VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal Local Government Finance Act 1988 - unadjusted price per m² to be adopted – rental evidence – rental evidence from connected parties or from Stamp Duty Tax documents – tonal evidence – end allowances sought for poor layout and poor access – appeal allowed

APPEAL NUMBER:	CHG100798521
RE:	Unit 11,Trans Pennine Trading Estate,Rochdale,OL11 2PX (the "subject property")

BETWEEN:	Fothergill Engineered Fabrics Limited	Appellant
	and	
	Ms A Hitchings (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	Monday 15 April 2024 at 11:30 am
BEFORE:	Mr K Everett (Presiding Senior Member) Mrs A E Fielder (Senior Member)
CLERK:	Mr A Jolly
APPEARANCES:	Mr K Rabbette of Rabbette Chartered Surveyors representing the appellant Mr A Glower representing the respondent

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed. The panel confirmed rateable value (RV) £109,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: An appeal was lodged by Rabbette Chartered Surveyors on behalf of the occupier on 19 October 2023 against the Valuation Officer's (VO) Challenge Decision Notice of 23 June 2023.

3. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

4. Mr Rabbette appeared on behalf of the appellant as both advocate and expert witness. He confirmed that he was on a fixed fee as an expert witness but on a conditional fee as advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Rabbette's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

5. Mr Rabbette declared 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 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).

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

8. Mr Glover, acting on behalf of the respondent, confirmed he was acting in the role of advocate only having not prepared the challenge decision nor having inspected the subject property.

Issues

9. The issue before the panel concerned the unadjusted price per m² to be adopted having regards to and having weighted the evidence presented by the parties. Also, whether or not end allowances should be given for the layout of the subject property and its access.

10. The subject property was a 1970s factory of steel portal frame construction with elevations primarily in brick with an asbestos cement tiled roof with lightboxes throughout. There was a two storey element to the north of the site which comprised both industrial and office accommodation. Internally there was a structural wall spanning the entire width of the property with four small openings within the wall. The area of the subject property was 7956 m².

11. The subject property was situated to the southwest of Rochdale in a traditionally industrial area. The Trans Pennine Trading Estate comprised of medium sized 1970s and 1980s industrial properties of which the subject property was the largest. Its access road was narrow which did not allow for two HGVs to pass each other.

12. The subject property had entered the 2017 Rating List at RV £267,500 based on an unadjusted price per m² of £32.82. During the challenge stage the Valuation Officer revised the RV to £181,000 based on a price per m² of £23 which the respondent was defending. The appellant sought a reduction to RV £109,000 based on an adjusted price per m² of £20 and 15% end allowances for both the poor layout of the subject property and for poor access.

Evidence and submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the VO's challenge decision notice, rental evidence, tonal evidence, valuations and the appellant's representative's submission.

Decision and reasons

14. Mr Rabbette stated that whilst the starting point would normally be the rent passing on the subject property, in this instance the landlord and the tenant were connect parties and therefore the rent should not be relied upon. He also referred to the VO's rental evidence and stated that it could not be relied upon as it was either between connected parties or the information was limited as it had been taken from Stamp Duty Forms or other sources and not from Forms of Returns. He stated that the Stamp Duty document did not provide information concerning whether the lease taken was on a full repairing and insuring basis and other factors. The only rental evidence that was reliable was the rent for 28 Trans Pennine Trading Estate but this hereditament was considerably smaller than the subject property and therefore the passing rent may be higher due to the effects of quantum. Also, he stated that the VO had included VAT in a few cases when analysing the rent which should not have been included.

15. Mr Glover accepted the points raised by Mr Rabbette concerning the rental evidence regarding connected parties and therefore would not be citing the rental evidence in support of his contention that the RV was not unreasonable. However, he considered that the rental evidence in relation to Unit 28 Trans Pennine Trading Estate (hereafter Unit 28) provided the best evidence and supported the price of £23 per m² adopted for the subject property.

16. The panel considered the rental evidence and the reasons given by Mr Rabbette that it should be disregarded. It accepted that the rent on the subject property; Bedcrest Ltd, Old Hall Street, Middleton and Inspired Lighting Ltd, Sefton Street, Heywood should be disregarded due to their leases being between connected parties.

17. The panel then considered the remaining rental evidence. The panel was informed that the rental information had been taken from Stamp Duty returns or from other sources and that the information therefore would be limited and not include important information such as the terms of the lease including whether or not it was a full repairing and insuring lease which had not been disputed by the respondent. The panel considered that to analyse the rental evidence correctly certain information would be required, and as the Stamp Duty and other sources may not include the relevant information the panel gave minimal weight to this evidence.

18. The panel noted Unit 28 rental evidence was not between connected parties but was considerably smaller and was also newer having been constructed in the 1980s. It had also been refurbished since it was built. The rent analysed to £33.73 per m². The panel considered that considerable adjustments were required due to the difference in size, age and the fact that it had been refurbished. The panel therefore gave lesser weight to this evidence.

19. Mr Rabbette provided the panel with details of six hereditaments in support of his contention that the unadjusted price per m² should be £20. His comparable hereditaments unadjusted price per m² ranged from £15.75 per m² to £24 based on age, size and location. He considered the best comparable hereditament to be Units C, G and L, Royle Barn Road, Rochdale which was located approximately 350 metres from the subject property. This hereditament was of similar age, although it had been refurbished with a metal sheeting roof and was similar in size at 7,801 m². This hereditament had been valued with an unadjusted price per m² of £20.

20. Mr Glover provided new details of the appellant's representative's comparable hereditaments in rebuttal but this information had not been given in either the challenge decision notice or prior to the hearing. The clerk informed Mr Glover that if he wished for the new information to be admitted the panel would have to consider whether or not the information was available at the time of issuing the challenge decision notice and also apply the three stages of Denton as it had not been provided to the parties at least four weeks before the hearing date. Mr Glover accepted that it was new information and therefore asked for the new information to be disregarded.

21. Mr Glover considered that Mr Rabbette's comparable hereditaments supported the unadjusted price of £23 per m² when considering age, size and location but considered the rental evidence in relation to Unit 28 to provide the most compelling evidence.

22. The panel considered the comparable hereditaments presented by Mr Rabbette to provide the best evidence as to the unadjusted price per m² to be adopted. The evidence illustrated that unadjusted values per m² adopted within the locality for similar hereditaments appeared to be between £15 per m² to £24 per m². The panel considered that Royle Barn Road, similar in age and size to the subject property but having been refurbished since construction, provided the most compelling evidence. This hereditament was also located some 350 metres from the subject property, albeit on a different trading estate but was within a similar locality. The panel therefore considered that, having had regard to the age and size of the subject property, the unadjusted price per m² of £23 was unreasonable and that £20 per m² should be applied.

23. Mr Rabbette considered that due to the poor layout and poor access end allowances should be applied. He considered a 15% allowance should be given for the poor layout due to a substantial wall along the whole width of the building with four small openings to allow access between the two areas. He stated that due to the size of the openings the occupier was unable to use forklift vehicles between the two areas and movement of items was restricted to hand carts which he considered was a disadvantage. He confirmed in questions that he was not certain whether the wall was structural or not, but it was a substantial wall and would take considerable time and effort to be removed.

24. Mr Rabbette also considered that a 15% allowance should be applied for the poor access to the subject property. He explained that the road leading to the subject property was narrow and did not allow for two HGV's passing each other and that there was only one entrance to the estate. He stated that access to the subject property meant manoeuvring was difficult and there was a crossed hatch area at its entrance to stop parking in that area.

25. Mr Rabbette stated that Unit 28 had an allowance agreed at 15% for poor layout and 15% for poor access. He stated this hereditament was considerably smaller than the subject property so whilst further along the estate road would have less traffic. In questions, Mr Rabbette explained that he had been informed that the poor layout in Unit 28 was due to a number of columns within the unit but could not confirm that this was definitely the reason for the reduction.

26. Mr Glover considered that no allowances should be granted as the unadjusted price per m² should take into account any disadvantages as well as advantages and therefore would amount to double counting.

27. Mr Glover stated that careful consideration should be given when applying allowances as they can then be used to justify allowances on other hereditaments and cited Valuation Tribunal decisions to support his contention which included *The occupier* v *Stauder (VO)*

[232017696805/125N10] and *J Rosenthal & Son Ltd* v *Rushall (VO) 237210269817/126N05]* on the issue and that "it is unreasonable to assume that, simply because one property has an assessment incorporating an end allowance, that another should automatically be entitled to the same allowance" and that "it was therefore incumbent on the agent to show the justification for the allowance on his comparables was mirrored by the circumstances at the appeal property".

28. In answer to a question Mr Glover stated that the allowance for Unit 28 concerned the layout of the plot being of a tapered nature and for the access due to the pinch point in the road.

29. The panel having considered the points raised did not consider the £20 per m² would have reflected the disadvantages raised by Mr Rabbette. In concluding £20 per m² was reasonable it had regard to comparable hereditaments where no disadvantages had been identified and therefore it did not consider that allowances would, in this instance, amount to double counting.

30. The panel noted that allowances had been given for Unit 28 due to poor layout and poor access but it was also aware that it did not automatically follow that allowances should be granted for the subject property.

31. However, the panel did consider the wall, be it structural or not, was a disadvantage and that a potential tenant would reduce his rental bid due to this issue. The panel therefore considered that 15% allowance was reasonable for poor layout.

32. The panel then considered whether an allowance should be given for poor access. The panel noted that the access road was narrow in that it would not allow for two HGVs to pass each other and that access into the subject property was hampered by the yellow hatching and closeness of other units. The panel noted that the allowance for Unit 28 had been given due to the narrow road although this property was towards the end of the estate road the issue would appear to affect the whole road. The panel considered that the issue of access would be the same for the subject property as it was for Unit 28 and therefore accepted that a 15% allowance should be applied.

33. The panel having considered all the evidence and having weighted that evidence was persuaded by the appellant's representative that the current RV of £181,000 was unreasonable. The panel considered that an unadjusted price of £20 per m² was reasonable and that an allowance of 15% for poor layout and 15% for poor access was also reasonable. The panel therefore allowed the appeal and confirmed RV £109,000.

Valuation

Floor	Description	area m²	unadjusted rate	Relativities	adjusted rate	value
Ground	Office	103.6	£ 20.00	1.32	£ 26.40	£ 2,735.04
ground	canopy	186.52	£ 20.00	0.16	£ 3.15	£ 587.54
ground	warehouse	5282.4	£ 20.00	1.05	£ 21.00	£ 110,930.40
ground	area under supported floor	1149.44	£ 20.00	0.74	£ 14.70	£ 16,896.77
first	office	819.31	£ 20.00	1.2	£ 24.00	£ 19,663.44

first	internal storage	324.34	£ 20.00	0.65	£ 13.00	£ 4,216.42
first	laboratory	90.96	£ 20.00	1.1	£ 22.00	£ 2,001.12
						£ 157,030.73
allowances	Poor access 15%					£ 23,554.61
	poor layout 15%					£ 23,554.61
						£ 109,921.51
	say RV					£ 109,000.00

Order

34. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £109,000 with effect from 1 April 2017 within two weeks of the date of this order.

Date issued to parties: 29 April 2024

Right of further 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.
