THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; warehouse and premises; price per m^2 to be adopted for the assessment; comparable evidence; rental evidence; appeal allowed.

RE: Gilbarco Ltd, Crompton Close, Basildon SS14 3BA

APPEAL NUMBER: CHG100716164

BETWEEN	Gilbarco Veeder Root Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mrs S Patel (Presiding Senior Member)
Mr K Everett (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING 2: 23 August 2023

APPEARANCES: Mr M Clayton, of Altus Group on behalf of the Appellant
Mr L Stevens, on behalf of the Valuation Officer

Summary of decision

1. Appeal allowed. The appeal property's assessment was reduced to £267,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal in respect of Gilbarco Ltd, Crompton Close, Basildon SS14 3BA ("the appeal property"), entered in the 2017 rating list as 'Warehouse and Premises' at £370,000 RV with effect from 1 April 2017.

3. The challenge proposal, submitted by Altus Group on behalf of Gilbarco Veeder Root Ltd, was received by the Valuation Officer on 5 August 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was unreasonable. A revised assessment of £230,000 RV was originally proposed with effect from 1 April 2017. At the hearing Mr Clayton stated that this had been amended to £267,000 RV (based on a price of £25/m^2) since the challenge was made.

4. The Valuation Officer issued a challenge case decision notice on 17 January 2023 which stated that, based upon the evidence and information available, the existing rating list entry was not considered to be unreasonable and the proposal was not well founded.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was received by this Tribunal against the Valuation Officer's decision on 16 March 2023.

6. In order to assist the Tribunal, the parties had agreed all basic facts and the analysis of the competing comparable evidence.

7. The appeal property is a substantial industrial unit of 11618.12m^2 situated in an established industrial estate located on Crompton Close in Basildon, constructed between 1955 and 1964. The property is situated close to the A127 Southend arterial road, which connects with the M25. The property comprises ground to second floor accommodation.

8. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) the appellant's representative, Mr Clayton, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the Valuation Tribunal for England (VTE) in giving his evidence, whether or not the evidence supported his client's case. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

9. The panel has accepted this expert witness evidence 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

10. 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.

11. This hearing was held remotely via Microsoft Teams.

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

Issue

13. The disputed issue related to the main space price to be adopted. The Valuation Officer argued for a price of £35/m^2 resulting in an RV of £370,000 whilst the appellant's representative contended that £25/m^2 resulting in an RV of £267,000 was fair and reasonable.

Evidence and submissions

14. The bundle of evidence comprised the documents exchanged between the parties as part of the challenge process which included amongst other things: the appellant's challenge submission and full supporting information; the exchanges of evidence between the parties;

site and location plans; the Valuation Officer's challenge case decision notice, assessment evidence; photographs and details of the appeal property and those cited as comparable by both parties; and a copy of the proposed valuation submitted by Altus Group.

Decision and reasons

15. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to be let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988).

16. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

17. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined 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.

18. The Lands Tribunal judgment in *Lotus and Delta v Culverwell* (VO) [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.

19. The starting point for consideration was the actual rent passing on the appeal property. As this property was held freehold there was no direct rental evidence upon which to base a starting point. Mr Clayton submitted that the appeal property was one of the oldest factories in Basildon with little to no market due to the low eaves of 4.27m, it had a tight frame structure and excessive office space which made it unsuitable for warehouse use as would be required by a modern occupier. The appeal property had been demolished on 9 August 2021 and the plot has been earmarked for retail units in line with the surrounding area.

20. In terms of comparable property evidence, the appellant's representative referred to Unit 44 Yardley Business Park, Miles Gray Road, Basildon, Essex SS14 3BZ as the best comparator, this property was also over 10,000m^2 in size, it had a passing rent close to the AVD of 1 April 2015, a new letting had been agreed at a rent of £320,220 per annum with effect from the 31 October 2014 on a 15 year term with a review in year six. This letting was agreed with a stepped rent incentive at a rent of £200,138 per annum for 31 October 2014 to 30 October 2016, £240,165 per annum for 31 October 2016 to 30 October 2017, then £320,220 per annum for 31 October 2017 to 30 October 2020. This rent adjusted to £200,138 per annum and analysed to £21.52/m^2, the property had a tone of £30/m^2.

21. Mr Clayton also submitted that in the 2010 rating list there had been a difference in tone of £5 between the two properties the appeal property having been agreed £30/m^2 and Unit 44 being agreed at £35/m^2. The panel noted this, however, it was aware that the 2010 rating list was a separate entity.

22. The panel noted that Unit 44 Yardley Business Park was constructed between 1965-1970 with eaves of 6.10m compared to the appeal property which was constructed between 1955-1964 and has eaves of 4.27m. The panel believed Unit 44 Yardley Business Park would be more desirable to a hypothetical tenant coming fresh to the scene it being more modern and with higher eaves. The panel found this to be good evidence and it attached significant weight to it.

23. Mr Stevens referred to rental evidence for 1 Hays Network Distribution, Arisdale Avenue, South Ockendon, RM15 5SJ. This property had a total significant area of 15,662.21m^2 and a tone of £30/m^2. The panel found that this property was in a superior location as it was close to the M25. Additionally, this property had much higher eaves height and there was good loading around the whole building. This was a newer, better-quality unit in a superior location and is therefore not comparable.

24. Mr Stevens argued that the subject property was in a different scheme to Unit 44 Yardley Business Park as it would more likely be described as a factory than a warehouse, although the appeal property did have some storage. The panel noted that no evidence had been provided regarding the different schemes and that Unit 44 Yardley Business Park was a similar large industrial property of over 10,000m^2 which was located next to the appeal property. Mr Stevens also argued that Unit 44 Yardley Business Park was larger than the appeal property, however the panel found that the disadvantages of the appeal property outweighed the difference in size.

25. Taking into account all of the evidence of comparable properties provided, the panel decided that an unadjusted base price of £25/m^2 was fair and reasonable for the appeal property. A revised valuation of £267,000 was determined.

Order

26. 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 amend the entry in the rating list to show a revised assessment of £267,000 RV for the appeal property, with effect from 1 April 2017.

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

28. 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 (Alterations 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: 13 September 2023

Appeal Number: CHG100716164

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.