THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2019; road haulage depot and premises; comparable assessments; appeal dismissed.

RE: E H Nicholls Junior, Sittingbourne Logistics Park, Sittingbourne ME10 2FF

APPEAL NUMBER: CHG100737891

BETWEEN:	E H Nicholls Junior Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr D Greensmith (Presiding Senior Member)
Miss L Westwell (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 6 July 2023

APPEARANCES: Mr K Batty (Appellant's representative)
Mr J Short (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £327,500 with effect from 1 April 2019.

Introduction

2. This appeal has been brought in respect of the following: E H Nicholls Junior, Sittingbourne Logistics Park, Sittingbourne ME10 2FF (the 'appeal property'), which was entered in the 2017 rating list as 'road haulage depot and premises', at rateable value (RV) £327,500, effective from 1 April 2019.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Batty made an appeal to the Valuation Tribunal for England (VTE) on behalf of E H Nicholls Junior Ltd. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, the valuation officer had made only a minor reduction to the rating list in his challenge decision notice that being

from £332,500 to £327,500 Rateable Value. Mr Batty sought a reduction to £280,000 Rateable Value.

4. The appeal hereditament is an industrial unit constructed in 2013 with an area of 3,205.92m^2. It comprises a ground floor warehouse and workshop space, with a mezzanine floor, ground and first floor office space, and a canopy. Outside, there are two pieces of hard surfaced, fenced land extending to 12,475m^2 and 8,087m^2 respectively, and a piece of rough surfaced, fenced land extending to 7,000m^2. The property is located close to the A249, approximately two and a half miles north of Sittingbourne, and the M2 motorway is approximately five miles to the southwest.

5. The appellant's representative, 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 VTE in giving his evidence, whether or not the evidence supported his client's case.

6. 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 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).

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

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

Preliminary issue

9. Mr Batty had contacted the clerk on the morning of the hearing with a revised witness statement, he had also sent a copy to Mr Short, he stated that he had rectified some errors which he had noticed in the statement. As Mr Short did not object and no new evidence had been submitted, the panel allowed the new statement to be admitted.

Issues

10. The issues were as follows:

    i. Whether the 10% addition for air conditioning to the first floor office should be halved back to 5%.
    ii. Whether an end allowance of 2.5% should be applied to reflect that the property is not connected to mains drainage and has to rely on its own treatment plant, as well as generating its own electricity.
    iii. Whether the rough surfaced, fenced land of 7,000m^2 should be valued at £3/m^2, rather than its current £4/m^2 which is the same as the hard surfaced, fenced land.
    iv. Whether a 2.5% allowance should be applied for the mezzanine due to the fact that it is unheated.
    v. Whether a 2.5% allowance should be applied for the hard surfaced, fenced area, since not only do pylons cross the site, but there is a major pipeline running through it and it is a condition that the line of the pipeline must be kept free of permanent obstructions.

vi. Whether the main space price of £60/m^2 should be reduced to £50/m^2.

Evidence and submissions

11. The evidence before the panel comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

Decision and reasons

12. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

13. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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 –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> 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;
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> 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"

14. 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, the closer that rent was set to the statutory definition, the more weight it should attract. 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.

15. Mr Batty submitted that the appeal property was held freehold so no rental evidence was available.

16. The panel noted that two of the issues had been resolved. With respect to issue (iv) it was agreed that as the mezzanine is part of the same unheated space as the rest of the workshop, which already has a 2.5% allowance to reflect that it is unheated, the same allowance should be applied to the mezzanine. It was also agreed that the 107.60m^2 area of

the workshop that is under the mezzanine should be assessed as "Area Under Supported Floor" and that this should also have the same 2.5% allowance applied for being unheated.

17. In respect of issue (v) it was agreed that the 600m^2 of the hard surfaced, fenced area which is affected by a major pipeline running through the site, and has to be kept free of permanent obstructions be reduced from £4/m^2 to £3/m^2.

18. Regarding issue (i), Whether the 10% addition for air conditioning to the first-floor office should be halved back to 5%. Mr Batty had argued that in a previous Valuation Tribunal decision which he referred to as ‘Backhouse Jones Ltd’ (235018695474/126N) it was held that where there is no hot water or other means of heating other than via the air conditioning system it would be double counting to add 10%, and that it should be halved back to 5%. However, Mr Short referred the panel to the previous Valuation Tribunal decision (225527569968/537N10), which was in relation to an earlier appeal for the appeal property for the 2010 rating list. In this decision it was recorded in paragraph 12 that Mr Batty had pointed out that there was air conditioning in the offices and proposed that 10% should be added to reflect this. Paragraph 14 of the decision states that the valuation officer agreed there was no adequate heating on the first floor and an allowance of 2.5% was proposed for this. In paragraph 16 the panel agreed with the valuation officer's methodology and confirmed a price per m^2 for the first floor that reflected a 10% addition for air conditioning with a 2.5% allowance for the lack of heating. Whilst the panel was not bound by either of the previous Valuation Tribunal decisions, it found no good reason to deviate from the previous decision made in respect of the appeal property, given the evidence before it.

19. Regarding issue (ii), Mr Batty contended that an end allowance of 2.5% should be applied to reflect that the property is not connected to mains drainage, and it has to rely on its own treatment plant, as well as generating its own electricity. The panel found that Mr Batty had provided no evidence to support this argument. It also noted that when inspecting the property, Mr Short had been advised that the appeal property is connected to the national grid.

20. Having regard to issue (iii), whether the rough surfaced, fenced land of 7,000m^2 should be valued at £3/m^2, rather than its current £4/m^2 which is the same as the hard surfaced, fenced land; once again the panel found that no evidence had been provided by Mr Batty to support his contention that rough land would normally be valued at a lower rate. Mr Short had referred to four properties from the Swale billing authority area with a price for rough surfaced, fenced land, which as yet were unchallenged in the 2017 rating list, of £4/m^2. Given the lack of any evidence from Mr Batty on this issue, the panel was not minded to reduce the rate to £3/m^2.

21. Finally, the panel turned to the matter of the correct main space rate to be applied to the appeal property’s assessment. Mr Batty had argued that the current rate of £60/m^2 was excessive and should be reduced to £50/m^2. This, he stated was in line with other properties in the ME10 postcode area which he argued are valued at considerably less ie, varying between £42/m^2 and £45/m^2. Mr Batty had referred to several postcodes but had not provided evidence of any specific properties. Mr Short argued that the current rate of £60/m^2 was not unreasonable and referred to rental evidence for three comparable properties to support his argument. The three rents had been set between 10 November 2014 and 1 November 2015 and analysed between £50.36/m^2 and £79.84/m^2. The panel found that the evidence provided by Mr Short did not suggest that a rate of £60/m^2 for the appeal property was excessive.

22. In appeals of this nature the burden of proof is with the appellant's representative to show that the appeal property's rateable value is unreasonable. After full consideration of the evidence before it, the panel found that the appellant's representative had not discharged the evidential burden of proof and, therefore, had not persuaded the panel that the appeal property's rateable value should be reduced. The appeal was therefore dismissed.

Date: 21 July 2023

Appeal number: CHG100737891

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.