VALUATION TRIBUNAL FOR ENGLAND

Amended decision following the correction of a clerical error in accordance with regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269).

2017 Non-Domestic Rating List Appeals: Local Government Finance Act 1988; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Factory and premises; main space price; allowance for disabilities; Berry (VO) v Iceland Foods Ltd [2015] UKUT0014 (LC); appeals allowed in part

APPEAL NUMBERS:	CHG100873155 and CHG100881566	
RE:	Ferguson Polycom Victoria Mill, Drury Lane, Oldham OL9 7PH (the "appeal property")	
BETWEEN:	Fothergill Engineered Fabrics Ltd	Appellant
	and	
	Ms A Hitchings (Valuation Officer)	Respondent
SITTING:	*Remotely using Microsoft Teams*	
ON:	16 August 2024 10:00	
BEFORE:	Ms CJ Jones, Presiding Senior Member Mr K Everett, Senior Member	
CLERK:	Mr R Gath IRRV(Hons)	
APPEARANCES:	Mr K Rabbette (Appellant's representative) Mr S Wright (Respondent's representative)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are allowed-in-part.

2. The Tribunal panel concluded that the main space price should be reduced to £26/m^2. The panel also decided that a 5% allowance for lack of access should be awarded and the fire

protection system should not be rateable. However, the panel concluded that there was no evidence to support an increase in the allowance for poor layout. The resultant rateable value (RV) was £132,000.00 for the period 1 April 2017 to 28 July 2022 (inclusive) and RV £132,000.00 for the period 29 July 2022 to 31 March 2023 (inclusive).

Introduction

3. The appellant had made two challenges against the accuracy of the compiled list assessments in the 2017 Rating List, by way of two proposals that he served on the Valuation Officer (VO) on 28 October 2022 and 23 November 2022. After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals were not well founded and refused to alter the existing assessment of £184,000 RV effective from 1 April 2017 to 28 July 2022 (appeal 1), and £187,000 RV effective from 29 July 2022 (appeal 2). Decision notices to that effect were served on the appellant on 24 November 2023 and his representatives then appealed the VO's decisions to the Tribunal on 23 March 2024, on the grounds that the current valuation for the hereditament was not reasonable, under regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appeal property was a factory and premises with an agreed area of 6,739m². It was originally built in the mid 1800s and had subsequently been extended in the 1970s which approximately doubled the size of the appeal property. The older part of the appeal property was valued at 30% less. The RV was increased effective from 29 July 2022 as a result of 12 shipping containers being added to the valuation.

5. As Mr Rabbette appeared on behalf of the appellant as both advocate and expert witness, the clerk asked 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).

6. He declared that he was instructed under a conditional or success fee arrangement in his role as advocate but in his role as expert witness, he was instructed on a fixed fee. Mr Rabbette confirmed 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.

7. The panel 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).

8. Mr Wright confirmed that he was representing the VO as advocate and expert witness.

9. As part of their induction training, two new members of the Tribunal were observing proceedings. It was explained to the parties that it was the panel's intention to invite their colleagues to accompany it to the retiring room. The parties were assured that the new members would not participate in the decision making exercise but would simply observe as part of their training. Neither party had any issues or objections to this.

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

Background

11. The issues in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Rabbette sought a reduced entry of £105,000 RV to 28 July 2022 and an entry of £106,000 from 29 July 2022 based on an unadjusted of value of £22.39/m² for the newer part and £15.40/m² for the older part. He also requested a 10% allowance for lack of access, a further 10% allowance for poor layout and he sought the sprinkler system to be excluded from the valuation as he considered that it was for the manufacturing process rather than to protect the building.

12. However, Mr Wright defended the VO's assessments of £184,000 and £187,000 RV respectively based on a tone of value of £31.50/m². He considered that the current 5% allowance for lack of access and layout was sufficient. He was also satisfied that the sprinkler system was for the building rather than the manufacturing process and should therefore be included in the assessment.

13. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties comparable assessments, skeleton arguments, a number of photographs of the appeal property and the comparable properties and a fire safety risk assessment conducted by OHEAP fire and security.

Preliminary issue

14. There was a preliminary issue in that Mr Rabbette provided additional late evidence to support his argument in relation to the Fire protection system. He also provided a copy of a Tribunal decision *Forthergill Engineered Fabrics Limited v Ms A Hitchings* appeal number CHG100798521 although a Tribunal decision is not considered to be evidence and could therefore be allowed.

15. Mr Wright objected to this information as he considered that Mr Rabbette had changed his argument in respect to the Fire protection system and asked the panel for an adjournment to re-inspect the appeal property.

16. Mr Rabbette objected to a postponement and wanted the appeals heard and brought to a conclusion. He did not consider the information to be new evidence but to support his argument that it should not included in the assessment. The VOA had already undertaken a joint inspection of the appeal property and his client would be prejudiced by a further postponement of the appeals so that the VOA could inspect the appeal property again.

17. The panel understood that Mr Rabbette had changed his argument in respect of the Fire protection system. However, it was disappointed that the VOA had not fully noted the details of the system when the appeal property was inspected. It decided to hear the appeal, but noted that Mr Wright was slightly prejudiced by the late evidence.

Discussion

18. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA141. The rent on the subject property is considered to be the correct

starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

19. However, both parties accepted that the rent was not reliable to determine the RV as the lease was between connected parties. Therefore, to determine the unadjusted rate, Mr Rabbette had identified a number of comparable properties in Oldham. A lot of these had parts that comprised of different ages and varied from £15.31/m^2 to £25.00/m^2 for the older parts of these properties and £31.00/m^2 and £40.39/m^2 for the newer parts.

20. Mr Rabbette disagreed with the VO's comparable properties as he considered they were in a better area of Manchester as they were located in Salford and Trafford. He also argued that the VO's comparable properties were built in the late 1980s whereas the appeal property was extended in the 1970s and it should be valued less than the VO's comparable properties.

21. To support the current value, Mr Wright produced a number of comparable properties within the Manchester area which had been built in the 1980s. They had also been agreed with the relevant agents and contended that these supported a tone of value. They varied from £28.50/m^2 to £37/m^2.

22. To support the current assessment, Mr Wright also referred to a number of comparable properties which had been built in the 1980s. They varied from a total area of 4,225m^2 to 13,800m^2. The values that had been adopted ranged from £30.00/m^2 to £32.00/m^2. He also presented a number of properties that had been built before 1918. They varied from a total area of 4,971m^2 to 7,400m^2. The values had been adopted ranged from £11.44/m^2 to £12.50/m^2.

23. Weighing up the evidence, the panel was satisfied that the appeal property should be valued less than the properties that had been built in the 1980s. Although the VO had contended that there was no difference in the construction of properties that were built in the 1970s and 1980s, the panel applied less weight to this argument as it was clear that properties built in the 1980's were going to be constructed using more modern construction methods and would be more valuable. The panel noted that Units L1/L2/L3 Lyntown Trading Estate was broadly similar in size to the appeal property and had been valued at £28.50/m^2 although it was newer and would therefore be more valuable.

24. The panel applied less weight to the values of most of the Appellant's comparable properties as they were larger than the appeal property and would therefore benefit from a quantum allowance. The panel noted that others were significantly smaller than the appeal property and were valued with an unadjusted rate £25.00/m^2. However, the VO had contended that most of those units had been built between the 1940s to 1960s. The panel therefore decided that the value of the appeal property should be £26/m^2 being less than Units L1/L2/L3 Lyntown Trading Estate. However, the panel considered that the appeal property would be more valuable than Mr Rabbett's comparable properties as they were older.

25. The VO had calculated the mid-point between £11.50/m^2 being the basic price of pre 1918 units and £31.50/m^2 being the mid-price of 1980s properties. As the panel determined that the value of the newer part of the appeal property was £26/m^2 by taking a mid-price between these values would be £15/m^2 which the panel considered to be too low for the older part of the appeal property. It therefore concluded that Mr Rabbatte's value of £17.07/m^2 for the older part should be used.

26. The panel then considered Mr Rabbette’s argument that the appeal property should had a 10% allowance for reduced access as there was only one entrance for deliveries. Although the Appellant’s photographic evidence did not support this as there were two vehicle entrances and none of them suggested that one of only for deliveries. Mr Rabette verbally confirmed that there was only one entrance for deliveries. The delivery lorries had to reverse within the car park and there was no room for them to park which meant that deliveries had to be staggered during the day. Mr Rabbette also verbally confirmed that there were regular daily deliveries to the appeal property.

27. The VO had argued that when the RV for the 2010 rating list had been agreed with the Appellant’s representative, there was no allowance for poor access. But, no evidence was presented to the panel to prove that it had been requested by the representative. However, the panel applied significant weight to the assessment for PP Profiles. That property was located next to the appeal property and therefore suffered from the same disabilities caused by the queuing traffic on Drury Lane and concluded that a 5% allowance should be awarded. Although the Appellant had argued for a higher amount for the entrance to the appeal property, no persuasive evidence was presented to demonstrate that the allowance should be greater.

28. Mr Rabbette also sought an increase for an allowance for poor layout from 5% to 10% allowance. Again, the VO had argued that a 5% allowance had been granted in the 2010 rating list following discussions between the VO and the Appellant’s representative. Although the panel was aware that the representative was not Mr Rabbette, no evidence had been presented to the panel to prove that the layout of the appeal property had changed from the previous rating list. The panel therefore considered that the 5% allowance should not change as there had not been any changes to the appeal property.

29. Turning to the final issue, the Fire Protection System, Mr Rabbette had argued that the appeal property was used for the production of rubberised material used for wet suits. The only method of producing this material was by using Toluene to make it more pliable. Toluene was highly flammable, explosive and toxic and required specific protection in case of fire. He also submitted that Magnesium Oxide and Zinc Oxide were stored at the appeal property. These chemicals required different fire protection from a normal water based sprinkler system. The system was designed to cater for the manufacturing process and was not to protect the building. He also submitted that this system only covered the production areas, plant rooms and storage, but not other areas such as mess rooms and offices. To support his argument, he included a Fire Risk Assessment. Mr Rabbette also referred to the judgment *Iceland Foods Limited v Berry* which confirmed that if plant and machinery was used in the connection with services or as part of the manufacturing or trade process, it was not rateable.

30. Mr Wright had argued that Mr Rabbette had not provided full details of the fire protection system or indicated why it was used for the processes rather than for protection of the building. The panel understood that the VO was disadvantaged as he had not noted the use of this system when he had visited the appeal property and some of this information had only recently been provided. However, it was clear to the panel that the fire protection system was purely for the protection of fire from the manufacturing process at it was designed to cater for the manufacturing process rather than for the protection of the building and that it should be excluded from the RV.

31. The revised valuations are as follows:

   1 April 2017 to 28 July 2022 (inclusive)

Floor	Description	Area m²	£ per m²	Value
Ground	Production area	1,883.09	17.07	32,144.35
Ground	Production area	46.78	17.07	798.54
Ground	Mess/staff room/lockers	67.41	18.78	1,265.96
Ground	Office	58.64	18.78	1,101.26
Ground	Office	82.68	18.78	1,552.73
Ground	Plant room	157.23	17.07	2,683.92
Ground	Offices	328.60	20.48	6,731.04
Ground	Reception/entrance	22.95	28.86	662.34
Ground	Plant room	16.74	24.18	404.77
Ground	Canopy	135.96	3.90	530.24
Ground	Production area	3058.45	26.00	79,519.70
Ground	Plant room	32.58	26.00	847.08
Ground	Plant room	52.61	26.00	1,367.86
Ground	Production area	42.00	26.00	1,092.00
Ground	Production area	104.44	26.00	2,715.44
Ground	Warehouse	97.58	26.00	2,537.08
Ground	Canteen/WCs/Lockers	166.97	28.60	4,775.34
Ground	Works office	28.36	28.60	811.10
Mezzanine	Works office	28.36	13.00	368.68
Ground	Loading bay	132.86	26.00	3,454.36
Ground	External storage	27.74	19.50	540.93
First floor	Laboratory	166.97	28.60	4,775.34
Ground	External storage	10.00	19.50	195.00
Plant and machinery				4410.00
			Sub total	155,285.06
Storage containers x 2		2	98.00	196.00
			Sub total	155,481.06
Less allowances				
5% Access			-5%	7,774.05
5% Loading			-5%	7,774.05
5% Layout			-5%	7,774.05
			Total	132,158.90
			Rateable value say	132,000.00

Effective from 29 July 2022

Floor	Description	Area m²	£ per m²	Value
Ground	Production area	1,883.09	17.07	32,144.35
Ground	Production area	46.78	17.07	798.54
Ground	Mess/staff room/lockers	67.41	18.78	1,265.96
Ground	Office	58.64	18.78	1,101.26
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Ground	External storage	27.74	19.50	540.93
First floor	Laboratory	166.97	28.60	4,775.34
Ground	External storage	10.00	19.50	195.00
Plant and machinery				4410.00
			Sub total	155,285.06
Storage containers x 2		2	98.00	196.00
Storage containers x 10		10	98.00	980.00
			Sub total	156,461.06
Less allowances				
5% Access			-5%	7,823.05
5% Loading			-5%	7,823.05
5% Layout			-5%	7,823.05
			Total	132,991.91
			Rateable value say	132,000.00

Order

32. 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 reduce the entry in the rating list to rateable value £132,000 with effect from 1 April 2017 to 28 July 2022 (inclusive) and rateable value £132,000 with effect from 29 July 2022.

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

Refund of appeal fees

34. As the grounds of the appeal have been made out, a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision.

Date issued to parties: 22 October 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.
