THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; appeal against the entry in the rating list at 1 May 2018; hangar; rental evidence; comparable assessments; appeal dismissed.

RE: Hangar SE50, Gloucestershire Airport, Cheltenham, GL51 6SP

APPEAL NUMBER: CHG100547682

BETWEEN:	Sky Park UK (Represented by Jones Lang LaSalle Ltd)	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mr F J Rogers (Chairman)
Mr O Miller

CLERK: Mr J Massey

HEARING: Remote hearing No.1 on 6 March 2023

APPEARANCES: Mr C Pockett of Jones Lang LaSalle (Appellant's representative)
Mr S Williams of Sky Park UK (Appellant)
Mr J Eddy (Respondent's representative)

Summary of decision

1. The appeal was allowed in part as the panel determined a tone of value of £42 per m². The assessment was therefore reduced from £83,500 to £67,500 rateable value (RV) with effect from 1 May 2018.

Introduction

2. The appellant's representative had made a challenge against the accuracy of the compiled list assessment in the 2017 rating list, by way of a proposal that he served on the Valuation Officer (VO) on 11 January 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well-founded and refused to alter the existing assessment of £83,500 RV. A decision notice to that effect was served on the appellant on 21 June 2021. His representatives then appealed the VO's decision to the Tribunal on 19 October 2021, on the grounds that the current valuation for

the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. Mr Pockett appeared before the panel in a dual capacity as both Advocate and Expert Witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), the statement of truth signed by Mr Pockett indicated that he was on a success related fee. He did, however, accept that his first duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case.

4. 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 in England). The panel therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

5. Mr Eddy appeared in a dual role of advocate and expert witness for the VO. He stated that his primary duty in giving expert evidence was to the Tribunal and that he was not instructed under a conditional fee arrangement or other success related fee.

6. This document is not and does not purport to be a full verbatim record of proceedings.

Issues

7. The issue in dispute concerned the rateable value of the appeal property. It had been assessed by the VO at £52 per m^2, adjusted to £50.70 per m^2 to reflect the lack of heating. The appellant believed that its unit price should be reduced to £25 per m^2 in line with a number of comparable properties from the same airport. The VO considered the rateable value reasonable having regard to the rents in respect of comparable properties.

Evidence and submissions

8. The appeal to this Tribunal included correspondence between both parties and the evidence which they had exchanged. It included the challenge proposal which referred to the rating assessments of other hangars at Gloucestershire Airport, the VO's initial response and challenge decision which included rental evidence and analysis in respect of other properties at the airport.

9. Prior to the hearing, the parties agreed to the inclusion of additional evidence. This included a schedule of amended assessments of hangars on Gloucestershire Airport effective from September 2022 which had been provided by the respondent and the appellant's rebuttal. The appellant had also provided an amended valuation of the subject property at RV £67,500 based on a rate of £42 per m^2 less 2.5% to reflect the lack of heating.

Decision and reasons

10. The subject property is a purpose-built aircraft hangar located at Gloucestershire Airport and was entered in the rating list as 'Hangar and Premises' with effect from 1 May 2018. Of its total area of 1,650m^2, 1,634m^2 is hangar space and the remainder is first floor office space.

It is not heated and has an eaves height of 8 metres. It is owned by the appellant on a freehold basis and there is therefore no rent passing on the subject property.

11. To understand what rateable value had to be determined for the appeal property it was necessary to have regard to 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 –
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> (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> (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;
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> (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".

12. 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).

13. 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 May 2018.

14. In the appeal under consideration, the panel analysed the competing rental and assessment evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent was considered the starting point and more weight was attached to those rents closest to the statutory criteria of rateable value and which were agreed closest to the AVD. Other rents were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. Other comparable assessments were also relevant but to a lesser degree.

15. In light of all the evidence an opinion could be formed on the rental value of the appeal property, the weight to be attributed to the different types of evidence depending on one hand on the nature of the actual rent and, on the other hand, the degree of comparability found in other properties. In those cases where there were no rents available for comparison, a review of other assessments may be helpful, but in such circumstances it would clearly be more difficult to reject the evidence provided by the actual rent.

16. As the subject property is owned by the appellant company, there is no rent passing on it to assist the panel.

17. The panel therefore considered the other rental evidence provided by the VO for hangars on Gloucestershire Airport. The respondent had provided an analysis of rents on a number of hangars, which ranged from £14.07 per m^2 to £88.33 per m^2. The closest of these to the AVD were SE13, which had let on a lease renewal on 16 March 2015, analysed to £46.83 per m^2 and SE47, agreed on a rent review from 1 June 2015 and analysed to £42.71 per m^2. These were both smaller than the subject property at 1,184m^2 and 672.71m^2 respectively. They had been assessed at £35 and £25 per m^2 respectively, but following a review by the respondent, the rate adopted for SE47 had been increased to £38 per m^2.

18. Mr Pockett considered that SE13 was comparable in terms of age as it was built in 2012, but of a higher quality than the subject property. It is used by an operator acting as the exclusive handling agent for the main airport and it is more than a storage facility.

19. The highest price was for SE31, constructed in 2004, but the panel noted that this was in a different market because of its larger office space.

20. The lowest rent was for SE3 and had analysed at £14.07 per m^2. According to the respondent, this was agreed at 20% of open market value effective from 1 December 2016. SE3 was, according to the respondent's records, 2,016.6m^2 in size and originally constructed in the 1930's/1940's but had been significantly refurbished in 2017. Its adopted rate was £35 per m^2 but an addition of 20% was made to reflect the refurbishment taking it to £42 per m^2. Its assessment had subsequently been reviewed again by the respondent and was now based on £49.42 per m^2.

21. The respondent considered that SE3 was most comparable to the subject property in size, as its hangar area was 1,695m^2. Although it had been reclad and refurbished in 2012, it was not a new build hangar like the subject property and this would be reflected in its rent and assessment. Mr Pockett described the subject property as an unheated storage facility, with basic insulation and basic lighting. He stated there is no maintenance or trade undertaken from the unit which was solely used for the storage of light aircraft. He referred to SE3 as a fully lit, insulated, heated maintenance depot which was essentially completely re-built and therefore comparable in terms of age and size. He also argued that SE3 has more natural light due to the additional glazing and is better located on the airport site.

22. In terms of assessment evidence, Mr Pockett had referred to hangars SE4 (total area of 1,694.85m^2) and SE34 (total area 1,540.55m^2) which had been assessed at £25. per m^2, and SE32/33 (total area 467.76m^2) which had been assessed at £21.57 per m^2 which he contended demonstrated that £52 per m^2 for the subject property was excessive. The respondent had subsequently reviewed the assessments of SE4 and SE34, along with a number of other hangars, as its records incorrectly showed them to be constructed pre-war. Having carried out the review their adopted rates were increased to £52 per m^2.

23. The panel did not consider that the increased assessments of 11 of the hangars by the respondent amounted to the VO impugning the list as the amendments had been made as a result of the VO discovering that it had incorrect age details for the hangars in question. However, it did not consider that much weight should be applied to the revised assessments as the revisions had only recently been made and had yet to be challenged by the ratepayers.

24. The respondent had referred to the decision of this Tribunal (CHG100080056) with regard to Hangar SE46 which had confirmed the unadjusted rate for this unit at £53.91. He considered

that this hangar was similar in age to the subject property and supported its adopted rate of £52 per m^2. The panel was not bound by previous Tribunal decisions, and in this case noted that the appellant for SE46 was not professionally represented. It also noted that SE46 was much smaller than the subject property, with a hangar area of 537.98m^2 and therefore not comparable in size.

25. Having considered the totality of rental and assessment evidence, the panel considered that the most comparable property was SE3 in terms of size. The VO had assessed this property at £42 per m^2 to take into account its refurbishment and the panel considered that it was of better quality than the subject property, although not a new build. On this basis the panel concluded that an unadjusted rate of £52 per m^2 was not reasonable for the subject property.

26. The panel found that this was also supported by the analysed rents for SE13 and SE47 which had been agreed close to the AVD. These were both significantly smaller units, and although there were questions over the age of SE47, SE13 was similar in age to the subject property. Their rents had devalued to £46.83 per m^2 and £42.71 per m^2 respectively and the panel considered that the rate for the larger subject property would be slightly lower.

27. In view of the foregoing, the panel determined that the unadjusted rate for the subject property should be amended to £42 per m^2 resulting in a revised valuation of RV £67,500. The appeal was therefore allowed in part.

Order

28. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VO is ordered to alter the list entry for Hangar SE50, Gloucestershire Airport, Cheltenham, GL51 6SP to £67,500 RV with effect from 1 May 2018. The VO must comply with this Order within 2 weeks of its making.

29. The ratepayers are also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009, provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 4 April 2023

Appeal number: CHG100547682

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.