THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; mill and premises; price per m^2 and removal of end allowance in dispute; rental evidence; comparable assessments; Barnard and Barnard v Walker (Valuation Officer); appeal allowed in part.

RE: Pennine Weavers Ltd, North Beck Mills, Becks Road, Keighley, West Yorkshire BD21 1SD

APPEAL NUMBER:	CHG100616839	
BETWEEN:	Pennine Weavers Ltd	Appellant
	and	
	Ms J Moore, Valuation Officer	Respondent
PANEL:	Mrs S Patel (Presiding Senior Member) Mr F J Rogers	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Wednesday 28 June 2023	
APPEARANCES:	Mr C Diamond from Altus Group, representing the appellant Mr J Hirst representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The panel decided to reinstate a 5% end allowance for access, but confirmed the present tone of £18.77 per m^2. This resulted in a revised rateable value (RV) of £85,000 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Pennine Weavers Ltd, North Beck Mills, Keighley, West Yorkshire BD21 1SD, (the ‘appeal property’) had been entered in the 2017 rating list as ‘mills and premises’ at a RV of £89,500 with effect from 1 April 2017.

3 The challenge proposal was submitted by Altus Group on behalf of Pennine Weavers Ltd and was received by the Valuation Officer on 16 February 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £48,750 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 2 February 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

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 received by the Tribunal on 9 March 2022.

6 Mr Diamond appeared on behalf of the appellant 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) he confirmed that he was instructed under a contingency fee. He 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.

7 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).

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

9 The appeal property was a mill and premises built pre-1900 and located outside Keighley town centre. It had a total significant area of 5,145m^2 over ground, first and second floors. It was valued in a scheme appropriate to all pre 1919 industrial hereditaments between 5,000 and 10,000m^2 located in Bradford Billing Authority. The present assessment of £89,500 RV was based upon an adopted price of £18.77 per m^2 (£19.75 per m^2 unadjusted).

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

Issues

11 The appellant's challenge submission identified two issues:

- A reduction in the adopted price from £18.77 per m^2 to £11.30 per m^2.
- Reinstatement of a 5% end allowance for access which had been awarded on the 2010 assessment.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission. The parties agreed that further information relating to the subject rent should form part of the bundle.

13 On behalf of the appellant, Mr Diamond outlined that the RV of the appeal property had increased substantially between rating lists. The justification for the increase appeared to be the Valuation Officer's reliance on the subject rent. He argued that other assessments valued within the same scheme had been subject to minimal increases or had decreased between lists, but his main contention was that the subject rent had been agreed between connected parties and therefore little weight should be attached to it.

14 Representing the Valuation Officer, Mr Hirst acknowledged that the subject rent had been agreed between connected parties, however, information provided in the form of return (FOR) confirmed that it had been agreed at open market value. In accordance with *Lotus and Delta v Culverwell (Valuation Officer)* [1976] RA 141, Mr Hirst submitted that most weight should be placed on the passing rent. As the RV for the appeal property and comparable properties in the locality had been closely derived from the passing rent, Mr Hirst submitted that an end allowance was not justified.

15 In addition to *Lotus and Delta*, the parties referred to the following:

- *Martyn Lamb (Valuation Officer) and Go Outdoors Ltd* [2015] UKUT 0366 (LC).
- *Barnard & Barnard v Walker (Valuation Officer)* [1975] LVC/23.

Decision and reasons

16 In arriving at a decision, the panel is 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.

17 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).

18 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 April 2017.

19 The panel was aware that in accordance with *Lotus and Delta*, the subject rent should be the starting point when considering the weighting of evidence. However, it was also necessary to consider whether significant weight should be attached to the subject rent given the circumstances under which it had been agreed. The remaining propositions required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

20 The appeal property was subject to a lease renewal at a rent of £90,000 per annum with effect from 28 April 2015. Mr Diamond stated that the appellant purchased Pennine Weavers Ltd in 2003 from the director of Chilcot Limited, the landlords. This director remained an active member of the board for Pennine Weavers Ltd. A testimony from the Managing Director of Pennine Weavers Ltd confirmed that neither the setting of the initial rent in 2003 nor the review in 2013 had any professional input or valuation. As the lease had been agreed between connected parties, Mr Diamond submitted that it could not be considered as an open market rent or at arm's length.

21 While it was acknowledged by the Valuation Officer that the subject rent was between connected parties, the FOR indicated that the rent was agreed at open market value. It was also the case that a review of Companies House information for each legal entity revealed a single director in common. The rent of £90,000 analysed at £19.27 per m^2 which Mr Hirst submitted supported the unadjusted price of £19.75 per m^2.

22 The panel was mindful that for rating purposes, a connected party rent would usually be treated with caution. Attention was drawn to an extract of the lease by the Valuation Officer:

> "For the purpose of this Lease, the expression 'market rent' means the best yearly rent at which the Premises might reasonably be expected to be let in the open market by a willing landlord to a willing tenant."

23 Mr Hirst submitted that when the 2015 lease renewal was agreed and signed by the relevant parties, Chilcott Ltd was a willing landlord and Pennine

Weavers Ltd a willing tenant. The tenant agreed to the terms of the lease renewal including the higher rent, because it was the best yearly rent at which the Premises might reasonably be expected to be let in the open market, as stated in the lease renewal. It was further submitted by Mr Hirst that the fact that it was a lease renewal as opposed to a rent review meant that there was the option to negotiate the rent either as an increase or decrease, which supported his view that it had been set at market rent.

24 Taking into account the terms of the subject lease and the forms of return completed by the appellant, the panel was prepared to accept that the subject rent, albeit between connected parties, had been agreed at open market value. As such, the panel rejected Mr Diamond's contention that little weight should be attached to it.

25 The panel then turned to the comparable rental evidence. Mr Diamond cited a 2009 rent in respect of Becks Mill, Becks Road, which analysed at £40,496 in support of his contention that the passing rent of the appeal property was unreliable and not on an open market basis. However, the Valuation Officer stated that the rent had been set to match the mortgage repayments and as such it carried little weight, in addition to it being too far removed from the AVD.

26 The panel noted that Becks Mill was the property cited by Mr Diamond in support of his adopted price of £11.30 per m^2. While it was close in location to the appeal property, it was over 1,000m^2 larger than the subject at 6,411.90m^2. Mr Hirst also stated that accommodation was provided over five floors, compared to three floors at the subject. Taking those differences into account, together with the rental information, the panel was not persuaded that the appeal property should be valued at £11.30 per m^2.

27 The Valuation Officer scheduled four pieces of rental evidence in respect of properties within the same scheme:

Linear Composites Ltd, Vale Mills, Vale Mill Lane, Keighley BD22 0EB

A rent of £120,000 effective from 1 January 2015 analysed at £31.50 per m^2 for a property of 5,102.67m^2 (total significant area). This property had been valued at £27.50 per m^2. According to the Valuation Officer's records, this was a lease renewal at open market value on FRI terms.

Mr Diamond submitted that this was a connected party rent on a property three miles away from the subject.

Universal Carbon Fibres, Station Mills, Station Road, Bradford BD12 8LA

A rent of £116,000 effective from 1 June 2013 analysed at £18.47 per m^2 for a property of 6,354.76m^2 (total significant area). This property had been valued at £17.25 per m^2. According to the Valuation Officer's records, this was a lease renewal at open market value on FRI terms.

Mr Diamond considered that this property was too far away and in a more prominent location.

Abbey Art Stone, Part Worth Valley Works, Pitt Street, Keighley BD21 4PG

A rent of £55,016 effective from 1 November 2015 analysed at £9.52 per m^2 for a property of 7,676.65m^2 (total significant area). There had been a recent agreement to value at £10.00 per m^2 in line with the rent.

Mr Diamond submitted that this was a key rent which indicated that the subject rent was unreliable.

Matchmakers Ltd, Park View Mills, Wibsey Park Avenue, Bradford BD6 3QA

A rent of £150,000 effective from 1 March 2015 analysed at £20.94 per m^2 for a property of 9,434.25m^2 (total significant area). This property had been valued at £19.50 per m^2. According to the Valuation Officer's records, this was a lease renewal at open market value on FRI terms.

Mr Diamond considered that this property was too far away and in a more prominent location.

28 As part of his comparable assessment evidence, Mr Diamond highlighted the percentage increases between the 2010 and 2017 rating lists for the appeal; property and three properties within the same scheme. The appeal property had the most significant increase of 54%; Abbey Art Stone, Part Worth Valley Works had fallen by 1%; Unit 5 River Technology Park had increased by 0.1% and Becks Mill had increased by 4%.

29 As each rating list is considered afresh and based upon different valuation dates the panel found that comparison of any percentage increase was not a relevant factor, as upheld in *Martyn Lamb (Valuation Officer) v Go Outdoors Ltd*.

30 The panel noted that the remaining comparable assessments presented by Mr Diamond were smaller properties from a different valuation scheme which ranged from 1,340.75m^2 to 3,962.10m^2. The appeal property at 5,145m^2 was assessed in valuation scheme 433377 which applied to properties between 5,000m^2 and 10,000m^2.

31 In consideration of the available evidence, the panel decided to attach most weight to the subject rent and rental evidence in respect of comparable properties from the same valuation scheme. The property closest in size to the appeal property, Linear Composites Ltd, Vale Mills was assessed at £27.50 per m^2. The panel held that the weight of the evidence demonstrated that the present adopted price of £18.77 per m^2 for the appeal property was reasonable.

32 The panel turned to the second issue in dispute, whether the 5% end allowance for access should be reinstated.

33 The Valuation Officer's position was that as the rateable value for the subject and comparable properties in the locality had been derived from the passing rent, any restrictions or disabilities had already been taken into account.

34 Mr Diamond cited *Barnard & Barnard v Walker (VO)* in support of the reinstatement of the 5% end allowance for access which had been applied in the 2010 list. He submitted that there had been no material change in circumstances to justify the removal of the allowance in the 2017 list assessment. The appeal property still suffered from the same disability which was not evident in the comparable properties. The panel referred to the photographs provided which illustrated poor access along a narrow road, shared with other occupants. The access issue remained and therefore the panel decided that it should be reinstated.

35 In conclusion, the panel confirmed the present adopted price of £18.77 per m^2 and determined the reinstatement of a 5% end allowance for access. This resulted in a revised RV of £85,000, and therefore the appeal was allowed in part.

Order

36 Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list to rateable value £85,000 with effect from 1 April 2017.

37 Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 14 July 2023

Appeal number: CHG100616839

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.