VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; warehouse and premises; preliminary issues; end allowance sought for the presence of stanchions; lower rate sought for area occupied by stairs within the warehouse; appeal dismissed.

APPEAL NUMBER:	CHG100829005
RE:	Unit 4, Connexion, Central Boulevard, Blythe Valley Park, Shirley, Solihull, B90 8AW (the "appeal property")

BETWEEN:	Evac & Chair International Ltd	Appellant
	and	
	Ms L Formela- Osbourne (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	Friday 11 October 2024
BEFORE:	Mr B Proudfoot, Presiding Senior Member Mr WJ Read, Senior Member
CLERK:	Mrs R James IRRV(Hons)
APPEARANCES:	Mr K Batty of Ken Batty Chartered Surveyors (on behalf of the appellant as both advocate and expert witness) Mr M Ingram (on behalf of the respondent as both advocate and expert witness)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel determined that the existing assessment of £169,000 Rateable Value, with effect from 4 December 2019 was not unreasonable.

Introduction

3. This appeal had been brought in respect of the following: Unit 4, Connexion, Central Boulevard, Blythe Valley Park, Shirley, Solihull, B90 8AW, which was entered in the 2017 Rating List as workshop and premises at £169,000 Rateable Value, with effect from 4 December 2019.

4. The appellant's challenge to the Valuation Officer (VO) was made on 13 July 2022. The appeal to this Tribunal was made on 3 October 2023, following the VO's decision notice of 9 June 2023, in respect of the appeal property (hereditament). The VO's decision notice reduced the assessment from £172,000 to £169,000 Rateable Value, with effect from 4 December 2019. The material day in this appeal is 4 December 2019.

5. The appeal property is located on a campus of high specification industrial/distribution units. Connexion at Blythe Valley Park, Solihill is claimed to be the West Midlands' premier location for industrial, manufacturing and logistics.

6. Mr Batty was appearing on behalf of the appellant as advocate and expert witness. Therefore, it was important to ascertain if 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).

7. Mr Batty explained that he was representing the appellant in this appeal on a conditional fee basis. However, he 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 supports his client's case.

8. The panel have 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 to it as it saw fit.

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

<u>*Preliminary issue*</u>

10. On 9 February 2024, which was after the challenge decision had been issued, the VO inspected the appeal property. The VO stated that during the inspection, several areas were identified that were not declared at the check stage. As such, the VO wished to introduce a new valuation based on the findings from the inspection. The VO was now seeking an increased value of £172,000 Rateable Value, with effect from 29 November 2021. Mr Batty stated that he had no objections to the additional evidence provided by the VO.

11. At this stage, the clerk referred the panel and the parties to regulation 38(5) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269), which stated:

'(5) Subject to paragraph (7), where it is decided that a disputed rateable value should be an amount greater than—
(a) the amount shown in the list at the date of the proposal; and
(b) the amount proposed by the appellant,

the VTE must order the VO to alter the list with effect from the day on which the VTE Panel made the decision.'

12. The clerk advised that should the panel find that the appeal property was undervalued, in accordance with regulation 38(5) above, the assessment could only be increased from the date of decision. Therefore, as the 2017 Rating List was now closed, the panel was unable to increase the existing assessment in that list.

13. The VO accepted this point but wished to proceed having regard to his additional evidence and the factual information obtained from the inspection in February 2024. The panel noted that during the challenge stage the VO made an offer, on the basis of the evidence submitted by the appellant's representative. That offer was a 2.5% allowance for lack of heating and a 1.1 uplift to office space, this reduced the assessment from £172,000 to £169,000 Rateable Value, with effect from 04 December 2019. However, following the site inspection, the VO found the earlier decision to reduce the rateable value to be flawed.

14. When questioned, the VO could not confirm that the physical state of the appeal property had been the same on 4 December 2019 as it had been when he had inspected in February 2024. In contrast, Mr Batty informed the panel that his firm had inspected the appeal property on 6 October 2021 and at that point in time no alterations had taken place to the appeal property since it was newly entered into the rating list on 4 December 2019. Any physical alterations would have taken place after this date.

15. Both parties were in agreement that the material date in this appeal was 4 December 2019, therefore, the panel decided that the VO's additional evidence from an inspection in February 2024 was irrelevant to this appeal demonstrating the physical state of the appeal property after the material date in question.

16. Finally, the panel drew Mr Batty's attention to page 8 of the challenge decision. This contained an email from Mr Batty to Mr Ingram dated 31 March 2023. In the email Mr Batty expressed his view that he would settle the appeal at £168,000 Rateable Value. After considering the matter, Mr Batty confirmed that he would be requesting the panel reduce the appeal property's assessment to £168,000 Rateable Value and not £143,000 Rateable Value as sought on appeal.

<u>*Background*</u>

17. Following Mr Batty's revised assessment, the following two issues remained in dispute:

    i) whether or not an end allowance was appropriate to reflect the presence of stanchions in the warehouse? and
    ii) the correct value to be applied to the area occupied by the stairs?

Relevant Law

18. 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, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 4 December 2019 for this appeal.

Discussion

19. The appeal property was let at a rent of £305,784 per annum from 1 December 2019 on a 15 year lease with five yearly rent reviews. The landlord was responsible for external repairs. A 17-month rent free period had been granted. As the rent had been set over four years after the AVD and the rent required a lot of adjustments to bring it back in line with the statutory definition of rateable value, the panel placed little weight on it.

20. Firstly, the panel addressed whether or not an end allowance was warranted to reflect any disabilities caused by the stanchions. In respect of the stanchions, Mr Batty sought a 2.5% end allowance, whereas the VO considered that an end allowance was not warranted. Mr Batty had explained that the stanchions impeded access internally in the warehouse, in particular for forklift trucks.

21. When questioned on supporting evidence in respect of the end allowance for the presence of the stanchions, Mr Batty explained that he had provided photographs to the VO during the challenge process. Mr Batty explained 37 photographs had been provided during the challenge, whereas the VO stated he had received two.

22. On this issue the panel did allow Mr Batty to provide four photographs of the appeal property which he stated were provided during the challenge. The panel found two of the photographs particularly helpful being internal photographs of the warehouse area showing the presence of the stanchions. In the panel's opinion, the stanchions were not too imposing and did not appear to impede access. From the photographs provided, it appeared to the panel that the area would have been accessible by a forklift truck. As such, the panel did not consider that an end allowance was warranted to reflect the disabilities caused to the appeal property due to the presence of the stanchions.

23. The panel then turned to the issue of the value attributable to the area occupied by the staircase. Mr Batty had requested that the fixed steel stairs giving access from the warehouse to the office be valued lower than the current rate applied. The VO defended the existing rate and explained that the appeal property had been measured in accordance with the Royal Institution of Chartered Surveyor's Code of Measuring Practice which measured such properties to gross internal area (GIA).

24. Mr Batty accepted that the area in question had been correctly measured. However, he considered that the area in question could not be used for anything other than access stairs and should be valued at a lower rate; the area could not be used for meaningful warehouse purposes.

25. The panel had not been provided with any supporting evidence to demonstrate that such areas should be valued at a rate lower than that applied to a warehouse. As such, the panel

found in favour of the VO on this point and determined that it had been provided with no evidence to suggest that the existing rate applied to the area in question was excessive.

Disposal

26. In view of the above findings and conclusions, the Tribunal panel is satisfied that the existing assessment of £169,000 Rateable Value, with effect from 4 December 2019 was not unreasonable. Therefore, the panel dismissed the appeal.

Date issued to parties: 7 November 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.
