THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Warehouse and Premises; Local Government Finance Act 1988; Statutory Assumptions; Economic Repair; Material Day; The Rating (Material Day for List Alterations) Regulations 1992 (S.I. 1992 No. 556); The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (S.I. 2009 No. 2268); Appeal dismissed.

Re: 18 Fairway Drive, Greenford, Middlesex, UB6 8PW
APPEAL NUMBER: CHG100596407

BETWEEN: SEGRO PLC Appellant
Represented by Altus Group PLC

And

Dawn Bunyan Respondent
(Valuation Officer)

PANEL: Mrs T Watson (Presiding Senior Member)
Mrs S Patel (Senior Member)
CLERK: Mr James Massey
REMOTE HEARING 2: 18 April 2023

PARTIES PRESENT: Mr M Jordan of Altus Group - Appellant's representative
Mr J Humphries Respondent's representative

Summary of decision

1. The appeal was dismissed. The panel did not consider that 18 Fairway Drive, Greenford, Middlesex, UB6 8PW ("the subject property") was beyond economic repair at the material day.

Introduction

2. This appeal has been brought in respect of the subject property, which was entered in the 2017 rating list as "warehouse and premises" at rateable value (RV) £307,500 with effect from 1 April 2017

3. The challenge process began on 1 October 2020 when the appellant had made a proposal to the Valuation Officer (VO) that the entry shown in the rating list for the appeal property was wrong and that it should be reduced to RV £0 with effect from 1 January 2019 on the basis that at the material day it was beyond economic repair.

4. Having considered the challenge the VO issued a decision on 16 June 2022 stating that the VO was of the opinion that the proposal was not well founded as a reasonable landlord would consider the cost of repairs to be economic.

5. The material date for this appeal was 1 October 2020. This was the date when the VO received confirmation of the accuracy or otherwise of the information that she held about the

property from the appellant under Regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended).

6. The subject property is a large industrial unit with a gross internal area of 4,526 m^2 with additional storage land situated on Fairway Drive, Greenford. It is located on an industrial estate close to the A40 with easy access to the M40, M25, M4 and central London and is close to two London Underground stations and Greenford Mainline rail station.

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

Issue

9. Whether the RV of the subject property should be reduced to £0 with effect from 1 January 2019 as it was beyond economic repair.

Evidence and submissions

10. As Mr Jordan appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

11. It was established that Mr Jordan's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, Mr Jordan declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

12. 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).

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

14. The evidence 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; photographs and location plans of the appeal property; both parties' cost estimates for the repair works and a supplementary evidence statement containing a summary of the appellant's case.

15. The appellant stated that the subject property was let to tenants on a one year lease from May 2018 but the tenants had not been able to carry out their business as the building was not wind or weathertight due to water ingress from the roof. This issue had been identified in August 2018 and the tenants vacated in December 2018. The subject property had previously become unoccupied in 2017 when the previous tenants vacated two years into a five year

lease which had been agreed in 2015. At this time an estimate had been carried out by the landlord to repair the roof as part of a larger scheme to improve the subject property and the cost of repairing the roof and other elements of the building damaged by the water ingress was found to be in the region of £900,000 including fees.

16. He considered that due to the condition of the subject property at the material day a reasonable landlord would not consider it economic to carry out roof repairs, taking into account their costs in comparison with a market rent achievable for a refurbished 1980s warehouse against the backdrop of the demolition and redevelopment of neighbouring industrial units. In support of his assertion, he referred to the Upper Tribunal case of *Barber (VO) v CEREP* [2015] in which the repair costs of around twice the rental value of the subject property were found not to be economic.

17. Mr Humphries stated that when assessing a property for non-domestic rates the Valuation Officer must assume that the property is in a 'reasonable state of repair'. It is then necessary to consider its actual state at the material day and cost of repair, which relate to the hereditament, necessary to bring the actuality up to the assumed state (as at the antecedent valuation date of 1 April 2015 for the 2017 rating list).

18. Once the works of repair have been costed it is then necessary to consider whether the reasonable hypothetical landlord would consider the repair works economic or not. If considered economic, then the hereditament can be valued in an assumed state of reasonable repair; if not then it will be valued *rebus sic stantibus* as it is at the material day (which for a derelict property would usually be with a nil rateable value).

19. Mr Humphries considered that there would have been sufficient demand for the subject property as a repaired 1980's warehouse in its locality for it to achieve a rental value equivalent to its RV, despite the redevelopment of neighbouring units. He considered that the cost of repairs submitted by the appellant contained elements of improvement and argued that the cost of actual repairs would have been in the region of £625,000 at the AVD. He submitted that a reasonable landlord would consider costs of between four and five times the rateable value of an industrial unit such as the subject property to be economic.

Decisions and reasons

16. In accordance with The Rating (Material Day for List Alterations) Regulations and 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations, the material day is the date on which the ratepayer confirms the accuracy of the information included in the check.

17. For this appeal the panel found that the material day, the day on which the VO is required to assess matters involving an alteration to the list, was 1 October 2020.

18. The panel noted that the respondent had agreed to delete the subject property with effect from 28 September 2020 as a program of works had commenced to demolish the subject property. Both parties' representatives confirmed that by the material day of 1 October 2020, no demolition works had physically started and it essentially remained in the same condition as it stood at the proposed effective date of 1 January 2019.

19. The panel then referred to the definition of the term 'rateable value' as set out 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".

20. The appellant considered that the state of repair of the subject property had deteriorated to such an extent by 1 January 2019 that the previous tenant had had to vacate. He had provided copies of emails from the tenant detailing the problems caused by the water leaking through the roof. The panel noted that the poor state of the roof was known to the landlord when the subject property was let to this tenant on a one year lease for an annual rent of £422,000. Although the problems with the roof were not evident at the time, it had also been let on a five year lease, five months after the AVD for an annual rent of £543,748. This exceeded the RV of the subject property and demonstrated to the panel that there was a demand for 1980s' warehouses in the locality which were in a reasonable state of repair around the AVD.

21. The panel was satisfied from the photographs provided by the parties showing puddles on the floor in various areas that the subject property was in a state of disrepair at the material day. The issue for it to consider was whether a reasonable landlord would consider those repairs to be economic to carry out in order to return the property to a state of reasonable repair. If so, then the repair assumption applies, and the appeal must fail.

22. The panel considered that the cost estimate provided by the appellant was excessive as it contained a number of items which the panel considered to be improvements rather than repairs. The total costs without fees were £700,260, however the panel noted that these costs also included the cost of external wall cladding, internal wall lining and new shutter doors. The panel considered that these items constituted improvements which would enhance the rental value of the subject property and were therefore not repairs. The respondent had stripped the costs of the improvements out of the costs but accepted the appellant's costs for replacing the existing roof, and repairing various electrical installations, blockwork and fireproofing, and flooring damaged by the water ingress. The panel was therefore satisfied that the cost of repairs would have been in the region of £625,000 (including fees) as asserted by the respondent.

23. Mr Jordan stated that the demolition and redevelopment of the three neighbouring units, 11,12 and 13 Fairway Drive would create modern warehouse space in the immediate vicinity of the subject property. He did not consider that a reasonable landlord would realistically expect to let a dated warehouse, even with a new roof, in competition to the three brand new warehouse units next door. He considered the situation was identical to that in *Barber (VO) v CEREP* and that a reasonable landlord would not be prepared to spend more than double the

annual rent of the subject property to place it in a reasonable state of repair, given the uncertainty over letting the property once it was repaired.

24. The panel found that in the case of *Barber (VO) v CEREP,* the property in question was a retail premises which was in the midst of a number of other retail and leisure properties which had been boarded up as they were earmarked for demolition. It considered that the effect of the state of its locality would have a far greater impact on the demand for a retail unit than it would an industrial unit. The panel therefore did not consider that in the present appeal, a reasonable landlord would consider repair costs of around twice the subject property's rental value to be uneconomic. It did not consider that the creation of three smaller, brand new, warehouse units adjacent to the subject property would lead to there being no demand for the subject property, situated as it was on a large industrial estate with numerous industrial units of differing ages and sizes.

25. Whilst the panel was aware that the appellant had chosen to demolish the subject property rather than carry out repairs, it considered that this was a subjective choice and was not persuaded that a hypothetical landlord would make the same choice in the same circumstances.

26. The panel was not persuaded that the subject property was beyond economic repair at the material day and therefore considered that it must be valued on the statutory assumption that it was in a reasonable state of repair. The appeal was therefore dismissed.

Date: 9 May 2023

Appeal number: CHG100596407

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.