown of their analysis of the rent.

23. In the absence of a breakdown from the parties of their respective analysis of the February 2015 rent, the panel found that it should be analysed over the six-year term and the appeal should be allowed in part. The panel applied a rough and ready analysis of the rent as follows –
Year one rent (£69,375) plus years 2-6 at £125,000 = £694,375
£694,375 divided over six years = £115,729 (rounded to £115,000).

**Order**

24. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for 2 Stonehill, Huntingdon, Cambridgeshire, PE29 6ED in the 2017 Rating List to £115,000 effective from 1 April 2017.

25. The Valuation Officer must comply with this Order within two weeks of its making.

26. 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:** 23 November 2022
**Appeal number:** CHG100537285

**Appeal Rights**

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.