THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; land used for storage and premises; tone of value of dock space; appeal dismissed.

RE: Berth No5, Southside Three, Chatham Dockyard, Chatham ME4 4SR ("the subject hereditament")

APPEAL NUMBER: CHG100774879

BETWEEN:	European Active Projects Limited	Appellant
	and	
	Valuation Officer	Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 9 February 2024

PANEL: Mrs N Carman (Presiding Senior Member)
Dr T Gledhill (Senior Member)

CLERK: Mr S Fletcher IRRV (Hons)

APPEARANCES: Mr J Fitzsimmons of Altus Group (Appellant's representative)
Mr C Webster of Altus Group (Appellant's expert witness)
Mr J Reene (Respondent's representative)

DECISION and STATEMENT OF REASONS

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of the subject hereditament of £38,500 with effect from 1 April 2017.

Introduction

2. The appeal process began with a challenge made by the appellant's representative on 14 February 2022 in respect of the Valuation Officer's (VO) compiled list entry of the subject hereditament at £43,250 RV with effect from

1 April 2017. The appellant’s representative proposed a revised assessment of £16,750 RV from that date based on a reduced space rate for the docks.

3. The respondent issued a challenge case decision notice on 17 March 2023, which stated that based on the evidence available, the existing rating list entry of £43,250 RV was unreasonable and determined a revised entry of £38,500 RV with effect from 1 April 2017. The revised RV accounted for a reduction to the land value which was not disputed by the appellant’s representative. All values were agreed between the parties except for the dock. The respondent did not consider that evidence had been provided to warrant a reduction to the space rate of the docks. The appellant’s representative appealed that decision to this Tribunal on 20 November 2023 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was land and premises with access to waters at Chatham Docks. The dock at the subject was located in a controlled and enclosed area of water which was impounded by a series of lock gates.

5. Mr Fitzsimmons confirmed he was appearing on behalf of the appellant as advocate only. Mr Webster appeared on behalf of the appellant as expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Webster declared that he was instructed under a conditional fee basis, he understood and accepted that his duty was to the Tribunal in giving his evidence and 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.

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

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

Issue

8. The issue for the panel to determine was the correct rateable value to be attributed to the subject hereditament in the 2017 rating list. The issue in dispute concerned the tone of value for the dock.

Evidence and submissions

9. Arguments and factual evidence from both the appellant’s representative and the respondent were provided. This comprised of documentation exchanged between the parties as part of the challenge process, the appellant’s representative’s challenge submission, the respondent’s challenge decision notice and reference to properties deemed comparable to the subject

hereditament by the parties. The respondent's representative provided photographs of the subject hereditament to the Tribunal and appellant's representative the day before the hearing in accordance with the Tribunal's consolidated practice statement.

10. There were two lease agreements at the subject hereditament with effect from 2003 and 2017 respectively. Both parties considered that the rents were too remote from the antecedent valuation date (AVD) to be of assistance in determining the RV, and instead submitted tonal evidence from comparable assessments.

11. The appellant's representative sought a revised RV of £16,750 based on £70 per m^2 for the dock. He had referred to several comparable assessments located in both the River Medway and Chatham Docks, many of which had a value of £70 per m^2 for their dock areas. Stig-Mig Welding was also situated at Chatham Docks and had a value for the docks of £70 per m^2.

12. The expert witness provided an explanation into the significance of depths at docks such as the subject and the appellant's representative's comparable assessments. He stated that larger depths provided greater flexibility in terms of the size of vessels being able to be serviced. In docks which benefited from deeper depths, larger and more profitable vessels were able to be serviced in the berths. In shallow depths, vessels had less draft and therefore were restricted in the size of vessels they can accommodate. He argued that the comparable assessments at the River Medway benefitted from ease of access for vessels through the river which afforded a desirable degree of flexibility and manoeuvrability, not dissimilar to the subject hereditament. As such, he contended there was an unsubstantiated inconsistency in value at the subject and the River Medway comparable assessments which shared similar depths. An additional service fee for access to waters was also payable at the subject hereditament as well as the passing rent. The expert witness argued that such a fee was detrimental to the RV, as it would lower a rental bid in terms of overall costs to a hypothetical tenant.

13. The respondent's representative contended that the value of the docks at the subject hereditament of £250 per m^2 was fair and reasonable, as demonstrated by assessments inside Chatham Dockyard that benefitted from non-tidal controlled waters. He contended that the higher value of tone for the docks at the subject was justified given it was located in an environment that was controlled by lock gates as opposed to the comparable assessments relied on by the appellant's representative. He argued that river flow and tidal ebb and flow movements were detrimental to docks located in the river as they restricted access and ease of serviceability to certain vessels. He acknowledged that dredging can be undertaken to increase bed depth, however, he argued that it was costly.

14. He argued that controlled waters were more desirable as they eliminated the potential for any impact from tidal waters that could negatively affect or suspend operations at the dock. He referred to Berths 6 & 7 Northside Three, which had an agreement of £250 per m^2 for the value of its docks, and Berth 1

Southside Three that had the same value for its docks that was unchallenged. They were both located within controlled waters at Chatham Dock. The respondent's representative acknowledged that Stig-Mig Welding was located at Chatham Dock and had a lower tone of value for its dock, however, he stated that it was outside of the gates to the controlled water area.

Decision and reasons

15. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

16. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the AVD. This common date was used to ensure that every property was treated in a consistent way.

17. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 1 April 2017.

18. The panel upheld the determination of the respondent. It was satisfied that there was a clear benefit to hereditaments such as the subject which were located in controlled waters behind lock gates as opposed to those that were open to the impact of the effects of river and tidal waters, which was demonstrated by the differential in tone of value of docks of the respective comparable assessments relied on by the parties.

19. The panel determined that the Berths at 6 & 7 Northside Three, and Berth 1, Southside Three, both of which had a tone of value of £250 per m^2 for docks supported the same at the subject. All of the hereditaments were located at Chatham Dock and benefitted from being in controlled waters. It was clear to the panel that docks which were subject to deviations in river depths and the effect of tidal waves, which would naturally fluctuate throughout a day, would be less desirable than those in a controlled environment. The panel considered that a controlled environment eliminated any potential impact to vessels looking to access, or be serviced at the docks, and in turn would attract a higher rental bid from a hypothetical tenant on that basis in comparison to those in the river. Stig-Mig Construction was also based at Chatham Docks and had a lower tone of value for its dock, however, it did not benefit from controlled waters. A photograph of its site was provided which showed its dock when it was dry, which the panel determined further supported the differential between its dock value and the subject.

20. The panel attached no weight to the appellant's representative's contention that the service charge would be considered a hinderance to a hypothetical

tenant as no evidence was provided that any such charge had affected any rental bids for the hereditaments with controlled waters. The service charge provided the tenant access to waters which the panel deemed would be beneficial to the operational function of tenants utilising land with docks.

21. In view of the foregoing, the appeal was dismissed.

Date: 8 March 2024

Appeal number: CHG100774879

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.
