THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the RV in the Rating List; Warehouse and Premises; End allowance for fragmentation; Johnson V HB Foods RA/46/2011; Appeal dismissed.

RE: Units 2A, 2B & 2C, Toll Bar Estate, Station Road, Sedbergh, Cumbria LA10 5HA

APPEAL NUMBER: CHG100742936

BETWEEN: Solo Sports Brands Ltd Appellant

and

Ms A Hitchings Respondent

(Valuation Officer)

PANEL: Mr C Derrick (Presiding Senior Member)

Dr H Freeman (Senior Member)

CLERK: Mrs S Morgan

REMOTE HEARING: Tuesday 21 November 2023

PARTIES PRESENT: Mr A Fowkes – Appellant's representative (Altus group)

Mr S Telford – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a warehouse and premises at £22,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO). After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to that effect was served on the appellant on 7 December 2022 and his representatives then appealed the VO's decision to the Tribunal on 26 April 2023 on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. Mr Fowke appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Fowke's declaration of truth included a statement that he understood and accepted that his duty is 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.

4. The panel 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 Procedure regulations 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).

5. As a preliminary issue the respondent stated that it was noted in an email exchange between the caseworker and the appellant's representative dated 6 December 2022 that he had referred to rental evidence for a neighbouring property at Units 1A 1B & 1C, Toll Bar Estate, Station Road, Sedbergh, Cumbria. However, this was incorrectly omitted from the decision notice issued on the 7 December 2022. The appellant's representative was agreeable to this evidence being admitted and the hearing continued.

6. The hearing was held remotely via Microsoft Teams.

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

Issue

8. The issue in dispute was whether or not a 5% end allowance was justified for fragmentation. The appellant's representative sought a revised RV of £20,750 whist the VO's representative believed that the current RV of £22,000 was correct.

Evidence and submissions

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence for the appeal property and the parties' comparable properties, location plans, a photograph of the appeal property and their skeleton arguments.

10. The appeal property was made up of three separate purpose-built units that had been merged to create one assessment. There was no interconnection between them. The walls of the properties were insulated and of block and stone construction with an insulated roof. The property was built circa 1998 and had a total area of 564.02m^2.

11. The appeal property was inspected by an officer from the VOA in August 2023 and there appeared to be no changes since 2013.

Decision and reasons

12. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

13. The starting point for consideration was the actual rent passing on the appeal property. The appeal property was held on 3 separate leases which began on 24/10/2018 and ended on 23/10/2020. The appellant's representative confirmed that his client was now holding over on the 3 expired leases at an annual rent of £29,900. Holding over the three leases allowed flexibility with the total rent of all three leases reflecting 3 individual units without any layout issues. As this rent was so far beyond antecedent valuation date (AVD), he contended that no weight should be attached to it.

14. With the aid of a plan the appellant's representative contended that having the one assessment created layout issues that had not been reflected in the valuation. Having internal dividing walls that were structural, compartmentalizes the property which effects efficiency by causing logistical issues which adds to time and cost. This in turn affects the hypothetical open market value of the property when compared to a similar property without the same issues.

15. To support his case, the appellant's representative referred to LDSPB, Rothay Road, Ambleside, Cumbria. This site was split and had been given a 5% end allowance. He contended this was no different from the appeal property. In both instances the occupiers would have to go outside in order to gain access between different parts which makes this property directly comparable. In addition, he referred to a factory and premises at Goacher Sails, New Hall Bank, Lowside, Windermere, Cumbria where a 15% end allowance had been given for layout and a warehouse and premises at Unit 27, Lake District Business Park, Mint Bridge Road, Kendal, Cumbria where a 7.5% end allowance had also been given for layout. He believed this supported his contention for a 5% end allowance for fragmentation for the appeal property.

16. In addition, the appellant's representative referred to the decision for *Johnson V HB Foods* RA/46/2011, where the VO put forward her analysis of levels of typical allowances which are relevant on a national basis in the same way that there are national relativities. It was agreed that contiguous properties separated by internal dividing walls warranted an allowance between 2.5% and 5% depending on the severity.

17. Based on the comparable properties he had cited and the decision for *Johnson V HB Foods,* the appellant's representative believed that an allowance of 5% for fragmentation should be given to the appeal property. He sought a revised rateable value of £20,750 with effect from 1 April 2017.

18. The respondent stated that according to his office's Form of Return records supplied by the occupier, a new lease renewal was agreed in December 2013 at the same combined rent of £29,900. He contended that as this renewal was just over a year pre AVD it could be weighted higher than those provided by the appellant. There was also another renewal post AVD in October 2017 at the same rent. The respondent contended that the current rateable value reflected the fragmentation as the rent was higher than the RV.

19. Reference was made by the respondent to Units 1A 1B & 1C, Toll Bar Estate, Station Road, Sedbergh, Cumbria which was in a similar situation to the appeal property. However, it was understood there was one lease here not three. There was no fragmentation allowance given to this property.

20. In relation to the comparable properties cited by the appellant's representative, the respondent contended that LDSPB, Rothay Road was smaller and on a fragmented site of small workshops and external storage, so it was not comparable with the appeal property. Goacher Sails, New Hall Bank had severe layout issues. It was smaller than the appeal property and of a different construction. It was therefore not a useful comparable property. Unit 27, Lake District Business Park was similar in size to the appeal property however it had more severe connectivity issues and areas which could not be accessed due to fire regulations. He considered that this was not a good comparable property either. In addition, he disagreed with the appellant's representative's interpretation of the *Johnson V HB Foods* decision, as there was no national agreement for fragmentation.

21. The respondent considered that the rent supported the current rateable value of £22,000 with effect from 1 April 2017 as being reasonable. He sought a dismissal of the appeal.

22. The panel considered the comparable properties submitted by the appellant's representative, and concluded from that evidence that end allowances of this nature were specific to the individual circumstances of each property and should not be applied solely on the basis that a similar allowance had been conceded in the valuation of another property.

23. Having examined the evidence presented by the parties, the panel accepted that there was no interconnectivity between the three units which made up the appeal property. However, the rent was agreed knowing that there were three separate leases, so it gave the tenant flexibility in the future to drop one of the leases if it suited them. This option suited the tenant. The panel found that having considered the rent passing on the appeal property itself at £29,900 per annum that the existing entry of £22,000 RV did not appear to be excessive and therefore the panel was persuaded that no allowance was justified in this case.

24. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for an allowance for fragmentation. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated, and the appeal was dismissed.

Date: Monday 18 December 2023

Appeal number: CHG100742936

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.