THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; workshop and premises; price per m^2 in dispute; subject rent relied upon in support of 50% reduction; no other rental evidence or comparable assessments presented; appeal dismissed.

RE: R/O 497 London Road, Isleworth, TW7 4DA

APPEAL NUMBER:	CHG100744254	
BETWEEN:	MEX Cars Ltd	Appellant
	and	
	Ms D Bunyan, Valuation Officer	Respondent
PANEL:	Mr J M Imperato (Senior Member) Mr M Nwosu	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Thursday 17 November 2022	
APPEARANCES:	Mr B O'Neill from Altus Group, representing the appellant Ms A Earl representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel confirmed the rateable value (RV) of the appeal property at £27,000 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. R/O 497 London Road, Isleworth, TW7 4DA, (the 'appeal property') had been entered in the 2017 rating list as 'workshop and premises' at a RV of £27,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by Altus Group on behalf of MEX Cars Ltd and was received by the Valuation Officer on 4 November 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £16,500 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 11 April 2022, which stated that based upon the evidence and information available, the rating list entry was reasonable and there would be no change to the list entry of £27,000 RV.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 18 May 2022.

6 As Mr O'Neill appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved, in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr O'Neill confirmed that he was instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

7 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 Procedure regulations and was 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).

8 The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

9 The appeal property is described in the rating list as a Workshop and Premises and is occupied by the appellant for the sale of used cars. It consists of four bays and is located to the rear of a workshop occupied by Kwik Fit at 497 London Road. The present assessment of £27,000 RV is based upon a total significant area of 486.22 m^2 at an adopted price of £50 per m^2. There is a 7.5% allowance for fragmentation and a 5% end allowance for poor access.

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

Issue

11 The issue in dispute is the price per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge; challenge

further exchange; Valuation Officer’s challenge case decision notice; and appellant’s challenge submission.

13 On behalf of the appellant, Mr O’Neill described the appeal property as a poor quality storage garage with very poor access. He disputed the Valuation Officer’s reliance on the adopted price of £50 per m^2 applied in the 2005 and 2010 lists and submitted that the key piece of evidence was the subject rent: the appellant had confirmed that there was a lease subject to a rent of £18,000 effective from 1 April 2013. The rent passing before and after the AVD analysed at £25.02 per m^2, which was the basis for the proposed RV of £16,500.

14 Ms Earl submitted that the appellant’s representative had not proved that a reduction of 50% was reasonable. She confirmed that the adopted price of £50 per m^2 had been agreed with Altus Edwin Hill for the 2005 and 2010 lists and there was rental evidence to support little or no change to 2010 values in the locality. Mr O’Neill’s reliance on the subject rent was questioned, given that a lease had not been provided and three forms of return provided conflicting information.

Decision and reasons

15 In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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;
>
> (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.

16 In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April, 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

17 The material day (the date by which physical factors have to be taken into account) was provided 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 Mr O'Neill cited the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, in support of his contention that the subject rent was the key piece of evidence and the starting point for the valuation of the appeal property.

19 In the appellant's challenge it was stated that MEX Cars Ltd took occupation of the appeal property in an open market transaction effective from 1 April 2013 for a five year term with a rent of £18,000 per annum excluding VAT and four months' rent free. Upon the ending of the lease in 2018 there was no new lease put in place and the appellant was effectively holding over on the previous rent of £18,000 per annum excluding VAT.

20 In the Valuation Officer's challenge case decision notice it was stated that there were three forms of return (FORs) completed by MEX Cars Ltd in 2016, 2019 and 2021. On all three forms a rent of £18,500 per annum had been declared. On the 2019 form the type of agreement had been recorded as a licence which, it was submitted, was unlikely to meet the rating hypothesis. The issue of the rent being agreed between connected parties was also raised by Ms Earl.

21 At the hearing Mr O'Neill stated that the appellant had confirmed that there was a lease in place at an open market rent of £18,000 per annum. It was not possible to provide a copy of the lease as it had been lost by the appellant, however, Mr O'Neill submitted that in its absence, the FORs should be taken into account.

22 The panel found further conflicting information in the challenge further exchange document. The Valuation Officer referred to information provided by Altus Edwin Hill in connection with the 2010 list appeal in which it was stated "the rent on the subject property equates to £16,000 on a rolling month to month basis and has remained unaltered for a number of years."

23 In the absence of a lease and in consideration of the conflicting information provided, the panel was not persuaded that any weight could be attached to the subject rent. Mr O'Neill's adopted price of £25 per m^2 relied solely upon his analysis of the subject rent, however, the panel was aware that guidance from *Lotus and Delta* required consideration of all of the available evidence.

24 As the basis of the appellant's case was that the RV was excessive when compared with the subject rent, the appeal could not succeed on that basis. Despite reference to comparable assessments in the appellant's challenge statement, the panel was not presented with any evidence of comparable assessments to support the appellant's contention that the adopted price of £50 per m^2 was unreasonable.

25 While it was the case that each rating list was considered afresh, the fact remained that the adopted price of £50 per m^2 had been agreed previously in respect of the 2005 and 2010 lists. The panel was not presented with any compelling evidence to demonstrate that £50 per m^2 for the 2017 list assessment was excessive. As such, the panel held that it was not unreasonable for the Valuation Officer to apply the same adopted price for the 2017 list.

26 The panel concluded that the appellant's representative had failed to demonstrate that the valuation of the hereditament was unreasonable, and therefore the appeal was dismissed.

Date: 23 November 2022

Appeal number: CHG100744254

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.