THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeals; warehouse and premises; height of warehouse and end allowances in dispute; appeal allowed in part.

RE: Hadley Industries, Gaitskill Way, Smethick, West Midlands B66 1BG (subject premises)

APPEAL NUMBER: CHG100895756

BETWEEN	Hadley Industries Holdings Limited	Appellant
	and	
	Ms L Formela-Osbourne Valuation Officer	Respondent
PANEL:	Ms C Edwards (Presiding Senior Member) Ms F Rahman-Cook (Senior Member)	
CLERK:	Ms J Routledge	
REMOTE HEARING:	Friday 9 February 2024	
APPEARANCES:	Mr K Rabette, representing the appellant Mr M Latif representing the Valuation Officer	

Summary of decision

1. Appeal allowed in part. The panel confirmed the Valuation Officer's revised end allowance for internal layout issues from 5% to 10% for and an increase for fragmentation from 5% to 10%. The panel also confirmed that the 5% for low eaves should be applied to the whole of the assessment.

Introduction

2. The challenge proposal on : Hadley Industries, Gaitskill Way, Smethick, West Midlands B66 1BG (subject premises) was received on 22 December 2022. It was made on the grounds that the Rateable Value (RV) shown in the rating list on 1 April 2017 was inaccurate. The Appellant's representative sought end

allowances of 10% for layout/shape a further 10% for fragmentation and a reduction in the base rate to £28 per m^2 before an end allowance of 5% for low eaves height was applied.

3. The Valuation Officer issued a challenge case decision notice on 16 May 2023 which disagreed with the proposed alterations, but stated that the rating list entry was unreasonable based on the evidence and information available. The Valuation Officer concluded that the unadjusted rate should be reduced from £41per m^2 to £39 per m^2 and the end allowances for fragmentation and layout should be increased to 10%.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal have been made on the grounds that the valuations for the hereditament was not reasonable. The appeal was registered by the Tribunal on 8 September 2023.The subject property is an industrial premises in Smethwick.

5. Mr Rabette 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) his statement of truth included a statement that he was not instructed under any conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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 subject premises comprised of three parts, the warehouse constructed in 1993 and the factory constructed in 1994 both portal framed buildings with block and PPM walls. The land surrounding the two buildings allows them to be contiguous and therefore the properties were merged into one assessment.

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

Preliminary Matter

8. The height of the factory eaves was in dispute. The Valuation Officer maintained it was 9.15m whereas the Appellant disputed this stating the height was 7.1m. Mr Rabette who is a qualified Chartered Surveyor stated he had taken this measurement himself using laser measuring equipment on 21 February 2018.

9. Mr Latiff had provided a copy of the survey report dated 18 November 1994 which stated the eaves height on the new building (presumed to be the

factory) was 9.15m. It was also stated that a further inspection had occurred on 3 October 2022 had confirmed the height.

10. Mr Rabette disputed there had been an inspection as the clients had strict security and there would not have been an inspection without the clients advising him and him being in attendance. Mr Latiff had provided no evidence of this inspection or the method of measurement.

11. The panel accepted Mr Rabette's measurements as they had been obtained by a qualified surveyor using modern equipment, whereas the Valuation Officer's method of measuring was not evidenced and therefore was less reliable.
12. Issues

13. The issues in dispute were whether the overall base rate was reasonable and how the end allowance for the limited eaves height should be applied.

Evidence and submissions

14. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

15. On behalf of the appellant, Mr Rabette went into detail regarding the history and construction of the subject premises and the location. He provided nine assessments he considered to be comparable and supported his contention that the RV was excessive. Most were warehouse and premises with sizes between 5,614.7m^2 and 35,304.17m^2. He provided details of these comparable premises and also his reasons why he considered the Valuation Officer was inaccurate in the analysis of the comparable premises he had identified.

16. The Valuation Officer had provided four comparable assessments most of which were warehouse and premises, ranging in size from 5,050.55m^2 to 9,693.06m^2. An analysis of the appellant's comparable premises and the reasons why they should be given less weight was submitted.

Decision and reasons

17. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at

which it is estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

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;

the third assumption is that the tenant undertakes to pay all the 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.

18. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

19. The panel referred to the hierarchy of rental evidence that should be used to determine the RV of the appeal property as detailed in the authoritative and binding Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. In addition, the RVs of other comparable properties should be considered. There was no rental evidence provided for the subject premises or for all but one comparable property cited by the parties.

20. The panel noted the reference by the Appellant's representative to comparable properties that were in different locations up to fifteen miles away from the subject premises as indicated on the map provided. These were also of differing ages to the subject premises and some were of a significantly larger size. Mr Rabette advised that he considered the comparable premises that best indicated the RV that should be applied to the subject premises was Birds Groupage Services which was similar in age and distance from the motorway. It was purpose built and therefore did not suffer the layout issues experienced by the subject premises. He also referred to East End Foods, which was extended at about the same time as the subject premises and therefore had similar disadvantages. Both of these comparable properties were in the list at £28 per m^2.

21. The panel noted Birds Groupage was of a similar age and has similar eaves height, however it was significantly larger at 12,077.85m^2 therefore the panel found this carried less weight as the RV may have been affected by a reduction for quantum. East End Foods was according to the VO constructed in 1976 and extended in 1993 and was therefore significantly older and was

smaller in size to the appeal premises. The weight given to these premises was limited due to the differences in sizes and age.

22. The panel then had regard to the Valuation Officer's comparable properties. These were much closer to the subject premises than the Appellant's comparable premises. The panel considered the most similar was Pargat & Co Ltd which was constructed in 1998 four years after the subject premises and was 9,693.06m^2. It had a base price of £42per m^2 and although this was challenged, the tone was maintained. It had been extended in 2013 and was considered to be of a superior quality by the appellant's agent. Jayplas was also assessed at £42per m^2, it was opposite the subject premises but was older and considerably smaller, even though it had been extended several times. The other comparable premises cited were also smaller and newer than the subject premises and had values between £42 and £44 per m^2.

23. The panel considered the comparable properties cited by the Valuation Officer provided good evidence of the tone for the locality. Although most were smaller and more modern, they were all close to the subject premises and would therefore be a better indication of tone for that locality. Allowing for an adjustment to take account of the age and quantum the panel found that £39 per m^2 for the subject premises was not excessive.

24. The panel accepted Mr Rabette's argument that the allowance for low eaves should be given to the whole of the subject premises as this would affect the potential rental bids. It was the panel's opinion that the hypothetical tenant would have regard to the restrictions caused by the low eaves when negotiating the rent for the whole property.

25. The following assessment was therefore determined, based on £39 per m^2 and applying the 10% line entries for the layout issues and end allowances for fragmentation and low eaves:

Description	**Area m/^{2}**	**Adjusted rate £/m^2**	**Value £**
Ground Workshop	5,887.36	35.10	206,646
Ground Office	219.66	42.12	9,252
First Office	219.66	42.12	9,252
Ground Office	112.21	42.12	4,726
First Office	115.9	42.12	4,882
Ground plant room	44.5	35.10	1,562
Ground Gate house	38.11	35.10	1,338
Ground Office	112.21	42.12	4,726

First Office	115.9	42.12	4,882
Ground Office	112.21	42.12	4,726
First Office	115.9	42.12	4,882
Ground canopy	908.02	5.27	4,785
Ground Warehouse	1,165.71	38.03	44,332
Ground Office/toilets	132.5	46.8	6,201
Ground canopy	235.94	5.85	1,380
Ground portable building	24.97	29.25	730
First Portable building	24.97	19.5	487
Ground portable building	15.3	29.25	448
Subtotal	**9,601.03**		**304,512**
Additional Items			
Hard surfaced, Fenced land	1709.3	4.9	8,376
Hard surfaced, Fenced land	1215.5	4.95	6,017
Hard surfaced, Fenced land	6418.5	4.9	8,816
Hard surfaced, unfenced land	1799.2	3.5	22,465
Plant and Machinery			7,618
Surfaced open spaces/car spaces	114	50	5,700
Valuation subtotal			**374,229**
Adjustments			
Divided split unit		-10%	37,422
Low eaves height		-5%	16,840
Total			**319,967**

Rounded to £317,500.

1 Accordingly the appeal was allowed in part.

Order

2 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 alter the entry in the rating list to £318,000 from 10 November 2020.

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

4 A refund of the paid fees will now be arranged provided there are no reviews of the Tribunal's decision.

Date: 4 March 2024 (re-issued 6 March 2024)

Appeal Number: CHG100895756

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to transcription and mathematical errors in the calculation of the RV.

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.