THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; factory and premises; end allowance in dispute; FC Brown Steel Equipment Ltd v Hopkins (VO) [2002] UKUT 51 (LC); Ladies Hosiery and Underwear Ltd v Middlesex Assessment Committee [1932] 2 KB 679; appeal allowed.

RE: Unit 11 & Unit 12 Apollo Park, Armstrong Way, Yate BS37 5AH

APPEAL NUMBER: CHG100785650

BETWEEN:	Saddleback Ltd	Appellant
	and	
	Ms A Morley (Valuation Officer)	Respondent

PANEL:	Mrs H Newman-Newing (Presiding Senior Member) Mrs N Crawshaw (Senior Member)
CLERK:	Miss F Willson
REMOTE HEARING ON:	13 December 2023
APPEARANCES:	Mr R Short from Knight Frank LLP (on behalf of the appellant) Mr S Cope (on behalf of the Valuation Officer)

Summary of decision

1 Appeal allowed. The panel determined a revised rateable value (RV) of £167,000 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Unit 11 & Unit 12 Apollo Park, Armstrong Way, Yate BS37 5AH (the subject property) was entered in the 2017 rating list as ‘warehouse and premises’ at an RV of £172,000 with effect from 1 April 2017.

3 The challenge proposal was submitted on 16 March 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate on the basis that Unit 12 did not have heating and an end allowance of 2.5% due to the poor layout of the assessment should be applied.

4 The Valuation Officer issued a challenge case decision notice on 28 February 2023 which agreed an alteration of the list as a result of there being no heating in Unit 12 but contested the proposal for a 2.5% end allowance due to the layout of the units. The RV was altered to £171,000 with effect from 1 April 2017.

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 27 June 2023.

6 As Mr Short 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 Short confirmed that he was not 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 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 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 subject property consists of two separate modern industrial units on Apollo Park Industrial Estate in Yate, South Gloucestershire. The present assessment of £171,000 RV is based upon an unadjusted rate of £41/m^2 which has never been contested by Mr Short at any stage throughout the process.

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

Issues

11 The appellant's submission identified two issues:

- A reduction to the RV due to the fact Unit 12 did not have heating.
- A 2.5% end allowance due to the fact the assessment consisted of two detached and unconnected units resulting in inefficiencies.

12 The first issue had been conceded by the Valuation Officer.

13 The only remaining issue, therefore, was whether the subject property should be given and end allowance of 2.5% due to the issue with layout.

Evidence and submissions

14 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

15 On behalf of the appellant, Mr Short submitted that the end allowance of 2.5% should have been applied to the subject property. Mr Cope, on behalf of the Valuation Officer, contended that the end allowance should not be awarded and asked the panel to confirm the RV of £171,000 and dismiss the appeal.

Decision and reasons

16 The panel is governed by 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—
>
> (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.

17 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).

18 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.

19 In this appeal the tone of £40/m^2 was uncontested and so Mr Short offered no evidence in connection with comparable rental properties. He did however refer the panel to five comparable properties which consisted of assessments which had divided or split units. All of these assessments had an end allowance of up to 5% due to the inefficiencies of the assessments being in two detached buildings with no interconnection. Mr Short referred the panel to the case *of FC Brown Steel Equipment Ltd v Hopkins (VO) [2002] UKUT 51 (LC)* in which an end allowance was given in respect of the fact the assessment was located on either side of a road and both sides were connected by a bridge. Mr Short submitted that the comparable properties supported an end allowance for the subject property and that he had requested a 2.5% end allowance when some of the comparable properties had been granted

a 5% end allowance. He further referred the panel to the recently settled case of Wessex Packaging which had been agreed with a 5% end allowance for having two detached buildings which was settled by consent order.

20 The panel noted that all the comparable properties had an end allowance due to having two detached buildings with no interconnectedness and put weight on this evidence.

21 Mr Short submitted that the three comparable properties put into evidence by the VO were significantly smaller than the subject property and were not in the direct vicinity of it. He argued that as he was not contesting the tone of the subject property these comparable properties did not speak to an end allowance for the subject property and little weight should be placed on them.

22 Under questioning by the panel Mr Short explained that the appellant's business included selling and distributing cycling goods and so having two detached buildings meant that goods had to be moved from one building to the other. This was regardless of the weather conditions. The staff room, toilets and kitchen for the staff were only in one unit and so the staff in the other unit had to go from one to the other to use them. These inefficiencies would not occur if the assessment consisted of one single building.

23 Mr Cope cited the leading judgment of *Lotus and Delta* in support of his contention. He noted that the subject property was held by the appellant on two coterminous leases which were for a term of fifteen years commencing on 6 June 2016. There was a six-month rent-free period and a tenant's option to terminate the leases at ten years. The initial rent had ben £300,368 per annum increasing to £348,216 per annum on 19 July 2021. The fit-out costs of £970,000 had been paid by the tenant. Although the leases were 15 months post AVD Mr Cope analysed the rent to £68.17 which he stated supported the adopted tone of £41/m^2.

24 Mr Cope also drew the panel's attention to three comparable properties which he submitted supported the tone at the AVD as being reasonable. They were:

- Unit 7, Bowling Hill Business Park, Quarry Road, Chipping Sodbury which had a lease commencing 27 March 2015 with an analysed rent of £97.80 and an adjusted unit price of £65.33 giving an RV of £7,800.
- Units 1-2 Rainbow Court, Armstrong Way, Yate had a lease commencing 1 February 2015 with an analysed rent of £56.63 and an adjusted price of £41.
- Units 17-19 Walker Way, Thornbury which had a lease commencing 27 March 2015 with an analysed rent of £51.71 and a base rate of £45.

25 Mr Cope submitted that in connection with Mr Shorts submission for an end allowance the case of *Ladies Hosiery and Underwear Ltd v Middlesex Assessment Committee [1932] 2 KB 679* was authoritative and relevant. In his judgment Scrutton L.J. at p.p. 686-688 stressed the "vital principle" of rating law that "*each hereditament should be independently assessed*" and that correctness should not be sacrificed to ensure uniformity but if possible to "*obtain uniformity by correcting inaccuracies rather than making an inaccurate assessment in order to secure uniform error*". He argued that simply because the appellant's comparable properties had an end allowance it did not mean that the subject property should be awarded one.

26 The panel was aware that the tone of the subject property was not in dispute and so could put little weight on the comparable properties presented by the VO. None of them consisted

of two detached properties in one assessment with no end allowance for layout to rebut the appellant's case.

27 The panel concluded that the appellant's representative had successfully demonstrated that the valuation of the hereditament was unreasonable and an end allowance of 2.5% should be applied to the subject property. The panel therefore allowed the appeal. The RV is as follows:

28

Floor	Description	Area/m²	Price per m²	RV
Ground	Warehouse	1,096.25	£43.97	£48,205
Ground	Area under supported floor	178.43	£30.78	£5,492
Mezzanine	Internal storage	217.27	£21.99	£4,777
Ground	Warehouse	682.21	£43.97	£29,998
Ground	Office	331.24	£59.53	£19,719
Ground	Office	67.56	£59.53	£4,022
Ground	Area under supported floor	489.42	£30.78	£15,065
Ground	Workshop	76.67	£42.85	£3,285
First	Office	433.63	£59.53	£25,815
First	Internal storage	76.56	£29.46	£2,256
Mezzanine	Internal storage	479.13	£21.99	£10,534
Mezzanine	Internal storage	257.63	£8.79	£2,266
Subtotal				£171,434
Less:	Layout allowance: -2.50%			-£4,286
Total:				**£167,148**
Say:				**£167,000**

Order

29 Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list for Units 11 & Unit 12 Apollo Park, Armstrong Way, Yate BS37 5AH be revised to a rateable value £167,000 with effect from 1 April 2017.

30 Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 27 December 2023

Appeal number: CHG100785650
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.