THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; factory and premises; price per m^2 to be adopted in the assessment; the panel found the rental and assessment evidence for comparable properties demonstrated that the appeal property's current assessment was excessive; appeal allowed in part.

RE: Norwood House, Temple Bank, Harlow, Essex CM20 2DY

APPEAL NUMBER: CHG100779111

BETWEEN	The Loft Room Staircase Co. Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mr D C Gardner (Presiding Senior Member)
Mrs N Crawshaw (Senior Member)

CLERK: Mrs A Keohane

REMOTE HEARING 2: Wednesday 18 October 2023

APPEARANCES: Mr M Clayton of Altus Group on behalf of the appellant, as advocate and expert witness
Mr L Stevens on behalf of the Valuation Officer as advocate and expert witness

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Summary of decision

1 Appeal allowed in part. The panel considered the appellant's case for a reduced rate/m^2 was made out but not to the extent for which it was argued. The panel reduced the appeal property's assessment to £219,000 rateable value (RV), based on a revised rate of £50/m^2.

Introduction

2 This is a 2017 rating list appeal. Norwood House, Temple Bank, Harlow, Essex CM20 2DY, (the 'appeal property') had been entered in the 2017 rating list as 'Factory and Premises' at £228,000 RV with effect from 1 April 2017.

3 The challenge proposal was submitted to the Valuation Officer (VO) by Altus Group on behalf of the appellant on 24 February 2022. The VO issued a challenge case decision notice on 6 February 2023, which declined to amend the

assessment in accordance with the proposal. An appeal was received by this Tribunal against the VO decision notice on 25 May 2023 on the grounds that the valuation for the hereditament was not reasonable.

4 As Mr Clayton appeared on behalf of the appellant as both advocate and expert witness, he was asked to clarify whether there was a success related fee involved and if so whether its existence was compatible with his obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

5 Mr Clayton declared that he was instructed on a contingency fee basis. However, he confirmed that 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 the evidence supported the client's case.

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

7 The appeal property comprises three bays with offices, stores, yard space and surfaced car parking. It was constructed in 1973, refurbished in 1985, and is lined and heated with some air-conditioned office space. The property has approximate eaves height of 4.1m and 5.5m ridge height. It is located in Temple Bank, Harlow, towards the far end of River Way, within the Templefields Industrial area. It is situated approximately four miles from Junction 7 of the M11.

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

Issues

9 At the time of the challenge decision several issues remained outstanding. Prior to this hearing, the parties confirmed the number of car parking spaces had been agreed, as had the end allowance to be adopted, and the uplift to the office space to reflect air-conditioning. The only matter remaining for the panel to consider was the rate on which the appeal property's assessment should be based. Mr Clayton argued for an assessment of £198,000 RV based on £45/m^2 and Mr Stevens for the current unadjusted rate of £52.50/m^2.

Evidence and submissions

10 The bundle of evidence before the panel comprised the documents exchanged between the parties as part of the challenge process, together with Mr Clayton's Supporting Evidence Statement.

11 In his evidence and oral presentation, Mr Clayton confirmed that he had placed no weight to the rental transaction for the appeal property, given it was between connected parties. In arriving at his reduced rate/m^2 he had looked at the available

rental evidence and settlements for similar properties placed within the same scheme, which applied to industrial units on River Way built between 1950 and 1979.

12 There had been two agreements on larger units of a similar age, namely BOC Distribution Services and Unit C River Way. These assessments had been settled with a reduction in rate from £50/m^2 to £41.14/m^2 and £40/m^2 respectively. He outlined rental details for other properties in the same scheme and argued that these rents suggested that the rates adopted by the VO were excessive. He contended there was little merit in considering rents that had been agreed significantly pre and post the antecedent valuation date (AVD) and submitted his approach in placing the most weight to rental evidence closest to the AVD was correct. In particular, he submitted the analysed rents of Parkside House and River House were relevant as they confirmed his revised rate/m^2 was reasonable.

13 Two challenges had been made to the assessment of River House that had been rejected. Mr Clayton confirmed the reason these had not been pursued was because the client had vacated the property and not because the level of value was accepted. Mr Clayton considered his rental and settlement evidence supported a revised rate of £45/m^2 for the appeal property and sought a revised assessment of £198,000 RV based upon this rate.

14 Mr Stevens clarified that he had not internally inspected the appeal property; however, he was aware it was in a good position within an established industrial area with links to the motorway. During the challenge process, the VO established that not all of the elements of the appeal property had been included in its assessment. The assessment had been increased to £249,000 RV from the date of schedule, in effect, 31 January 2023. This was considered to be the fairest way of increasing the assessment given the omission errors. The increase reflected factors such as air conditioning and additional car parking spaces, which had now been agreed. He confirmed that the higher assessment would be reviewed, with the base rate determined by the tribunal at this hearing applied and other factors that had occurred after the material day considered.

15 In support of the current rate of £52.50/m^2, Mr Stevens provided a schedule of rents obtained from Forms of Return (FOR) for industrial properties at Parkside House, The Soda Stream Building, River House, and Units A1, B and F1 River Way, that had been set between 2013 and 2018. These incorporated lease renewals, rent reviews and new lettings. When analysed these rents produced values of between £46.29/m^2 and £86.61/m^2, which he considered supported the level of value applied to properties in this area, and in particular, the £52.50/m^2 applied in the appeal property’s assessment.

16 Referring to the settlement evidence, Mr Stevens explained that an agreement was made in respect of Unit C River Way and as a consequence the four topmost size band prices had been amended, those below were not affected, with the rental evidence available. The assessment of BOC Distribution Services, the second largest assessment in the scheme, had been reduced following the agreement on Unit C River Way.

Decision and reasons

17 The appeal 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 let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

18 The Lands Tribunal judgment *in Lotus & Delta v Culverwell (VO) and Leicester City Counc*il [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was the correct starting point, but where available, rents on similar properties were also to be considered. The assessments of other comparable properties could also be relevant. All the evidence could then be weighed.

19 The starting point therefore was consideration of the appeal property's rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account when deciding the weight to attach to it. The subject property was leased between connected parties at a rent of £300,000 per annum effective from 1 April 2021. The appellant owned the building and then leased it back. Given this, the panel placed no weight to the rental transaction, as it did not represent an open market letting.

20 Consideration was given to the rental and assessment evidence provided by the parties. Very briefly, this included the following.

- Parkside House, a smaller property with an assessment based on £55/m^2. The rent, set in February 2015 as shown on the FOR, was from a new letting and analysed to £47.88/m^2.
- The Soda Stream Building, a smaller property subject to a new letting from September 2016 with its rent analysing to £58.43/m^2. Its assessment was based on £52.50/m^2.
- River House was larger than the appeal property and subject to a lease renewal in January 2016. Its rent analysed to £46.29/m^2, and its assessment was based on £50/m^2.
- Unit A1 River Way was smaller than the appeal property and subject to a February 2013 rent which increased by a stepped arrangement. The rent analysed to £46.34/$m^{2,}$ and its assessment was based on £52.50/m^2.
- Unit B River Way was a smaller property subject to a new letting in July 2016 at a rent which analysed to £59.56/m^2. Its assessment was based on £55/m^2.
- Unit F1 River Way had been subject to rental transactions in 2013 and 2018, which showed rental growth had occurred in the area between these dates. Its assessment was based on a rate of £50/m^2. The level of value applied to this property had been challenged but to date an appeal had not been made.
- There was no rental evidence submitted for Unit E River Way, this was an industrial unit in leisure use as a Go Kart Track and Premises. It was similar in size to the appeal property and its assessment was based on £52.50/m^2.

This level of value had been challenged and an appeal was awaiting hearing.

21 Agreements had also been reached in respect of Unit C River Way at £40/m^2 and BOC Distribution Services at check stage at £41.14/m^2. Both of these properties (9469.47m^2 and 8,872.13m^2 respectively), were substantially larger than the appeal property.

22 The panel found the rental and assessment evidence for River House to be useful and it also considered that the rental and assessment details of Parkside House were of assistance in deciding this appeal. Particular attention was paid to these rents as they had been set in January 2016 and February 2015 and therefore were the closest to the AVD. Whilst these properties were older than the appeal property, they fell within the same scheme, which covered properties built between 1950 and 1979.

23 River House was closest of the two in size to the appeal property. Whilst its rental transaction had been from a lease renewal it was still considered to provide good evidence. The rent had analysed to £46.29/m^2 which the panel considered supported the rate of £50/m^2 applied in its assessment. Parkside House was substantially smaller than the appeal property and its rent, which analysed to £47.88/m^2, was the result of a new letting. Its assessment was based on £55/m^2 and there was no evidence to show this level of value had been challenged. The panel accepted that it was not unusual for the assessments of smaller properties to reflect higher values than larger properties which would attract quantum.

24 On balance, the panel was persuaded by Mr Clayton's argument that the appeal property's base rate was excessive. The panel considered the property should be valued at £50/m^2 in line with River House, a property closer in size, situated opposite, with higher eaves height and not too different in age. The rent of River House had analysed to £46.29/m^2 which in the panel's view supported the £50/m^2 applied in the assessment. It considered the differential between this and the £55/m^2 applied to Parkside House reflected an element of quantum as the appeal property was much larger. The panel was satisfied that this rate reduction was not shown to be unreasonable by the settlements on BOC Distribution Services at £41.14/m^2 and Unit C River Way at £40/m^2, as these were significantly larger properties, and their values would reflect quantum.

25 The panel also considered the assessment evidence of Unit F1 River Way supported a reduction in the base rate applied to the appeal property. Unit F1 was very similar in size to the appeal property and its assessment was based on a rate of £50/m^2. This assessment had been challenged but the parties had indicated that no appeal had yet been made against this level of value.

26 Having regard to the above, the panel confirmed a revised assessment for the appeal property as shown below, based on a revised rate of £50/m^2. In doing so, it adopted the number of car parking spaces, relativities and allowances set out within Mr Clayton's valuation. The appeal was therefore allowed in part.

Line	Floor	Description	Area (m2/unit)	£ per m2/unit	Value £
1	Ground	Warehouse	1156.90	50	57,845
2	Ground	Workshop	1544.49	50	77,224
3	Ground	Works Office	17.24	50	862
4	Ground	Mess/staff room	105.76	55	5,817
5	Ground	Workshop	1127.16	50	56,358
6	Ground	Area under supported floor	44.91	35	1,572
7	Mezzanine	Workshop	44.91	25	1,123
8	Ground	Office	272.94	60	16,376
9	First	Office	144.67	60	8,680
10	First	Internal Storage	68.70	32.50	2,233
11	First	Internal Storage	7.73	32.50	251
			Subtotal		**228,341**
			Allowances Eaves 4.1m and pillars	Less 10%	205,507
			Car Parking 58 spaces	150	8,700
			Plant and machinery		5,267
			Total RV		**219,474**

Say £219,000 RV with effect from 1 April 2017.

Order

27 As a consequence of the above, the VO is ordered to amend the appeal property's 2017 Rating List entry to £219,000 RV with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

28 The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible, provided no review of the decision takes place.

Date: 17 November 2023
Appeal Number: CHG100779111

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.