THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating appeals; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; warehouse / workshop and premises; rental evidence; comparable assessments; Barnard & Barnard v Walker (VO) [1975]; appeals dismissed.*

RE: 1 Technology Centre, White Oak Square, London Road, Swanley, Kent BR8 7AG

APPEAL NUMBER: CHG100856693

RE: 5 Technology Centre, White Oak Square, London Road, Swanley, Kent BR8 7AG

APPEAL NUMBER: CHG100857186

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| BETWEEN: | Focus Windows Limited and Rydal Precision Engineering Limited (Represented by Altus Group) | Appellants |
| | and | |
| | Ms Dawn Bunyan (Valuation Officer) | Respondent |

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| PANEL: | Mrs L Bryning (Presiding Senior Member)<br>Mrs N Carman (Senior Member) |
| CLERK: | Ms R Muller |
| REMOTE HEARING: | Wednesday 10 January 2024 |
| APPEARANCES: | Mr J Wyndham from Altus Group, (Appellant's representative)<br>Mr R Das, Valuation Officer's representative |

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**Summary of decision**

1. The appeals were dismissed. The assessments were confirmed as follows:

    (i). 1 Technology Centre, White Oak Square, London Road, Swanley, Kent BR8 7AG, with a rateable value (RV) of £72,500 with effect from 1 April 2017.
    (ii). 5 Technology Centre, White Oak Square, London Road, Swanley, Kent BR8 7AG, with an RV of £71,500 with effect from 1 April 2017

**Introduction**

*1 Technology Centre – Focus Windows Limited*

2. This was a 2017 rating list appeal. The RV of the subject property was entered into the rating list at £72,500 from 1 April 2017, as workshop and premises. The total area of the subject property was 1,157.90 m².

3. Following a challenge made by the appellant which sought a reduction to the RV to £54,000 from 1 April 2017, the valuation officer (VO) issued a decision notice with no change to the RV. The appellant appealed against the decision notice on 5 July 2023 on the grounds that the valuation for the hereditament was not reasonable.

*5 Technology Centre – Rydal Precision Engineering Limited*

4. This was a 2017 rating list appeal. The RV of the subject property was entered into the rating list at £71,500 from 1 April 2017, as warehouse and premises. The total area of the subject property was 972.40 m².

5. Following a challenge made by the appellant which sought a reduction to RV £53,500 from 1 April 2017, the VO issued a decision notice with no change to the RV. The appellant appealed against the decision notice on 5 July 2023 on the grounds that the valuation for the hereditament was not reasonable.

6. Mr Wyndham appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Wyndham explained that he was instructed on a contingency fee basis and he declared that he understood and accepted his duty 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.

7. Mr Das who appeared on behalf of the Valuation Office Agency also stated he was acting as both expert witness and advocate.

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

9. As these were both compiled list entries, the material day for both appeals was 1 April 2017.

10. The subject properties were modern detached two storey business units built in 1990 and were located off Pioneer Way in Swanley circa 17 miles south east of central London. Both subject properties had been placed into the valuation scheme 293584.

11. 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 was not reasonable. The appeal was received by the Tribunal on 29 June 2023.

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

**Issues**

13. The issue for the panel to consider was the correct unadjusted rate to be applied in the subject properties assessments. Mr Das contended that £80 per $m^2$ was correct, but Mr Wyndham requested the panel determine a revised unadjusted rate of £60 per $m^2$.

**Evidence and submissions**

14. The evidence bundle submitted to the Tribunal comprised all of the documents exchanged between the parties as part of the challenge process, the VO's decision notice and the appellant's challenge submission, along with various extracts from several judgements.

15. During the hearing, the agent referred to the case law of *Barnard & Barnard v Walker (VO)* [1975] which had not been included within the evidence bundle. Therefore, the clerk issued a copy to the panel and the parties after the hearing.

**Decision and reasons**

16. In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where 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. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* [1976] RA 141, as referred to by the respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    (1) ‘Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

    (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

    (3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

    (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

    (5) In light of all the evidence an opinion can then be formed of the value of the subject property, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

    (6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.’

18. The panel was aware that, following the propositions set out above, the rent on the subject property should be a starting point. It noted that the freeholds of the subject properties were owned by the appellants’ and so turned to the comparable properties each party had each provided.

19. Mr Wyndham referred the panel to the following comparable property in support of his contention that the subject property was over assessed. The comparable property was Units 1B & 1C, The Interchange, Wested Lane, Swanley, Ken BR8 8TE. This property was in a different scheme than the subject property, 436163 and had an unadjusted rate of £62.50 per m². However, the panel noted that it was much larger in size than the subject properties at 10,931.45 m² with an RV of £680,000.

20. Mr Wyndham discussed the rental and tonal differences between the 2010 and 2017 rating lists when compared to properties comparable to the subject properties. In support of his contention, he referred the panel to the case of *Barnard & Barnard v. Walker* (VO) [1976], where Mr Jones commented that:

"The level of value in the old list is of no help in determining values in the new list; but when it comes to a consideration of differentials in the old valuation, it seems to me that there must be a presumption that these differentials were correct. Such a presumption can be rebutted by evidence."

21. As such, Mr Wyndham stated that even though each list is to be considered separately, the settlements within the 2010 rating list should be considered and carried over to the 2017 rating lists. The panel considered the table which provided details of 2 and 3 Technology Centre. These properties were much smaller in size than the subject properties at 505.81 m² and 507.2 m² where the unadjusted rate in the 2010 rating list had been the same as the subject properties at £62.50 per m². However, they were higher than the subject properties in the 2017 rating list at £88.72 per m². Therefore, the panel placed less weight on this statement by Mr Wyndham.

22. The panel considered the details of *Barnard & Barnard v. Walker (VO)* [1976], and the fact that each list was to be considered separately. It was noted that the VO had looked at the subject property afresh with regards to the 2017 rating list. However, the panel noted that this judgment referred to end allowances and whether changes had been made with regards to layout or access when considering a hereditament, if not, the end allowances should remain the same between rating lists.

23. The panel was informed by Mr Wyndham that the subject properties were located in a less superior location than the comparable properties presented by Mr Das, as some of the comparable properties were located on a motorway junction. The subject properties were located close to the town centre and also the railway station and were, therefore, in not as a desirable location compared to the comparable properties. However, the panel held that this was an opinion, as it may be more beneficial to be close to local amenities and a railway station and not near a motorway junction. Therefore, it placed less weight on this statement.

24. The panel turned its attention to the evidence provided by Mr Das, which he contended supported the unadjusted base rate of £80 per m$^2$ for the subject properties.

25. The panel noted that the comparable properties presented by Mr Das were located in the postcode area of BR8 7** or BR8 8** districts. The sizes of the comparable properties varied between 225.81 m² and 4,487.56 m² and had unadjusted rates between £67.50 per m² and £90 per m².

26. The comparable property of 4 The Interchange, Wested Lane, Kent BR8 8TE, was similar in size to 1 Technology Centre at 1,380.20 m². This property had a lease which commenced on1 March 2010 and its five year rent review took place on 1 March 2015 with a rent set at £113,000 pa. Its unadjusted rate had been set at £75 per m². As this was a rent review, the panel placed some weight on the details provided.

27. The panel paid particular attention to the comparable property of 2 Gateway Trading Estate, London Road, Swanley, Kent BR8 8EE which was similar in size to 1 Technology Centre at 1,078.05 m² though described as a Warehouse and Premises within the 2017 rating list. This property was let on a new lease for six years from 20 October 2014 for a rent of £83,000 per annum (pa). Its unadjusted rate was £70 per m² giving an RV of £76,500. However, it was noted that its unadjusted rate had been reduced to £65 per m² due to taking into account a three year six month break clause. As the new lease had commenced only six months prior to the AVD of 1 April 2015, the panel placed more weight on this comparable property.

28. The panel noted that Unit 1a, The Interchange, Wested Lane, Swanley, Kent BR8 8TE had a new lease set near the AVD of 1 April 2015, however this property was much larger in size than 1 Technology Centre at 4,487.56 m². Its unadjusted rate had been set at £67.50 per m² however, the panel held that due to its size, less weight should be placed on it.

29. Of the comparable properties detailed above by Mr Das, the panel noted that the only comparable which was within the same scheme as the subject properties was First Floor 4 Technology Centre, White Oak Square, London Road, Swanley, Kent BR8 7AG. It had an unadjusted rate of £90 per m². It had a new lease from 1 March 2016 for a term of six years. However, it was much smaller in size than both 1 and 5 Technology Centre at 255.81 m² and had been described as business unit and premises within the 2017 rating list. Therefore, the panel placed less weight on this comparable property.

30. The panel considered the other hereditaments located at 2 and 3 Technology Centre, which were described as warehouse and premises within the 2017 Rating List and had unadjusted rates of £88.72 per m² and £88.97 per m². Both hereditaments were smaller in size than 5 Technology Centre, at 505.81 m² and 507.20 m². However, the panel noted that the unadjusted rates for these two comparable properties were slightly higher than both the subject properties.

31. The panel found that Mr Wyndham had failed to produce any significant evidence to justify his argument for the lower base rate of £60 per m². The panel attached more weight to the hereditaments located at the Technology Centre which had slightly higher rates than the subject properties and the comparable property of 2 Gateway Trading Estate, which was located near the motorway network. The unadjusted rate for the subject properties fell between both of these hereditaments unadjusted rates, therefore, the panel held that £80 per m² for the subject properties was not excessive.

32. From the basket of evidence provided by both parties, the panel was satisfied that the current assessments of the subject properties were reasonable. It therefore dismissed the appeals and confirmed the current entries in the list for the subject properties at £72,500 RV with regards to 1 Technology Centre, White Oak Square, Swanley BR8 7AG, and £71,500 RV with regards to 5 Technology Centre, White Oak Square, Swanley BR8 7AG.

**Date:** 29 January 2024

**Appeal number**: CHG100856693 and CHG100857186

**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.