THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; workshop and premises; mode and category of occupation; comparable properties; appeal allowed as the evidence showed that the appeal property was incorrectly valued as a showroom and premises and that the existing valuation was unreasonable.

Re: Unit 7 Daddon Moor Business Park, Clovelly Road Industrial Estate, Bideford EX39 3HN

APPEAL NO: CHG10071965

BETWEEN:	James Doble	Appellant
	and	
	Valuation Officer	Respondent

BEFORE: Mr M Heslop-Mullens (Senior Member)

CLERK: Mrs R James

REMOTE HEARING 1: Wednesday 29 March 2023

APPEARANCES: Mr J Doble (appellant)
Mr A Durrant (respondent's representative)

Summary of decision

1. The appeal was allowed: the appeal property's entry was amended to workshop and premises at £6,500 Rateable Value (RV), with effect from 18 July 2021.

Introduction

2. This appeal has been brought in respect of the following: Unit 7 Daddon Business Park, Clovelly Road Industrial Estate, Bideford EX39 3HN, which was entered in the 2017 Rating List as showroom and premises at £12,750 RV, effective from 29 May 2019.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 17 August 2021. The appeal to this Tribunal was made on 28 April 2022, following the VO's Decision Notice of 31 March 2022, in respect of the appeal property (hereditament). This is a material change of circumstances appeal so the material day is 7 August 2021; the date the VO received confirmation from the interested person over the accuracy of the information held by the VO.

4. The appeal hereditament was mid-terrace industrial unit. It was of steel portal frame construction under a profiled insulated roof. There was brickwork to the exterior of the premises with all internal elevations being blockwork. The ground floor measured 70m^2 and had a head height of 3.05m. There was a full coverage mezzanine floor with double glazed windows to the front and rear.

5. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two members of the Tribunal, including at least one Senior Member. However, paragraph 11 of those Arrangements also provide that a Senior Member may sit alone to avoid postponing the hearing where a second panel member is unable to sit for any reason.

6. In respect of this hearing, a second panel member has been unable to sit. In accordance with paragraph 11 of the Tribunal Business Arrangements, I am satisfied that I am authorised to hear and determine this appeal alone.

7. To assist the appellant (who was not professionally represented) and with the agreement of the parties, I varied the Tribunal's model procedure and invited Mr Durrant, the respondent's representative, to present his evidence first.

8. A preliminary issue was raised. Mr Durrant highlighted that when lodging his appeal, Mr Doble had referred to additional comparable properties that had not been referred to during the Challenge process. Mr Durrant had not been involved with the appeal during the Challenge process. When he became involved with the appeal, he had carried out a review and noted the new evidence. He had emailed the Tribunal office on 28 February 2023, regarding the matter.

9. In response, Mr Doble pointed out that he had provided Mr Durrant's colleague with the relevant information a year earlier on 7 March 2022. That information related to the rent passing on the appeal property and referred to several comparable properties.

10. The VO's decision notice stipulated that the appellant's rebuttal statement had been received on 8 March 2022. As such, I was satisfied that the VO had been in receipt of the appellant's rebuttal statement prior to serving the decision notice on 31 March 2022. Furthermore, when an appeal was initially lodged with the Tribunal office, the VO has a period of four weeks to review the documentation accompanying the appeal to ensure that no additional evidence had been included or that no evidence had been omitted. In this case, the VO had not contacted the Tribunal office until 28 February 2023.

11. Having considered the matter, together with the fact that the appellant was an unrepresented ratepayer who was unfamiliar with the appeals process, I decided to allow the evidence to be admitted. The VO had been in receipt of that evidence for over one year and had ample opportunity to consider it.

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

Issue

13. The issue to be determined was the correct mode or category of occupation for the appeal property. The VO was defending the current entry, which valued the appeal property as a showroom and premises at an unadjusted rate (UAR) of £80/m^2. In contrast, Mr Doble contended that the appeal property should be valued as a workshop and premises with the

ground floor at £78/m^2 and the mezzanine at £34.86/m^2, which resulted in his proposed assessment of £7,919 RV.

Evidence and submissions

14. I had been provided with a copy of all the documentation exchanged during the Challenge process.

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 let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 7 August 2021.

16. The appeal property had originally been entered in the 2017 Rating List as a workshop and premises. However, on 5 March 2019, the VOA received a billing authority report stating that the premises were occupied as a showroom and premises with the addition of a mezzanine floor. Following which, the VO amended the appeal property's description to showroom and premises and increased the assessment to £12,750 RV, which included the mezzanine floor.

17. The issue in dispute related to the correct description for the appeal hereditament, together with the appropriate valuation. Mr Durrant defended the current description as 'showroom and premises', whereas Mr Doble contended that the appeal hereditament should be valued in line with all the neighbouring units as a 'workshop and premises'.

18. I had to have regard to the appeal property 'vacant and to let' and consider what had been the correct mode or category of occupation as at the material date. When determining the issue of mode or category of occupation, I had to consider the appeal property physically as it stood or *rebus sic stantibus*.

19. The issue of valuing a property *rebus sic stantibus* had been considered by the Court of Appeal in the judgment of *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* as referred to in the VO's evidence bundle. The *Scottish & Newcastle* case involved two public houses located within a shopping centre in Milton Keynes. The Court of Appeal upheld the Lands Tribunal's decision which found that the subject premises had to be valued *rebus sic stantibus* and having regard to the actual mode or category of occupation. It was held that the works required to strip the subject premises back to a shell suitable for them to be let as retail units were not minor works and would not be in the contemplation of the hypothetical tenant when formulating a rental bid. It was held that the two public houses were not in the same mode or category of occupation as the shops and restaurants relied upon by the VO; the premises were valued as public houses and premises.

20. Mr Durrant explained that neither himself nor a colleague from the VOA had personally inspected the appeal property prior to amending its description to that of showroom and premises. The amendment had followed the billing authority's report. He explained that the appeal property differed from the neighbouring units as it was heated and had the benefit of a mezzanine floor that was completed to a high specification.

21. In response, Mr Doble explained that the appeal property was not heated. The previous occupier had a log burning business and had provided their own heat; no physical alterations had been made to heat the premises. Mr Doble then referred me to the internal photograph of the appeal property. He pointed out that the 'good quality wood flooring' referred to by Mr Durrant was actually chipboard that had a vinyl cover.

22. Mr Doble also disputed that the appeal property was the only unit with a mezzanine floor, adding that both Units 8 and 9 benefitted from mezzanine floors. With the agreement of Mr Durrant, Mr Doble provided an internal photograph of Unit 9. The photograph illustrated an identical mezzanine floor to that provided at the appeal property. Having regard to that photograph, Mr Durrant accepted that Unit 9 also benefitted from a full mezzanine floor.

23. I was aware that there were two limbs to the *rebus sic stantibus* rule, which must be treated separately. The first rule being that the physical state of the property had to be regarded as at the material day. The only alterations permitted were minor alterations of a non-structural character. On the evidence presented, I was not persuaded that vacant and to let the appeal property had been correctly valued as a showroom and premises. I note that the VOA had not carried out its own inspection but had relied on details from the billing authority. The appeal property was not heated, the mezzanine floor was not completed to the high specification as claimed by Mr Durrant but to a similar standard to the neighbouring units. Furthermore, the appeal property had the same physical appearance as the neighbouring units with roller shutter doors. The appeal property did not give the appearance of a showroom and premises.

24. The second limb of the *rebus sic stantibus* rule was that it had to be assumed that the hereditament could only be occupied for a purpose within the same mode or category of purpose as that for which it was being occupied on the material day. Any prospective change of use outside that mode or category should be ignored. As such, the question to be addressed was in what mode or category of use did the appeal property's actual use place it on the material day? As at the material day, I found that the evidence overwhelmingly suggested that the characteristics of the appeal property were more in keeping with a workshop and premises.

25. Accordingly, on this point, I found in favour of Mr Doble and determined that the correct mode and category of occupation for the appeal property was that of a workshop and premises.

26. I then went on to determine the correct UAR to be applied to the appeal property's assessment. Mr Durrant was defending the current UAR of £80/m^2, which had been uplifted to reflect quality. Mr Durrant stated that the neighbouring units, whilst having been valued as workshop and premises, had also been valued at the same UAR of £80/m^2, with a 2.5% allowance for lack of heating, which equated to an adjusted rate of £78/m^2.

27. In arriving at my decision, I had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976], as referred to by the VO. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value. Bearing those six propositions in mind, I acknowledged that the correct starting point when assessing a property's rateable value was the actual rent passing on the property in question.

28. In this appeal, I had been provided with conflicting evidence in relation to the correct rent passing on the appeal property. Mr Durrant explained that the VOA had been provided with

a Form of Return, which had declared a rent of £9,000, with effect from 1 June 2018 on a 5 year lease. He had analysed this rent to £120.36/m^2. However, Mr Doble had provided a lease from 18 July 2017 with a stepped rent passing of £7,000 per annum rising to £7,500 on 17 October 2018, exclusive of VAT. Mr Durrant had analysed this alternative rent to £96.49/m^2. He added that both rents suggested that an UAR of £80/m^2 for the appeal property was not unreasonable.

29. After having regard to the analysed rents on the appeal property, I found in favour of Mr Durrant and accepted that an UAR of £80/m^2 for the appeal property was not excessive. In reaching that conclusion I was also persuaded by this being the rate that had been applied to the neighbouring units, namely Units 8 and 9, and to a workshop and premises at the nearby Unit 1 Ashlaur Court.

30. However, whilst accepting that the UAR of £80/m^2 was reasonable, I determined that the relativities applied to the assessment were incorrect. Firstly, I determined that there should be no uplift for quality and a 2.5% allowance granted in line with the neighbouring units to reflect the lack of heating. Mr Durrant had advised that if the appeal property was valued as a workshop and premises, the ground floor should be valued at a relativity of 0.7 to reflect an area under supported floor (AUS) and the mezzanine floor should be valued at a relativity 0.5. I applied the relativities as suggested by Mr Durrant.

31. Accordingly, after having regard to the above conclusions, I allowed the appeal as I considered that the current assessment was unreasonable. I determined that the appeal property should be valued as a workshop and premises at an UAR of £80/m^2, with the appropriate relativities, which resulted in an assessment of £6,500 RV, with effect from 18 July 2021. A breakdown of the assessment has been shown below.

Floor	**Description**	**Area**	**£/m2**	**Value (£)**
Ground	AUS	70.17	54.60	3,831
Mezzanine	store	70.17	39.00	2,737
Say				6,568
Say £6,500 Rateable Value, with effect from 18 July 2021				

Order

32. As a consequence of the above decision, the Valuation Officer is ordered to amend the 2017 Rating List entry to workshop and premises at £6,500 RV, with effect from 18 July 2021, within two weeks of the date of this Order.

Refund of fees

33. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal’s decision. The refund will take around six weeks to process.

Date: 18 April 2023
Appeal Number: CHG10071965

Rights 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.