VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; warehouse and premises; correct main space rate to be applied; whether the land element should attract a value; end allowance sought for access; appeal allowed in part.

APPEAL NUMBER:	CHG100730136
RE:	Unit 1 And 43, Phoenix Way, Hounslow, TW5 9NB (the "subject property")

BETWEEN:	DB Schenker	Appellant
	and	
	Mrs D Bunyan (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	Friday 2 August 2024
BEFORE:	Dr T Webb, Presiding Senior Member Mr SMA Ullah, Senior Member
CLERK:	Mr R Patel IRRV (Hons)
APPEARANCES:	Mr M Webb of Colliers International (on behalf of the appellant as both advocate and expert witness) Mr J Balogun (on behalf of the respondent as both advocate and expert witness)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The panel determined that the appeal property's existing assessment of £390,000 Rateable Value (RV) was unreasonable and reduced it to £300,000 RV, with effect from 1 April 2017.

Introduction

3. This appeal had been brought in respect of the following: Unit 1 And 43, Phoenix Way, Hounslow, TW5 9NB, which was entered in the 2017 Rating List as warehouse and premises at £410,000 RV, effective from 1 April 2017.

4. The appellant's challenge to the Valuation Officer (VO) was made on 16 September 2021. The appeal to this Tribunal was made on 27 March 2023, following the VO's decision notice of 28 November 2022, in respect of the appeal property (hereditament). The VO's decision notice reduced the assessment to £390,000 RV, with effect from 1 April 2017. This is a compiled list appeal so the material day is 1 April 2017.

5. The appeal property is a warehouse and premises, which includes a 1950s factory building with typically low working eaves height and a more modern (1970s) additional industrial/warehouse style building. It was located on Phoenix Way within Phoenix Distribution Park in Hounslow. Phoenix Distribution Park was located close to the M4 and Heathrow airport. The appeal property had a total area of 6,863.03 m^2, which included warehouse accommodation, an office area and 1,000 m^2 of hard surfaced land.

6. Mr Webb was appearing on behalf of the appellant as advocate and expert witness. Therefore, it was important to ascertain 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 Webb confirmed that he was not representing the appellant at the hearing on a contingency fee basis. He also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

8. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

9. There remained three main issues in dispute, namely:

   i) Mr Webb sought a reduction to the current unadjusted main space rate (UAR) from £70/m^2 to £50/m^2. Mr Balogun supported the existing rate of £70/m^2.
   ii) Mr Webb contended that the hard surfaced land should attract a nil value as its sole use was for essential access, circulation and loading. Mr Balogun considered that the current value of the 1,000 m^2 of hard surfaced land at £10/m^2 was not excessive.
   iii) Mr Webb sought an additional 15% end allowance to be applied to reflect perceived access issues. Mr Balogun did not believe an allowance for access was warranted.

Preliminary issues

10. There were three preliminary issues raised by the clerk:

i) In the appeal submission, Mr Webb was seeking a lower assessment to that what which had originally been sought in the challenge. Whilst he had originally sought a reduction to £250,000 RV, within the appeal he requested a lower assessment of £232,000 RV, with effect from 1 April 2017.
ii) Mr Balogun was also seeking the panel to determine his revised assessment of £380,000 RV, with effect from 1 April 2017.
iii) Mr Webb had provided late evidence that he wished to be admitted in relation to Schenker House and Unit 3 Ridgeway Distribution Centre.

11. Neither party objected to the other party's revised valuation and Mr Balogun had no objections to Mr Webb's additional evidence. As such, the panel proceeded to hear the appeal having regard to both parties' revised assessments and Mr Webb's additional evidence.

12. During the course of the hearing, Mr Balogun referred to settlement evidence that had not previously been provided in the challenge process and was being referred to for the first time. Mr Webb objected to this new evidence being admitted. As such the panel had regard to Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended), which stated that the Valuation Tribunal for England may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if –

(a) that evidence—
  (i) is provided by a party to the appeal;
  (ii) relates to the ground on which the proposal was made; and
  (iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or
(b) all the parties to the appeal agree in writing to the party providing the new evidence.

13. The panel determined that this evidence had been available at the challenge stage. The panel further concluded that to include it at this late stage would cause prejudice to Mr Webb. As such the panel excluded the VO's additional settlement evidence.

Relevant Law

14. 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, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

Discussion

15. In arriving at its decision, the panel turned to each issue in dispute. Firstly, addressing whether the current UAR applied to the appeal property's assessment was unreasonable. Mr Webb sought a reduced UAR of £50/m^2 after having regard to the assessments placed on his comparable properties. Whereas Mr Balogun supported the existing UAR of £70/m^2.

16. In considering whether the current UAR was reasonable, the panel turned to the rent passing on the appeal property as at the AVD. The panel acknowledged that the appeal property had been a merger of two units. Originally the property just comprised Unit 1, which had been let

from December 2010 at £472,875 per annum (pa). There was a nil increase at the December 2015 rent review. The VO had analysed this rent to £62.20/m^2.

17. Unit 43 was merged with the appeal property under a new letting in December 2016 at £111,215 pa. When the VO had adjusted the rent-free period, the rent analysed to in excess of £70/m^2, which he found supported the current UAR. He also added that the rents passing on the appeal property totalled an amount far in excess of the current and his proposed assessment for the appeal property.

18. However, having regard to both parties' submissions, the panel placed little weight on the passing rent on the appeal property. As at the AVD there were two separate rents in place. The panel accepted Mr Webb's point that the appellant was not a new party in 2016 and was already tied into a lease on Unit 1. The panel considered that the appeal property's rent in this case was unhelpful. As such, it turned to the rental and tonal comparable evidence presented by both parties.

19. When the panel had questioned Mr Balogun on the evidence to justify the current rate of £70/m^2, he explained that it had not been submitted. However, the panel noted that the VO's decision notice referred to two additional rents in support of the current UAR:

    i) 7A 7B 7C and 7D International Avenue, which analysed to £96.59/m^2 effective from 1 October 2017. This property had been valued at a UAR of £80/m^2; and
    ii) 3-5 Haslemere, which analysed to £76.32/m^2, with effect from 30 June 2016. This property had been valued at a UAR of £75/m^2.

20. The VO's decision notice also made reference to 19 19A & 20 Airlinks Industrial Estate, Spitfire Way, which had been valued at a UAR of £75/m^2.

21. The panel attached less weight on these three comparable properties preferring those provided by Mr Webb. The panel found that the comparable properties presented by Mr Balogun were not as comparable to the appeal property, which was a combination of a 1950's factory and a 1970's warehouse, located on an old industrial estate that was originally used by one occupier as an aerodrome. This was in contrast to Mr Balogun's comparable properties that were purpose-built warehouses located closer to Heathrow airport, with 3-5 Haslemere having direct access to the airport.

22. The panel preferred the comparable assessments presented by Mr Webb which related to units of a similar size and age to the appeal property. After having regard to those comparable assessments which had been valued at UARs of £50/m^2 and £55/m^2, the panel was of the opinion that the current UAR of £70/m^2 applied to the appeal property was excessive. However, it was not convinced that the rate should be reduced as low as £50/m^2 as contended for by Mr Webb, which had been applied to Unit A1 & B Bridge Road Industrial Estate and Units E&F Twickenham Trading Estate, which were located 3 and 4.7 miles, respectively from the appeal property.

23. The panel attached greatest weight to the assessments placed on Units 8 & 9 and Unit 4 International Trading Estate, which were located two miles from the appeal property. These units were similar in size to the appeal property, and like the appeal property, were not located in the immediate vicinity of the airport and were accessed through a residential area. Both these units had been valued at a UAR of £55/m^2. After having regard to these two comparable units, the panel determined that a UAR of £55/m^2 more fairly reflected the appeal property's

attributes, its location slightly further away from the airport, its size and its access through a residential area. In the absence of any evidence to the contrary, the panel applied the reduced UAR of £55/m^2 to both Units 1 and 43.

24. The panel then moved on to address the second issue of whether or not the 1,000 m^2 of hard surfaced land should attract a value. Mr Webb explained that the buildings at the appeal property covered 83% of the site. This was excessive when compared to the normal site coverage of 50%. He contended that the whole of that land was required for essential access, circulation and loading, and in line with the comparable properties he had presented, should attract a nil value. Mr Webb explained that land attracted a value once it provided a useable amount for storage over and above that commonly found with modern warehouses. In contrast, Mr Balogun contended that the 1,000 m^2 of land should attract a value. He was of the belief that the number of car parking spaces included in the valuation was incorrect and as such the value of the land at £10/m^2 was fair and reasonable.

25. The panel noted that within the challenge and the appeal submission, the number of car parking spaces had not been raised. Within their respective revised assessments both parties had included 21 car parking spaces, which had been valued at £255 per space, equating to a total value for the car parking spaces at £5,355. The panel was not convinced by Mr Balogun's contention that because he now believed the number of car parking spaces to be incorrect that this justified the hard surfaced land attracting a value of £10/m^2. The panel found no reason to move away from the 21 car parking spaces that were currently in the valuation.

26. The panel had regard to the evidence provided by Mr Webb in relation to Schenker House and Unit 3C Ridgeway Distribution Centre. The panel had been provided with aerial view photographs of the two properties, together with that of the appeal property. The panel found that the land at both of those properties was almost identical to that at the appeal property, and due to their site coverage, the land was required for essential access, circulation and loading. The hard surfaced land at both properties had attracted a nil value. The panel found the buildings at the appeal property covered the vast majority of the site that was over and above the norm. Due to the nature of the appeal property being a warehouse and premises, the panel was of the opinion that the land area in dispute was essential for loading, access and circulation, as without this area operating as a warehouse would prove impossible. Having regard to its findings, the panel determined that the 1,000 m^2 of hard surfaced land should attract a nil value in line with the comparable properties presented by Mr Webb.

27. Finally, the panel addressed the issue of whether or not an end allowance was warranted to reflect access issues at the appeal property. Mr Webb sought a 15% end allowance for access. He described how there was a one-way system at the distribution park and lorries had to travel around the whole of the appeal property to unload. He detailed that whilst the appeal property was close to the M4 there was no direct access from the distribution park. Access to the distribution park was through a residential area, which was not ideal for large lorries. Mr Balogun disputed that an allowance for access was warranted. He pointed out that the appeal property was a large independent unit that had its own separate access from Phoenix Way.

28. Having heard from both parties, the panel was not convinced that the appeal property warranted an end allowance of 15% to reflect access issues. Whilst the panel appreciated that there was a one-way system within the distribution park, it also noted that the appeal property had its own access to Unit 1; this point was also confirmed by Mr Webb. Whilst the panel accepted that access to the distribution park was through a residential area, the panel noted that this also applied to Units 8 & 9 and Unit 4 International Trading Estate, which had been

valued at a UAR of £55/m^2. The panel determined that the reduced UAR already sufficiently reflected any perceived access issues to the appeal property through the residential area. Accordingly, on this point, the panel found in favour of Mr Balogun and determined that no allowance for access issues was warranted.

29. The panel noted that Mr Balogun's revised assessment of £380,000 RV, included a 3% allowance to reflect that the premises was a hybrid property, originally consisting of Unit 1 with Unit 43 having been added at a later date. The 3% allowance had been incorporated as an allowance to each line entry rather than an end allowance. However, the panel noted that both parties' revised valuations and the current assessment already included a 5% end allowance to reflect the split/divided site. As such, the panel did not find it necessary to apply the additional 3% allowance to reflect its hybrid nature.

Disposal

30. In view of the above findings and conclusions, the panel was satisfied that the current assessment was unreasonable. The panel determined that an assessment of £300,000 RV more accurately reflected the appeal property and its associated advantages and disadvantages. A breakdown of the assessment has been shown below.

Floor	Description	Area m^2	£/m^2	Value (£)
Ground	Office	140.30	72.60	10,186
Ground	Warehouse	4,594.50	53.63	246,403
Ground	Warehouse	1,049.00	53.63	56,258
Additional features of property included in the valuation				
	Surfaced open spaces	21	255	5,355
Sub Total				318,202
Amendments made to sub total				
Less 5% divided or split unit				15,910
Total				302,292
Say £300,000 Rateable Value, with effect from 1 April 2017				

Order

31. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £300,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

32. 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).

Date issued to parties: 30 August 2024

Right of further 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.
