THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list; compiled list appeal; land used for storage and premises; rental evidence; comparable assessments; price applied to the land in dispute; appeal allowed.

Re: Ainscough Crane Hire Ltd, Swallowfield Way, Hayes, UB3 1DQ

APPEAL NO: CHG100712870

BETWEEN:	Ainscough Crane Hire Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

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

CLERK: Mrs A Keohane

HEARING: Remote Hearing No. 1 on 13 October 2022

APPEARANCES: Mr O Hamblin of Altus Group on behalf of the Appellant as advocate and expert witness
Mr T Jackson representing the Valuation Officer as advocate and expert witness

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Summary of decision

1. Appeal allowed. The appeal property's assessment was reduced to £236,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This appeal is a 2017 rating list appeal brought in respect of Ainscough Crane Hire Ltd, Swallowfield Way, Hayes, UB3 1DQ (the 'appeal property'). The property was entered into the 2017 rating list as Land Used for Storage and Premises, at £257,500 RV with effect from 1 April 2017.

3. As a result of information provided at the check stage, namely, that Altus Group had remeasured the appeal property to be in excess of 10,000m^2, the Valuation Officer increased the assessment to £282,500 RV by applying the existing price/m^2 to the increased land area. On behalf of the Appellant, Altus Group submitted a challenge proposal that was received by the Valuation Officer on 23 July 2021. The proposal sought a reduction in the appeal property's assessment to £157,000 RV, based on a reduction in the price of the land from £22.50/m^2 to £10/m^2. It was subsequently

established that the size of the land had been agreed for the previous two rating lists at 9,520m^2. Following an external inspection, it was ascertained that no changes to the site had occurred. The Valuation Officer re-instated the original assessment of £257,500 RV and issued a decision notice on 10 February 2022 stating that the rate of £22.50/m^2 was considered to be reasonable.

4. As the appeal property's assessment had not been altered as requested in the proposal, an appeal was made to the Valuation Tribunal on 27 April 2022, on the grounds that the valuation for the hereditament was not reasonable.

5. The appeal property is an area of land close to Heathrow airport, the M4, the M3 and the M25 and is located within the Swallowfield Industrial Estate. This is serviced by a two-way tarmac road with street lighting, pavements, and landscaping to the front of each site. The land is enclosed with metal security fencing and is, in the majority, surfaced with concrete. There is an area of firm gravel surface to the front of the site used for parking. There are also portacabin offices, a workshop and a chain store.

6. A preliminary issue arose, in that Mr Hamblin sought to introduce new evidence relating to two comparable properties. This information had been sent to the Valuation Officer on the same day that the challenge decision was issued. As Mr Jackson raised no objection to this information being introduced, the panel admitted the evidence.

7. Mr Hamblin appeared on behalf of the Appellant in the dual role of advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Hamblin confirmed that he was instructed under a contingency fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and would comply with this as well as the requirements of his professional body, regardless of whether the evidence supported the client's case.

8. It was therefore appropriate for the panel hearing the evidence to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. This decision document is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before reaching its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked by the panel.

Issue

10. The dispute related to the value of the land in the appeal property's assessment. Mr Hamblin argued for a revised assessment of £236,000 RV based upon the appeal property being 9,520m^2 in size and the application of £20/m^2 for the hard surfaced fenced land and £16/m^2 for the rough surfaced fenced land. The Valuation Officer maintained that the assessment of £257,500 RV, based upon £22.50/m^2 for the hard surfaced fenced land and £18/m^2 for the rough surfaced fenced land, was reasonable.

Evidence and submissions

11. A bundle of evidence comprising the information and correspondence exchanged between the parties during the challenge process was provided for consideration. In addition, a copy of the new evidence submitted by Mr Hamblin was also before the panel.

12. Mr Hamblin explained that the appeal property was subject to a lease between connected parties that commenced in 2007, at a rent of £390,000.

13. Mr Hamblin believed that the Valuation Officer was supporting the level of value adopted in the appeal property's assessment using settlement evidence for comparable properties within the West London Industrial Park (WLIP), Iver Lane, Uxbridge, where the tone had been established at £20/m^2. In looking at WLIP, Mr Hamblin found that an assessment below 10,000m^2 attracted a value of £20/m^2, which did not support the £22.50/m^2 adopted in the appeal property's assessment. WLIP was a purpose-built land used for storage site, where all assessments had the best quality hard surfaced and fenced land with security fencing, CCTV, proper drainage, and all were on level ground. In contrast the appeal property was 'shoehorned' in between various industrial premises and a railway line and had shared access. It was therefore considered to be inferior to the Valuation Officer's comparable properties on Iver Lane.

14. In further support of his valuation, Mr Hamblin referred to his new evidence relating to the assessments of plots 1 and 4 Frogsditch Farm, UB3 1RN. He considered these assessments contradicted the Valuation Officer's opinion that the subject property was in a superior location, given they were situated in the immediate locality and placed within the same valuation scheme, but the rough surfaced fenced land had been valued at £15/m^2.

15. Mr Jackson was aware that the appeal property was subject to a connected party rent at £390,000. Whilst he accepted that this transaction was between two companies that shared a director, he still considered it gave a view of the rental value put forward by the company. This rent had been analysed to £38/m^2. In addition, the site had been sold close to the AVD for almost £7m. Mr Jackson drew the panel's attention to the Knight Frank Investment Yield Guide for 2015, which suggested a yield of 5% for industrial type properties in the SE London/Heathrow area. This equated to an annual rent of around £345,000 for such properties.

16. Mr Jackson referred to the Valuation Officer's decision notice which included rental, assessment, and settlement schedules for properties similar to the appeal property within the Ealing, Hounslow, Brent, and Hillingdon billing authority areas. He considered that this evidence supported a value of £20/m^2 or more for properties of between 4000m^2 and 10,000m^2.

17. Mr Jackson stated that the information within the schedules established that properties situated on WLIP on Iver Lane had been correctly assessed at £20/m^2. Mr Jackson considered this location to be poorer than that of the subject, which was near to Heathrow airport and close to major road links. Having regard to the difference in locations, he considered it was not unreasonable for the appeal property's assessment to be based on the higher rate of £22.50/m^2.

Decision and reasons

18. The appeal hereditament must be valued for the purposes of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions detailed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters affecting the physical state or enjoyment of the property, or the locality, were to be taken as at 1 April 2017 (material day) for this appeal.

19. 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 the correct starting point but, where available, rents on similar properties were also to be considered. The assessments of other comparable properties may also be relevant. All the evidence could then be weighted.

20. As outlined in *Lotus and Delta*, the starting point was consideration of the appeal property's rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account when deciding the weight to attach to it. In the subject, the appeal property was held on a lease between connected parties. As this was not an open market transaction, the panel considered this rent to be unreliable and little weight was attached to it. The panel also considered it unreasonable to place weight to the rental estimate for properties on the appeal property's site, based on the information within the Knight Frank Yield Guide 2015. The panel had regard to the remaining rental evidence and the assessment and settlement evidence for properties comparable to the appeal property.

21. Mr Jackson argued that the appeal property was in a markedly better location than Iver Lane, due to its proximity to Heathrow airport and major motorway routes. In the absence of direct rental evidence for properties on the appeal property's site to allow a comparison to be made, the panel was unable to establish whether Mr Jackson's comments on the site's superiority were well-founded.

22. A schedule was provided showing 22 assessments within the Ealing, Brent, Hillingdon and Hounslow billing authority areas, that had land within the assessments. Eleven of these were considered less relevant to the subject; given they were in excess of 10,000m^2 and their assessments reflected values of between £4.20/m^2 and £15/m^2.

23. Eight properties of between 7840m^2 and 9740m^2 at Iver Lane, Brentfield, Wembley and West Drayton were assessed at £20/m^2. Veolia Central at Wembley was of 9546.75m^2 and its assessment was based on £22/m^2. The appeal property and portacabins at Atlas Road had assessments based on £22.50/m^2 and Portakabin Ltd, the site next to the appeal property had been valued at £30/m^2.

24. A number of assessments had been subject to challenges, and settlements had been made at values of between £4.20/m^2 and £22/m^2. The settlements included a tribunal decision where an appeal relating to Nationwide Platforms at Iver Lane had been dismissed, leaving it valued at £20/m^2.

25. Upon consideration of all of the evidence presented, the panel was persuaded that the rating representative had shown that the assessment of the appeal property was unreasonable and that it should be based on a rate of £20/m^2. The panel placed more weight to the assessments within the Hillingdon billing authority area that were under 10,000m^2, the majority of which were based on £20/m^2. In reaching this decision, the panel had regard to the following:

    i. There was no evidence to demonstrate that the appeal property was in a superior location to WLIP and would command a higher rent. Rents that had been set for properties on WLIP in 2014 and 2016, had analysed to prices of between £18.93/m^2 and £23.13/m^2. The assessments were based on £20/m^2.

ii. Whilst the appeal property was close to Heathrow airport, in good proximity to the main junction of the M4 and M25 and within three junctions of the M3, the panel considered WLIP was also in a good location, near to the A40 and M25.
iii. The aerial views showed that WLIP was a more traditional purpose-built land used for storage site, whereas the appeal property was on a mixed industrial/business site. The photographs provided of the street views of both sites did not, in the panel's view, show a marked difference in the nature or the amenities thereon, such as security fencing and made-up access roads
iv. The comparable properties within West Drayton and plots 1 and 4 Frogsditch Farm, Hayes, were under 10,000/m^2 and had land valued at either £20/m^2 for surfaced fenced land or £15/m^2 for rough surfaced fenced land. The plan showed both locations were near to the appeal property, close to Heathrow Airport and the M4 and M25. The panel found support for £20/m^2 for the appeal property from these assessments.
v. A settlement had been reached in respect of Veolia Central Depot, Wembley at £22/m^2. Mr Hamblin argued that this was akin to a waste transfer site and not land used for storage and premises and thus was in a different mode and category of occupation. The panel could see the merit in this argument and placed little weight to the settlement reached for this property.
vi. The Portakabin site adjoining the entrance to the appeal property was valued at £30/m^2 and had not been challenged. Whilst accepting that it was in the same location, the panel noted that at 2,750m^2 it was substantially smaller than the appeal property, and therefore it did not provide the best evidence.

26. During his evidence, Mr Hamblin had referred to the appeal property's shared access; however, in the absence of any evidence to demonstrate how this disadvantaged the property, the panel did not consider this point further.

27. On balance, the panel found that the revised assessment of £236,000 RV proposed by Mr Hamblin was not shown to be unreasonable and therefore determined the following:

Floor	Description	Area m^2/unit	£ per m^2/ unit	Value £
	Hard surfaced, Fenced Land	6735	20.00	134,700
	Rough Surfaced, Fenced Land	2785	16.00	44,560
			Sub total	**179,260**
Additional Features of the valuation				
	Chain Store	118.70	60.00	7,122
	Portakabin Offices (A/C)	136.00	40.00	5,440
	Portakabin Offices (Non-A/C)	360.00	40.00	14,400
	Workshop	598.00	50.00	29,900
			Total Value	**236,122**
			Rateable Value	**236,000**

Order

28. 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 appeal property's entry in the Rating List within two weeks of the date of this order to show a revised assessment of £236,000 RV with effect from 1 April 2017.

Refund of fees

29. 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 (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 11 November 2022

Appeal number: CHG100712870

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.