THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; workshop and premises; price per m^2 in dispute; rental evidence; comparable assessments; the panel found the existing assessment was not shown to be unreasonable; appeal dismissed.

RE: 79 Duxons Turn, Hemel Hempstead, Herts HP2 4SB

APPEAL NUMBER: CHG100687145

BETWEEN Micro Precision Gear Technology Ltd — Appellant
And
Mrs J Moore
(Valuation Officer) — Respondent

PANEL: Mr J M Imperato (Senior Member)
Dr P A R Thomson

CLERK: Mrs A Keohane

REMOTE HEARING 1: 13 October 2022

APPEARANCES: Mr M Clayton of Altus Group on behalf of the Appellant, as advocate and expert witness
Mr C Wykes on behalf of the Valuation Officer, as advocate and expert witness

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Summary of decision

1 Appeal dismissed. No change was made to the appeal property's existing assessment of £91,000 rateable value (RV), with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. 79 Duxons Turn, Hemel Hempstead, Herts HP2 4SB (the 'appeal property') had been entered in the 2017 rating list as 'Workshop and Premises' at £91,000 RV with effect from 1 April 2017.

3 The challenge proposal, submitted by Altus Group on behalf of the Appellant, was received by the Valuation Officer on 22 April 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £70,500 RV was proposed with effect from 1 April 2017, based on a rate of £35/m^2.

4 The Valuation Officer issued a challenge case decision notice on 10 February 2022, which stated that based upon the evidence and information available, the existing rating list entry based on £45/m^2 was reasonable and no amendment would be made.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal was made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 26 April 2022.

6 As Mr Clayton appeared on behalf of the Appellant as both advocate and expert witness, he was 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).

7 Mr Clayton declared that he was instructed under a contingency based fee. He confirmed 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.

8 The expert witness evidence was accepted on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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). The "expert" evidence was considered, and the panel attached weight to it as it saw fit.

9 The appeal property is a workshop and premises constructed predominantly of bricks during the late 1950s. It comprises two ground floor workshop areas, together with office and storage space. It has a total significant area (TSA) of 2,185.46m^2. The premises are located off Maylands Avenue, just over a mile from junction 8 of the M1 motorway. There are several differing uses in the vicinity including offices and retail space, but industrial distribution is a main occupier as Amazon and Royal Mail have a presence on the Mayfield estate. There are 15 parking spaces to the front that are already reflected in the assessment.

10 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 having been overlooked by the panel.

Issue

11 The disputed issue was the rate/m^2 to be adopted in the appeal property's rating assessment. The Valuation Officer contended for the existing rate of £45/m^2. Mr Clayton proposed a revised rate of £37.50/m^2, giving an assessment of £75,500 RV.

Evidence and submissions

12 The bundle comprised the documents exchanged between the parties as part of the challenge process. This included: the Appellant's supporting evidence; an official copy of the title deeds for 'Blue Box'; maps and location plans; details and photographs of properties cited as comparable by both parties; rental and assessment schedules; and the Valuation Officer's challenge decision notice.

13 To support his revised valuation of £75,500 RV based on £37.50/m^2, Mr Clayton outlined in his challenge documentation and oral presentation the reasons he believed the appeal property's current valuation was not reasonable. Very briefly these included that the appeal property was much older than the majority of other assessments within the same scheme (316466), which covered the '*value applicable to properties built on the Maylands Estate and Paradise Estate prior to 1974'.* He argued that the appeal property had been built in the late 1950's, had low eaves height and poor layout due to numerous dividing walls.

14 Mr Clayton submitted that most of the larger assessments within the scheme were either freehold, as was the appeal property, or subject to connected party arrangements. Blue Box (title deeds provided) and Enterprise House at Maylands Avenue were both connected party lettings. The remaining comparable properties were either more modern, or also had a connected party arrangement in terms of the passing rent.

15 Mr Clayton considered the best evidence to be the assessments of comparable properties of a similar age. His key evidence was a 2017 agreement in respect of Enterprise House HP2 7DX, which was of a similar age to the appeal property. This comparable property had an allowance of 23.10% to reflect its age which reduced the basic rate from £45/m^2 to £34.61/m^2.

16 Referring to the 2010 rating list, Mr Clayton confirmed the appeal property was placed in scheme 121605, which had been applicable to '*industrial properties built before 1971 situated on the Maylands Industrial Estate and Riversend Business Park, Hemel Hempstead'.* Properties in these locations were deemed comparable at that time and Mr Clayton considered this still applied. He provided a comparison table setting out the rates/m^2 applied to the appeal property and Motorway Maintenance Depot HP2 4TZ, Environmental Services Depot HP2 7BA and 66 Wood Lane HP2 4FR in their 2010 and 2017 rating list assessments. All had been in scheme 121605 for the 2010 rating list. Whilst the rate/m^2 applied in the appeal property's 2017 assessment had increased, those applied to the properties he had identified were at the same level or lower than the rates/m^2 adopted for their previous list assessments. Mr Clayton considered the increase in the rate applied to the appeal property was unreasonable and unsupported.

17 Having regard to his evidence, Mr Clayton requested the panel to allow his revised valuation of £75,500 RV based on a rate of £37.50/m^2.

18 On behalf of the Valuation Officer, Mr Wykes referred to the rental schedule he had provided. He accepted that much of the comparable evidence related to properties held on a freehold basis or between connected parties. However, he considered that the scheme in which the appeal property was placed did provide one piece of comparable rental evidence, that of Blue Box at Maylands Avenue. This was a

slightly larger property with smaller eaves height, located 0.3 miles from the subject. It was held on a 25-year term from September 2002, subject to a nil increase at rent review in 2012. The rent of £150,000 per annum analysed to £45/m^2. Although this rent had been set three years prior to the AVD, he considered it gave an indication of the level of value the subject held.

19 Given the lack of evidence available for properties of a similar age to the appeal property, Mr Wykes had looked at the assessments of more modern properties to establish values surrounding Mayfield Avenue. These assessments were included in the decision notice. Mr Wykes argued that this evidence contributed to determining a value for the subject, and whilst in terms of age it was not directly comparable, the evidence showed the trend of how values had been adopted for properties of different ages within the Mayfield Industrial Estate area. He considered this evidence supported the £45/m^2 adopted in the appeal property's assessment.

20 Mr Wykes referred to Mr Clayton's evidence relating to Enterprise House and the 23.10% age allowance in its assessment. Mr Wykes confirmed that this allowance had been applied historically and was a compiled list error. To correct this error, a Valuation Officer's report had been raised to remove the allowance and the property would be re-valued based on the adopted base rate of £45/m^2.

21 Having regard to the evidence, Mr Wykes considered the appeal property's current assessment of £91,000 RV based on £45/m^2 was not unreasonable and sought dismissal of the appeal.

Decision and reasons

22 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:

> "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.

23 In respect of an appeal against an entry in the 2017 rating list, the rental levels were 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).

24 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 was 1 April 2017.

25 The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

26 The panel noted that rental details had been included in the Valuation Officer's schedule in respect of the appeal property. However, it had been established that the property was held on a freehold basis and thus no weight was placed to this evidence. The panel therefore had regard to the rental evidence and assessment details provided for comparable properties.

27 The panel addressed the evidence submitted by Mr Clayton. He had placed weight on the allowance of 23.10% given in the assessment of Enterprise House to reflect the age of the building. The panel was not persuaded that this was the most reliable evidence on which to determine this appeal, given Mr Wykes had stated that this allowance was a compiled list error and steps were being taken to remove it. The property would then be revalued at the adopted base rate of £45/m^2.

28 The panel had regard to the evidence of the comparable properties provided by Mr Clayton that had been placed in the same scheme as the appeal property for the 2010 rating list. In considering this evidence, the panel accepted that each rating list was distinct and separate and comparisons between lists was not conclusive. That said, the panel had regard to these properties to see if they provided the best evidence in this appeal. Unfortunately for the Appellant, the panel concluded that they did not, for the following reasons:

i. Motorway Maintenance Depot, HP2 4TZ was of a similar size to the appeal property; however, it was in a stand-alone location, which Mr Wykes stated had been recognised when deciding the scheme to be adopted for the 2017 rating list. Its location was reflected in the lower price/m^2 applied in its assessment.
ii. Environmental Services Depot, HP2 7BA was more than double the size of the appeal property and therefore not considered to be truly comparable. Having regard to quantum, the property had been placed in a scheme which reflected its larger floor area.
iii. 66 Wood Lane, HP2 4RF was over three times larger than the appeal property and again not considered to be truly comparable, nor within the same rental market as the substantially smaller appeal property. For the 2017 rating list it had been valued within a scheme for larger industrials, resulting in a lower rate/m^2.

29 The panel then addressed the Valuation Officer's rental schedule which set out the details of 16 properties. Mr Wykes had outlined the rental details of Blue Box and Enterprise House; however, Mr Clayton had stated that these were subject to connected party lettings, as were a number of others shown therein. The panel decided to place little weight on the rental evidence for these properties, as there was some doubt over whether they represented open market rental values.

30 The appeal property had been constructed in the late 1950s and there was no open market rental evidence within the schedule for properties of this age. The remaining rental evidence related to more modern properties constructed between 1970 and 2000, which would have a higher rental potential. However, from the rental schedule, the panel found the following:

i. A rent set two years after the AVD in respect of a property constructed in the 1970s had analysed to £85/m^2. Its assessment was based on £60/m^2
ii. Rents from 2013 and 2014 for properties built in the 1980s had analysed to £54/m^2 and £75/m^2. Their assessments were based on £60/m^2.
iii. Rents set in 2015 and 2017 for properties constructed in the 1990s had analysed to prices of £76/m^2 and £81/m^2. Their assessments were based on £75/m^2.
iv. Rental evidence in 2016 and 2017 for properties constructed in 2000 had analysed to £85/m^2 and 108/m^2 and their assessments were based on £75/m^2.

31 Whilst the subject property was not directly comparable to the properties subject to the rental evidence due to the age differences, the panel accepted that the rates applied to the different aged properties in this locality (which were supported by the rental evidence) established a pattern of values. The appeal property's assessment based on £45/m^2 was not considered to be excessive when properties constructed in 1970 and the 1980s were valued at £60/m^2, and properties from the 1990s and 2000s had been valued using £75/m^2.

32 Mr Clayton had referred to disabilities within the appeal property such as low eaves height and poor layout due to dividing walls. However, no supporting evidence, such as photographs, had been provided in relation to these issues.

33 On balance, and after consideration of all of the available evidence, the panel found insufficient evidence to demonstrate that the appeal property's current assessment of £91,000 RV based on a rate of £45/m^2 was incorrect. The appeal was therefore dismissed.

Date: 11 November 2022

Appeal Number: CHG100687145

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.