THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; factory and premises; comparable assessments; appeal dismissed.

RE: Briggs House 430 Thurmaston Boulevard, Leicester LE4 9LE

APPEAL NUMBER: CHG100625899

BETWEEN:	Briggs Industrial Footwear Ltd	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

PANEL: Miss S Ballentine (Presiding Senior Member)
Mrs A Fielder (Senior Member)

CLERK: Ms R Muller

HEARING: Remote Hearing No. 2 on 14 March 2023

APPEARANCES: Mr N Brewitt from Altus Group, the representative for the Appellant
Mr I Riley, the representative for the Respondent

Summary of decision

1. Appeal dismissed. The assessment was confirmed at rateable value (RV) £107,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the subject property was entered into the rating list £107,000 from 1 April 2017, as factory and premises. As this was a compiled list entry, the material day for this appeal was the same date of 1 April 2017. A check had been submitted on 11 February 2021 and completed on 21 February 2021 with no change to the RV of the subject property. A challenge was submitted on 22 February 2021 and was completed on 12 May 2022. An appeal was received by the Tribunal on 17 August 2022, on the grounds that the valuation for the hereditament was not reasonable.

3. Mr Brewitt 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), his declaration included a statement that he was instructed on a contingency based fee.

4. Mr Brewitt also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and 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.

5. 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).

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

7. Mr Riley also stated that he appeared on behalf of the respondent as both advocate and expert witness.

8. The subject property was built between 1955 and 1964 and was located near a main transport road and a 10 minute drive from the A47, A607 and A46. Construction of the subject property was steel framed infilled with brick walls. The roof construction was constructed of a light steel trussed roof clad in corrugated asbestos sheets / glazed panels. Access was shared with the neighbouring factory and a 5% allowance had been included within the assessment with regards to the shared access. The total gross internal area (GIA) of the subject property was 5,675.70 m² and had been placed into the valuation scheme 350225, which included properties that were built between 1940 and 1964.

9. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence.

Issue

10. The issue for the panel to consider was the correct unadjusted base rate to be applied in the subject property's assessment. Mr Riley contended that £20/m² was correct, but Mr Brewitt requested the panel determine a tone of £12.50/m².

Evidence and submissions

11. Mr Brewitt submitted a bundle of evidence which included: a summary of evidence statement; supporting legal arguments; issues for the Tribunal to determine; a summary of comparable assessments and rental evidence and a copy of the current valuation along with a copy of his proposed revised valuation. The proposed RV sought by the appellant was £67,000 with effect from 1 April 2017. This was based on a reduction from the current unadjusted base rate of £20/m² to a proposed unadjusted base rate of £12.50/m².

12. Mr Riley, the representative for the respondent, provided a copy of the challenge decision, the appeal history with agreed and disputed issues; the current rateable value, along with his contention that the current RV of £107,000 was correct.

Decisions and reasons

13. 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.

14. The panel noted that the subject property was freehold, as such, no rental evidence was available. Therefore, the panel considered the evidence provided by both parties in order to make its decision.

15. Mr Brewitt contended that the unadjusted base rate of £20/m² was excessive. He provided details of settlements with regards to two properties of Unit 1, 22 Menzies Road and Unit 3, 39 Menzies Road, which were within the same area of the subject property. The unadjusted base rate of these two properties had been agreed and reduced from £30/m² to £20/m². Mr Brewitt stated that there is no difference between the subject property and these settlements when it comes to location near to the Ring Road, but in every other aspect, the subject property was inferior to the properties located on Menzies Road. Mr Brewitt argued that there was a difference in quality and height as well as site layout.

16. Mr Brewitt contended that the subject property had a low height, which he had measured at 3.6m. He argued that the comparable properties provided by the Valuation Officer of 161 Barkby Road and 6 Wenlock Way had eaves heights of 6m and 8m. He also stated that Booker Belmont was a wholesale warehouse and therefore was in a different market to the subject property. 203 Belgrave Gate was assessed as a retail warehouse, again within a different market. Jones & Shipman on Murrayfield Road appeared to be more modern than the subject property as well as loftier than the 4.57 eaves height quoted.

17. Due to the above, Mr Brewitt requested that the panel reduce the unadjusted base rate from £20/m² to £12.50/m², which would produce a revised assessment for the subject property of £67,000 RV.

18. Mr Riley stated that Mr Brewitt had not provided any factual evidence in support of his request for a reduction in tone from the current unadjusted base rate of £20/m² to the proposed unadjusted base rate of £12.50/m². The weight in terms of location had been considered, however, Mr Riley was of the opinion that the subject property was located in a better location than the properties located on Menzies Road. The subject property had the best access to the Ring Road with two access points.

19. Mr Riley stated that the eaves height of the subject property, which was 3.6m falls within the range of 3.5m to 6.1m, which was the standard height within Leicester for industrial units. These standard heights were confirmed within the rental evidence discussed with regards to the 2017 rating list.

20. Mr Riley also stated that Unit 3, 39 Menzies Road was much larger in size than the subject property at 9,449.44 m² and therefore, not a suitable comparable property. However, he did agree that Unit 1, 22 Menzies Road was similar in size to the subject property at 5,959.62 m², but no rental evidence had been provided to show that a reduction in tone was warranted with regards to the subject property. Therefore, Mr Riley requested that the panel dismiss the appeal.

21. The panel considered the evidence provided by both parties of comparable properties. The GIA measurements with regards to the comparable properties ranged from 2,973.97 m² to 7,274.20 m². The unadjusted base rates for these properties ranged from £18/m² to £27.77/m². The panel noted that some of the comparable properties were within different valuation schemes than the subject property. Therefore, the panel only considered the comparable properties which were within the same scheme as the subject property, scheme 350225.

22. The panel noted that rental evidence had been provided with regards to the comparable property of Jones & Shipman on Murrayfield Road. This property was similar in size with a GIA of 5,042 m². However, this property was within a different scheme 350269 and considered to be more modern than the subject property as it had been built between 1965 and 1970. Mr Riley had informed the panel that the rental evidence provided was due to a rent review, which had taken place on the day of the AVD of 1 April 2015, which confirmed that there had been a nil increase in the rent. The parties had confirmed that the original lease of this property had commenced in 2009. Therefore, the panel placed less weight on the rent review details provided as it would not be considered to be an open market rental figure.

23. 161 Barkby Road, Jelson Ltd, 370 Loughborough Road, Shield Engineering (Syston) Ltd, 6 Wenlock Way and 434-442 Thurmaston Boulevard were within the same scheme as the subject property. The GIA of each property ranged from 2,973.97 m² to 6,010.58 m². The unadjusted base rate for Jelson Ltd and Shield Engineering (Syston) Ltd was the same as the subject property at £20/m². The panel noted that the unadjusted base rates for 161 Barkby Road and 434-442 Thurmaston Boulevard was £21.50 m².

24. The panel found that the appellant's representative had failed to produce any significant evidence to justify his argument for the lower base rate of £12.50/m². The panel attached more weight to the respondent's comparable properties due to size and age and determined that the established tone of the list had been set at £20.00/m². The panel found that the only truly comparable property for it to base its decision on was Jelson Ltd, which was similar in size with a GIA at 5,815.32 and it was within the same valuation scheme. The unadjusted base rate for this comparable property had been £20/m², the same as the subject property.

25. The persuasive or legal burden of proof was on the appellant to prove his case. Unfortunately, the appellant's representative had failed to discharge this burden as there was no reliable substantive valuation evidence to support a case for a reduced unadjusted base rate and therefore, the appeal was dismissed.

Date: 3 April 2023

Appeal number: CHG100625899

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.