THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; warehouse and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: Units 1-3 Birch, Kembrey Park, Swindon, Wiltshire SN2 8UU

APPEAL NUMBER:	CHG100714750	
BETWEEN:	Frank Smythson Limited	Appellant
	and	
	Ms D Bunyan, Valuation Officer	Respondent
PANEL:	Mrs F Cortese (Senior Member) Mr O Miller	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Monday 10 July 2023	
APPEARANCES:	Mr A Flower from Jones Lang LaSalle Ltd (JLL), representing the appellant Mr M Ingram representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel confirmed the rateable value (RV) of the appeal property at £149,000 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Units 1-3 Birch, Kembrey Park, Swindon, Wiltshire SN2 8UU, (the 'appeal property') had been entered in the 2017 rating list as 'warehouse and premises' at a RV of £149,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by JLL on behalf of Frank Smythson Limited and was received by the Valuation Officer on 30 July 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 £126,000 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 12 September 2022, which stated that based upon the evidence and information available, the rating list entry was reasonable and there would be no change to the list entry of £149,000 RV.

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 11 January 2023.

6 Mr Flower 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 comprises three interconnecting modern industrial units constructed in 2006. They are of steel portal frame construction with associated office space at ground and first floor levels. The property is located on the Birch Industrial Estate within Kembrey Park, which is popular with small, medium and large businesses due to its location close to the town centre and the other main industrial areas.

10 The present assessment of £149,000 RV is based upon a total significant area of 3,214.8 m^2 at an adopted price of £45 per m^2, with a 5% end allowance for layout. It is valued on scheme 359531 which applies to industrial units on Ash and Birch, Kembrey Park. The values within this scheme range from £45.00 to £67.50 per m^2.

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

Issue

12 The issue in dispute is the price per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge; challenge further exchange; Valuation Officer's challenge case decision notice; and appellant's challenge submission.

14 On behalf of the appellant, Mr Flower contended that the subject rent was of significant relevance as it represented an open market arm's length transaction ten days before the antecedent valuation date (AVD) of 1 April 2015. He submitted that his analysis of the rent at £37.69 per m^2 demonstrated that the present price of £45 per m^2 was excessive. The relevance of the smaller properties cited by the Valuation Officer was disputed.

15 On behalf of the Valuation Officer, Mr Ingram disputed Mr Flower's reliance on the subject rent. He submitted that due to the lengthy rent-free periods, the subject rent could not be relied upon as an open market transaction. In the absence of a full breakdown, he also questioned Mr Flower's analysis of the rent at £37.69 per m^2. In his opinion, the Valuation Officer's analysis at £53.83 per m^2 demonstrated that the adopted price of £45 per m^2 was not unreasonable. In consideration of the basket of evidence, Mr Ingram contended that the current RV was reasonable.

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.

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 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
3. Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
4. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

20 Mr Flower submitted that the subject rent was the key piece of evidence and the starting point for the valuation of the appeal property. He provided the following details in respect of the two separate co-terminus 10-year leases:

Units 1-2 Kembrey Park

Lease start date – 20 March 2015
Term – 10 years
Rent free period – 12 months

Annual rent - £122,850
Rent review – 5^{th} year
Net effective rent - £98,280

Unit 3 Kembrey Park

Lease start date – 20 March 2015
Term – 10 years
Rent free period – 24 months
Annual rent - £56,215.50
Rent review – 5^{th} year
Net effective rent - £33,729.40

21 Mr Flower's analysis of £37.69 per m^2 was derived from his calculation of the net effective rent of £132,000. However, the panel held that this approach was too simplistic and did not follow the general method of rental analysis, i.e., the application of years purchase, and capitalised rate. As such, his reliance on an analysis at £37.69 per m^2, did not persuade the panel that the appeal property should be assessed at £38 per m^2.

22 Mr Ingram referred to the form of return completed by the occupier in which a rent of £179,065.48 had been declared. The Valuation Officer's analysis of the subject rent was higher than Mr Flower's at £53.83 per m^2, however a full breakdown of that analysis had not been provided for the panel's consideration.

23 Ultimately, the panel found that while the subject rent was close to the AVD, the question of the amount to be adjusted for the excessive rent-free periods meant that significant weight could not be attached to it.

24 As the basis of the appellant's case was that the RV was excessive when compared with the subject rent, the appeal could not succeed on that basis.

25 The panel was satisfied that the Valuation Officer's rental comparable evidence in respect of Units 4, 5 and 11 Birch, demonstrated that the valuation of the appeal property at £45 per m^2 was not unreasonable. Those units were smaller than the appeal property at 852.61m^2, 755.6m^2 and 655.84 m^2 respectively, however they were valued at a higher price of £50 per m^2. It was also significant to the panel that the values adopted for properties within the subject scheme ranged from £45.00 per m^2 to £67.50 per m^2. At £45 per m^2, the appeal property was assessed at the lowest possible price per m^2.

26 The panel concluded that the appellant's representative had failed to demonstrate that the valuation of the hereditament was unreasonable, and therefore the appeal was dismissed.

Date: 21 July 2023

Appeal number: CHG100714750

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.