THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; warehouse and premises; price per m^2 to be adopted for the assessment; comparable evidence; rental evidence; appeal allowed.

RE: Unit 5, Fountain Drive, Hertford SG13 7UB

APPEAL NUMBER: CHG100787427

BETWEEN	John A Hart Carpet Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mrs S Patel (Presiding Senior Member)
Mr K Everett (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING 2: 23 August 2023

APPEARANCES: Mr O Plumley, of Altus Group on behalf of the Appellant
Mr L Stevens, on behalf of the Valuation Officer

Summary of decision

1. Appeal allowed. The appeal property's assessment was reduced to £17,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal in respect of Unit 5, Fountain Drive, Hertford SG13 7UB ("the appeal property"), entered in the 2017 rating list as 'Warehouse and Premises' at £19,500 RV with effect from 1 April 2017.

3. The challenge proposal, submitted by Altus Group on behalf of John A Hart Carpet Ltd, was received by the Valuation Officer on 21 March 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was unreasonable. A revised assessment of £17,500 RV was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 2 February 2022 which stated that, based upon the evidence and information available, the existing rating list entry was not considered to be unreasonable and the proposal was not well founded.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was received by this Tribunal against the Valuation Officer's decision on 16 March 2023.

6. The appeal property is a two storey purpose built semi-detached industrial unit of block and profiled metal construction. The unit has a total floor area of 212.43m^2 and was constructed in 1999. It is located on an industrial estate approximately one mile from Hertford town centre.

7. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) the appellant's representative, Mr Plumley, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the Valuation Tribunal for England (VTE) in giving his evidence, whether or not the evidence supported his client's case. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. The panel has 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

9. It was therefore appropriate for the panel hearing the evidence to consider the expert evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

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

Issue

11. The disputed issue related to the main space price to be adopted. The Valuation Officer argued for a price of £90/m^2 resulting in an RV of £19,500 whilst the appellant's representative contended that £80/m^2 resulting in an RV of £17,500 was fair and reasonable.

Evidence and submissions

12. The bundle of evidence comprised the documents exchanged between the parties as part of the challenge process which included amongst other things: the appellant's challenge submission and full supporting information; the exchanges of evidence between the parties; site and location plans; the Valuation Officer's challenge case decision notice, assessment evidence; photographs and details of the appeal property and those cited as comparable by both parties; and a copy of the proposed valuation submitted by Altus Group.

Decision and reasons

13. 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 be let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988).

14. 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 antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

15. 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 appeal, the material day is 1 April 2017.

16. 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.

17. The starting point for consideration was the actual rent passing on the appeal property. There was a lease for a new letting on the appeal property effective from 26 February 2016 for a rent of £18,000 for a 10 year term with yearly rent reviews. The lease devalued to £82.11/m^2. However, the panel noted that the lease was between connected parties, that being Jonathan Hart Carpet Ltd and Jonathan Hart Carpet Ltd SSAS and therefore it was less reliable as rental evidence, and the panel could not attach significant weight to it.

18. The appellant's representative, Mr Plumley, submitted that there had been several agreements in the locality where the tone had been reduced. He referred to Unit 7, Fountain Drive, Hertford, the tone on this property had been reduced from £75.00 to £65.00/m^2 at the challenge stage. Unit 7 had an area of 1495.59m^2; Unit E Rear, Foxholes Business Park, John Tate Road, Hertford, SG13 7YH, had been reduced from £75.00 to £60.00/m^2 it had an area of 3530.79m^2; and 10, Merchant Drive, Mead Lane, Hertford, SG13 7BH, had been reduced from £68.53/m^2 to £65.00/m^2 it had an area of 827.82m^2. Unit 7, and unit E, were in the same valuation scheme as the appeal property. Mr Plumley accepted that these properties were significantly larger than the appeal property but argued that these agreements showed that the tone adopted for the 2017 list was excessive.

19. Mr Plumley also submitted that there was a disproportionate difference between properties built between 1985 and 1993 (scheme 303245) and those built between 1994 and 2003 (scheme 303218). As evidence he had provided details of four industrial properties in scheme 303245 ranging between 174.65m^2 and 259.35m^2 which had a tone of £80.00/m^2 as compared to the appeal property which was in scheme 303218 and had a tone of £90.00/m^2 he argued that this evidence highlighted the current disconnect between early 1990's and late 1990's industrial properties. Both parties agreed, given the findings in *Saintta Global Lawyers (UK) Ltd v Ricketts* (VO) [2021] UKUT 0242 (LC), that the correct starting point for valuation was rental evidence and that valuation schemes were not all encompassing, and were used as a guide for valuation purposes.

20. The panel considered the rental evidence. The Valuation Officer had referred to the rent on Unit 1, Warehams Lane, Hertford, SG14 1LA, it had an area of 259.35m^2, a rent of £22,500 and a tone of £80.00/m^2. Mr Stevens argued that this property supported a tone of £90/m^2 for the appeal property. The parties did not agree on the analysis of this rent, Mr Plumley had analysed it to £72.01/m^2 and the Valuation Officer to £87.57/m^2. Mr Plumley argued that land had been included in the rent with a value of £4,000 which should have been deducted. Mr Stevens stated that he had not checked whether the land should be included. The panel noted that the five larger properties referred to on Merchant Way which ranged from 393.99m^2 to 586.47m^2 analysed to between £61.81/m^2 and £79.57/m^2. Four of these properties had a tone of £75/m^2 and one of £65.92/m^2. The panel noted that these properties were older than the appeal property, however, in terms of location, build style and quality, both parties had agreed, there was little difference.

21. Taking into account the full basket of evidence before it, the panel found Mr Plumley's evidence to be the more persuasive, it determined that an unadjusted base price of £80/m^2 was fair and reasonable for the appeal property resulting in a rateable value of £17,500.

Order

22. 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 amend the entry in the rating list to show a revised assessment of £17,500 RV for the appeal property, with effect from 1 April 2017.

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

24. 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 (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 13 September 2023

Appeal Number: CHG100787427

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.