THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; factory and premises; rental evidence; comparable assessments; appeal dismissed.

RE: Unit 2 Toutley Works, Toutley Road, Wokingham RG41 1QN

APPEAL NUMBER: CHG100773440

BETWEEN:	C & V Mechanics Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL: Ms L Hussein-Venn (Senior Member)
Prof P Catterall (Member)

CLERK: Ms R Muller

HEARING: Remote Hearing No. 1: 28 April 2023

APPEARANCES: Mr B Buchkov from Altus Group, the representative for the Appellant
Ms P Rowntree, the representative for the Respondent

Summary of decision

1. The appeal was dismissed, the rateable value (RV) £21,250 remained unchanged within the Rating List with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: Unit 2 Toutley Works, Toutley Road, Wokingham RG41 1QN (the ‘subject property’) which was entered in the 2017 rating list as ‘factory and premises’ at RV £21,250, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, C & V Mechanics Ltd made an appeal to the Valuation Tribunal for England (VTE). The appellant had sought a reduction to RV £18,000 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the unadjusted rate should be lowered or an end allowance should be applied considering the relevant disadvantages of the subject property when compared to similar properties in the locality.

5. The subject property had an ITMS area of 252.12m^2 and comprised of a production area with stores, with an office on the ground floor and an office on the first floor. Originally constructed post 1980, its construction was a steel frame building with extensive aluminium frame and glass frontage with profile rollover roofing. It had an eaves height of circa 4 / 4.5m. The subject property was located in Toutley Industrial Estate, Toutley Road in the borough of Wokingham.

6. The appellant's representative, Mr Buchkov when appearing as expert witness, stated that he was on a conditional fee arrangement. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), 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.

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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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. 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.

9. The respondent's representative, Ms Rowntree also appeared as an expert witness.

10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel considered all of the evidence presented when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

11. The unadjusted value adopted for the appeal property was £85 per m^2. Mr Buchkov questioned the valuation officer's method of valuation as it did not reflect the rent on the subject property. However, if the unadjusted rate was to remain the same, he requested that an end allowance of 15% be applied to the assessment due to its age, quality and low eaves height.

Evidence and submissions

12. Mr Buchkov had submitted evidence which included: a written submission; photographic evidence; a location plan; a map of the comparable properties; the current 2017 assessment; a lease; and a revised valuation in respect of the subject property.

13. Mr Buchkov contended that the passing rent was the best evidence as it had been agreed on 12 August 2015 on a ten year lease with a rent review after five years. The rent had been agreed close the antecedent valuation date (AVD) of 1 April 2015. Mr Buchkov stated that adjusting the rent free period and the landlords' insurance obligation, he had analysed the rent using a PV generates, which provided a net effective rent of £18,143 per annum. This resulted in an unadjusted rate of £71.96 per m^2 in terms of main space (ITMS).

14. Mr Buchkov argued that, if the unadjusted rate was considered by the panel to be correct, the property suffered from several major disadvantages which, given a price per square metre of £85, warranted the following end allowance to reflect the rent.

    (a) 15% end allowance requested due to quality and age of the property. The eaves height was also an issue which warranted an end allowance. The subject property had an eaves height or circa 4 / 4.5m which was considerably lower than the other units located on the same industrial estate.

15. Mr Buchkov added that the comparable properties cited by the respondent's representative, Ms Rowntree, did not suffer from low eaves heights and they were newer hereditaments, built circa 10 years post the subject property. Therefore, Mr Buchkov asked the panel to confirm an RV of £18,000 for the subject property.

16. Ms Rowntree referred to the challenge decision which included details of comparable properties; a valuation of the property; a summary of comparable rental evidence; evidence of settlements and comparable assessments. She argued that the tone of the list had been established and no allowances had been granted for any of the units within the same industrial estate where the subject property was located. She had provided assessments of the comparable properties located on the same industrial estate.

17. Ms Rowntree contended that the rent on the subject property required too many adjustments and rental values of other properties on the same industrial estate, that were also within the same scheme, supported a unadjusted rate of £85 per m^2. She also argued that the end allowance sought by Mr Buchkov was unwarranted. Ms Rowntree asked the panel to confirm the RV of the appeal property at £21,250.

Decision and reasons

18. The panel had to determine the RV for the subject property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

19. 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 –

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

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"

20. 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, 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.

21. Mr Buchkov had submitted that the subject property was held on a leasehold basis with a new letting which had been agreed on 18 August 2015 for a term of 10 years with a rent review in five years. A three month rent free period had been granted. After adjusting the rent to consider the rent free period, along with the landlord's insurance obligations, Mr Buchkov stated that the rent equated to £18,801 per annum, which devalued to £71.96 per m^2 against the current tone of £85 per m^2

22. Ms Rowntree had argued that a tone had been established in the list and she provided comparable properties in the same scheme located on the same industrial estate. These units had been built circa 10 years post build of the subject property but were of the same construction, even though they had a higher eaves height of circa 6m.

23. The panel was informed that all of the units in Toutley Works had been granted a 7.5% allowance for lack of heating and lack of insulation to the walls and roof. However, none of the units had an end allowance for age or quality. Mr Buchkov stated that the subject property was the oldest of the units and had been built circa 10 years prior to the other units located in Toutley Works. Due to this and the low eaves height, he considered a 15% end allowance to be fair and reasonable.

24. The best guide to RV would be the actual rent on the subject property. However, the panel noted that the rent had to be adjusted due to a three month's rent free period and also to take into account the landlord's insurance obligation. Therefore, the panel went on to consider the details of the other units within Toutley Works.

25. The panel considered the comparable properties presented of units 1, 3, 6 and 7 Toutley Works. The subject property and the comparable properties were all within the same scheme of 366697, which had the unadjusted rate between £62.50 per m^2 and £110 per m^2.

26. The panel considered units 6 and 7, which had a lease renewal completed in December 2015 where the rent commenced in January 2016, indicating a month's free rent. However, no adjustments had been made when analysing the rental figure. Both units were smaller in size than the subject property with areas of 127.16m² and 125.89m² ITMS. The lease renewals had been agreed at rents of £15,000 per annum which analysed to £117.96 per m² and £119.15 per m². Both units had an unadjusted rate of £105 per m². Mr Buchkov argued that the rent on these units would be slightly higher because, even though they were smaller in size, they were of a newer build and had eaves heights of circa 6m, therefore, more desirable units than the subject property. However, the panel held that, even though these rents had been agreed further away from the AVD by circa four months when compared to the rent of the subject property, no adjustments had been made, which it found made these rents more reliable.

27. The panel considered unit 1. The parties could not agree on who the tenant was with regards to this unit. However, it was noted that a new lease had commenced in January 2015 on an open market basis with a rent review in three years, based on full repairing and insuring terms. The headline rent had been set at £34,000 per annum and the RV was £38,500. This unit had an area of 423.93 m² ITMS with extra hard surfaced, unfenced land. The rent analysed to £77.63 per m² which Mr Buchkov stated supported a reduction with regards to the subject property. However, Ms Rowntree stated that the rent of £34,000 analysed to £131.55 per m². Therefore, she stated that this evidence supported the existing tone and attached the highest weight to the rental evidence of this unit.

28. Ms Rowntree stated that a rent review for unit 3 had been agreed in March 2016 on an open market value basis with full repairing and insuring terms. The RV of this unit was £22,500 with a headline rent of £16,500, which had analysed to £173.70 per m². However, Mr Buchkov had informed the panel that the lease of unit 3 had been considered to be between connected parties, which may have indicated that the ratepayer's pension scheme was the landlord. The panel held that, as there were some discrepancies relating to this unit, it would place minimal weight on its details.

29. The panel found that a tone appeared to have been established for the units referred to, and therefore considered whether an end allowance was warranted with regards to the subject property due to the difference in age and the lower eaves height when compared to the other units within the same industrial estate. The panel noted that none of the other units had an end allowance, and their unadjusted rates were higher than the subject property. Therefore, the panel held that Mr Buchkov had not provided sufficient evidence to support that an end allowance of 15% be granted with regards to the subject property.

30. The panel determined that a hypothetical tenant coming fresh to the scene would be prepared to pay a rent similar to the ones on the other units within the same industrial estate. The fact that the subject property was circa 10 years older and had a lower eaves height maybe less desirable but as the subject property had the lowest tone value of £85 per m² compared to the other units with a slightly higher eaves height at a tone of £110 per m², the panel held that this would not deter prospective tenants for acquiring the subject property. Therefore, the panel held that an end allowance of 15% for age, quality and low eaves height was not warranted and dismissed the appeal.

Date: 17 May 2023

Appeal numbers: CHG100773440

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.