THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; workshop, store and premises; rateable value in dispute; rental evidence; comparable assessments; appeal allowed.

RE: Unit 5, Termitts Farm, Termitts Chase, Terling Road, Hatfield Peverel, Chelmsford, CM3 2AB

APPEAL NUMBER:	CHG100571616	
BETWEEN:	Posh Garden Marquees Limited	Appellant
	and	
	Ms J Moore, Valuation Officer	Respondent
PANEL:	Mr C Taylor (Senior Member) Dr P Thomson	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Tuesday 17 May 2022	
APPEARANCES:	Mr A Brown, Director of Posh Garden Marquees Limited, the appellant Mr N Cobill, from No 5 Chambers, appellant's counsel Mr J Crussell from Edmonson Hall, appellant's representative Mr L Stevens, representing the Valuation Officer	

Summary of decision

1 Appeal allowed. The Rateable Value (RV) of the appeal property is altered from £15,750 to £12,000 with effect from 1 November 2019.

Introduction

2 This is a 2017 rating list appeal. Unit 5, Termitts Farm, Termitts Chase, Terling Road, Hatfield Peverel, Chelmsford, CM3 2AB, (the 'appeal property') had been entered in the 2017 rating list as Workshop, Store and Premises at a RV of £17,000 with effect from 1 November 2019.

3 The challenge proposal was submitted by Mr A Brown, the director of Posh Garden Marquees Limited, and was received by the Valuation Officer on 20 January 2021. It sought a reduction in RV from £17,000 to £12,000 with effect from 1 November 2019.

4 The Valuation Officer issued a challenge case decision notice on 16 June 2021, which stated that the rating list was unreasonable based upon the evidence and information available. Based upon a 2.5% adjustment for lack of wall insulation, a 2.5% adjustment for lack of roof insulation, and a 2.5% adjustment for sloping site, an alteration to £15,750 RV was confirmed with effect from 1 November 2019.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was submitted by the appellant's legal representatives, Messrs Edmonson Hall Solicitors, and received on 15 October 2021.

6 The appeal property is a steel framed warehouse with a steel trussed barrel roof, mono-pitched section with metal corrugated cladding and roof sheets, and a concrete floor. The total area of the property is 436.06 m^2 (425.15 m^2 total significant area).

7 The property is valued according to valuation scheme number 418015 applicable to rural industrial properties in the Braintree District Council area built post 1980. The value ranges from £20.00 to £80.00 per m^2. The present valuation of £15,750 RV is based upon an unadjusted price of £40 per m^2.

8 The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Preliminary issue

9 The panel heard submissions from both parties in respect of additional evidence which the appellant had sought to rely on. A short adjournment followed while the panel considered the request and the parties held their own discussions.

10 The panel referred to Part 2 of the Consolidated Practice Statement, PS2 Non-domestic rating appeals (part b Rating lists 2017 and later) and was guided by the three stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926.

11 It was noted that the appellant's representative had made a written application for new evidence to be admitted on 8 February 2022, ahead of the previous

hearing date of 9 March 2022. There had been no formal objection from the Valuation Officer as required by PS2.

12 Mr Stevens submitted that the lack of a formal objection was an oversight on the part of the Valuation Officer. He confirmed that he had no objection to comparable RVs or the letter from the appellant, but he did object to a letter from Lord Rayleigh's Farms and a defect report commissioned on 6 October 2021. He also referred to a bundle of 117 pages he had received on 11 May 2022, however, he accepted that this was mainly a consolidation of the appeal documents.

13 The panel took into account the following factors in its decision to admit the appellant's additional evidence:

- When the check was submitted, the appellant was unrepresented.
- Parts of the evidence the appellant sought to rely on had not been available at the time.
- Mr Cobill explained that the appellant had been hampered in his attempts to engage a chartered surveyor.
- The additional evidence had been in the Valuation Officer's possession for around 14 weeks and there had not been a formal objection made to the Tribunal.

14 Although Mr Stevens had indicated that he would seek an adjournment if the new evidence was admitted, he confirmed that he had changed his position and requested that the appeal proceed to be heard.

Issue

15 The issue in dispute was the RV to be adopted in the valuation of the appeal property.

Evidence and submissions

16 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice, appellant's challenge submission and additional evidence.

17 The case for the appellant is that appropriate weight should be placed upon the subject rent of £13,200 with effect from 1 November 2019, and that the individual characteristics have not been properly reflected by the Valuation Officer. With reference to rental evidence and the assessments of comparable properties in the locality, a revised RV of £12,000 was requested.

18 On behalf of the Valuation Officer, Mr Stevens defended the unadjusted price of £40 per m^2 with reference to rental evidence derived from properties in the same valuation scheme. He argued that little weight should be attached to the subject rent which was four years post the antecedent valuation date (AVD) of 1 April 2015.

19 Following discussions with Mr Cobill, Mr Stevens proposed a revised RV of £15,250 based upon an increased adjustment from 2.5% to 5% for the sloping floor.

Decision and reasons

20 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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.

21 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 AVD of 1 April, 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

22 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 11 November 2019.

23 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

3. Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
4. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.

24 In the subject appeal, a new lease had been agreed with effect from 1 November 2019 at a rent of £13,200 per annum. As outlined above, the starting point is the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements need to be taken into account when deciding the weight to attach to it. As the subject rent had been agreed four years after the AVD, the panel could not attach significant weight to it.

25 The panel turned to the comparable rental evidence scheduled in the Valuation Officer's challenge decision:

Address	Total significant area	Rental details	Analysed rent/m^2	Adopted £/m^2
Unit 2 Park Farm Industrial Estate, Witham Road, CM77 8JX	58.62 m^2	£7,000 1 Nov 2013	£83.28	£80.00
2 Bouchiers Grange Courtyard, Marks Hall Road, CO9 2EX	214.6 m^2	£16,000 1 Feb 2015	£58.29	£57.50
Unit B1 Great Domsey Farm, Domsey Chase, CO9 2EX	252.6 m^2	£14,400 1 Oct 2014	£50.41	£56.91
Danbury Fencing, South Section, Olivers Farm, CM8 3HY	691.97 m^2	£52,860 1 Sep 2014	£46.03	£35.00

26 In valuation scheme 418015 properties were valued according to their total significant area. The appeal property with a total significant area of 425.15 m^2 fell within the range of properties with a total significant area less than 500 m^2.

The price to be adopted by the Valuation Officer for this category was £40 per m^2.

27 Mr Stevens acknowledged that rental evidence in the locality was sparse. The appeal property had previously been an agricultural building and therefore there was no direct rental evidence.

28 During cross examination it became apparent that there was uncertainty over the age of the appeal property. Mr Stevens asked Mr Brown to confirm if the Valuation Officer’s opinion of the age of the property was correct. Mr Brown could not confirm, but stated that in his opinion it was much older. Mr Stevens was aware that it had previously been an open agricultural unit, and he accepted that it could have been there prior to 1981.

29 As the age of the property was significant to the value to be attributed to it, the panel found that this cast doubt on the valuation scheme it had been placed within, the resulting unadjusted £40 per m^2 adopted, and the rental evidence relied upon by the Valuation Officer.

30 The panel turned to the rental evidence provided by the appellant. In a letter dated 12 October 2021, the following rents were provided by the landlord’s agent:

Unit	Area (sq ft)	Rent (£/yr)	Rent (£/sq ft)
Termitts Farm Unit 5	4,700	13,500	2.87
Termitts Farm Unit	1,570	4,200	2.68
Termitts Farm Unit	11,800	24,000	2.03
Termitts Farm Unit	4,700	12,000	2.55
Whitelands Unit	6,000	12,900	2.15
Termitts Farm Unit	6,100	16,200	2.66
Termitts Farm Unit	3,300	9,600	2.91

31 It was stated that these rents had taken place within the last two years and therefore, as with the subject rent, the panel held that they were too far removed from the AVD to be of assistance. It was, however, highlighted that the subject rent included a service charge, which had not been reflected in the Valuation Officer’s analysis at £31.05 per m^2.

32 In the absence of suitable AVD rental evidence, the panel referred to the appellant’s comparable assessments which were all located close to the appeal property on Terling Road.

Address	Total area	Unadjusted price per m^2	RV
Unit 10 Whitelands	540.3 m^2	£30.54	£13,000
Unit 11 Whitelands	362.4 m^2	£33.00	£12,250
6 Powers Hall Farm	366.4 m^2	£30.00	£10,750
7 Powers Hall Farm	317.7 m^2	£33.05	£10,000

33 Mr Cobill contended that the best comparable was Unit 10 Whitelands. This was a larger unit than the subject but with a lower RV. Mr Brown confirmed that this was similar in character to the appeal property, but it did not have a sloping floor.

34 In response, Mr Stevens stated that the appellant's comparable assessments had been placed in a different valuation scheme for older properties (built between 1955 and 1964), which explained why there were valued at a lower price per m^2. However, given the uncertainty of the construction date of the appeal property, the panel considered that the appellant's comparable assessments should not be rejected.

35 In addition to the level of value to be attributed to the appeal property, the appellant contended that the Valuation Officer had not fully reflected the individual characteristics in light of the sloping floor. The defect report concluded that due to the floor slope:

- Only large and long items can be stored at the north end of the property.
- Any small items are likely to fall over and cause injury or damage.
- The slope prevents any large storage racking from being installed.
- The present arrangement of stored items is not practical for the intended use of the warehouse.

36 In consideration of all the evidence presented, the panel decided to attach most weight to the appellant's comparable assessments. The range of values adopted between £30.00 and £33.05 per m^2 indicated to the panel that an unadjusted price of £40 per m^2 for the appeal property was unreasonable. The panel was satisfied that the appellant had demonstrated that a RV of £12,000 was consistent with comparable units in the locality and also reflected the individual characteristics of the appeal property.

37 The appellant did not provide a breakdown of the proposed valuation of £12,000 RV. The panel considered that the unadjusted price per m^2 to be adopted should be derived from the range of values adopted for the comparable assessments. Taking £31 per m^2 as a starting point, and applying the required adjustments (2.5% for lack of wall insulation, 2.5% for lack of roof insulation and 5% for sloping floor) this resulted in an adjusted price of £28.00 per m^2. When applied to the total area of 436.06 m^2, this resulted in a RV of £12,209.68. Adopting the Valuation Officer's usual practice of rounding down to the nearest £250, the panel arrived at a RV of £12,000.

38 The appeal is therefore allowed, and 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).

Order

39 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £12,000 with effect from 1 November 2019.

Date: 30 May 2022

Appeal Number: CHG100571616