VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating; allowance sought for mixed age; layout allowance to be applied on whole assessment; assessment of comparable properties. Appeal dismissed

APPEAL NUMBER: CHG100896703

RE: Kyoto Futons Ltd, Hards Lane, Frognall PE6 8RP
(the "subject property")

BETWEEN: Kyoto Futons Ltd — Appellant

and

Joanne Moore
(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 01/05/2024

BEFORE: Mrs N Crawshaw, Presiding Senior Member

CLERK: Mrs J Routledge IRRV(Tech)

APPEARANCES: Rowan Locke of Rabette Chartered Surveyors representing the Appellant
Richard Hichens Representing the Respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. I found that the layout allowance should be applied across the whole assessment and no allowance for mixed age should be granted, as a consequence the rateable value will remain unchanged

Introduction

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 16 January 2023. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was well founded and agreed to reduce the RV from £162,000 down to £110,000. A decision notice to that effect was served on the appellant on 4 August 2023. His representatives then appealed the VO's decision to the Tribunal on 4 December 2023 on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appeal property was a described as a factory and premises with a total significant area of 4,151m^2. The original building was constructed between 1965 and 1970 with further additions being added in 1989 and 1994.

5. Mr Locke appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a conditional fee basis. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Davies' declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

6. 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).

7. The panel hearing the evidence considered the "expert" evidence and assessed what weight, if any, it should give to it in the context of the matters in issue before it.

8. Mr Hichens was representing the VO in the dual role of advocate and expert witness.

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

Background

10. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

11. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

Preliminary issue

12. A second panel member had been allocated to this hearing. However, on the day of the hearing the member was required to attend an appointment in the afternoon and was unable to continue to sit to hear this appeal.

13. I referred to the Valuation Tribunals Consolidated Practice Statement Part 1 Tribunal Business Arrangements paragraph 11 “Hearings where a member is unable to sit”:-

> “Where a panel member is allocated to a hearing and unable to sit for any reason or fails to appear…….a hearing will proceed with a Senior Member alone where a member gives notice of unavailability within one working day of the hearing, to avoid postponing the hearing”.

14. I duly proceeded alone.

Relevant Law

15. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

“(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.

16. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 prescribes the requirements to establish the material day. In this case:

A valuation date of: 1st April 2015
A material day of: 1st April 2017

Discussion

17. The evidence submitted for consideration of this appeal consisted of the VO's challenge decision and challenge update, the agent's rebuttal to the VO's initial response, photographs and location maps of the appeal property, photographs and location maps of properties submitted as comparable to the appeal property, and the agent's written appeal statement.

18. Mr Locke confirmed that he was seeking to have the agreed 5% allowance for layout issues to be applied to the whole assessment as it directly affects the rental bid of the subject property as a whole and should be applied at the final "stand back and look" stage of the valuation. Although the VO had made an adjustment to the RV so as to separately value the three areas of the subject property taking into account the differing ages he argued that an additional 5% mixed age allowance to reflect the differing construction styles, eaves heights and requirements for repair and maintenance of the buildings should be granted.

19. Mr Locke provided eight comparable properties which all demonstrated that the allowances for either mixed age or layout issues was applied at the end of the assessment and therefore I gave weight to the contention that the allowances should be applied to the whole assessment.

20. I then went on to consider the mixed age allowance, Mr Locke's comparable properties were some distance from the subject property whereas the VO's comparable properties were within the same locality as the subject property and had no allowance for mixed age. I noted that the photographs appeared to show the subject property appeared to be of brick built construction with the extended warehouses being of similar construction.

21. Mr Locke argued that the revised unadjusted rates accounted for variations in the age and quality of the buildings. If the different sections of the subject property had been valued as individual units, they would attract the differing unadjusted rates used by the VO. However, the individual sections are not standalone units, and the value of the whole hereditament "as it stands" should be determined.

22. I noted that in the comparable assessments identified by Mr Locke there was no adjustments on the assessments of the individual buildings to reflect their mixed ages, this was reflected in the end allowance. He quoted from *Robinson Brothers (Brewers) Limited v. Chester-Le-Street [1937]* in his submission "it is the duty of the valuer to take into consideration every intrinsic quality and every intrinsic circumstance which tends to push the rental value either up or down, just because it is relevant to the valuation and ought therefore to be cast into the scales of the balance before he looks to see the resultant figure on the dial at which the pointer finally rests."

23. Mr Hichens argued that it would be double counting to allow a mixed age allowance as this had already been provided for in the assessment of the individual buildings, he quoted *The Occupier v Stauder (VO).* where the tribunal held that – "the granting of end allowances will always depend on the particular facts affecting any property. 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". I appreciated that as a

Valuation Tribunal decision it is not binding upon me, however it does reflect the correct approach in my opinion.

24. In reaching my decision I noted that the rent was not a reliable starting point as it was informal and between connected parties. I also noted that the comparable properties identified by the VO, Garford Farm Machinery which was next door to the subject property and Ken Read and Son Ltd in Market Deeping which had both been added to over a number of years had no end allowance for mixed age and the assessment had not been challenged. This evidence supported the VO argument that in the locality no allowances had been made for mixed age but different assessments had been made for the newly constructed areas. I gave the evidence of assessments within the locality more weight than the comparable evidence submitted by the appellant as these properties were a considerable distance away, the construction of the later buildings appeared to differ substantially and there was no line adjustments to reflect the differing ages of the buildings, this was applied at the end.

Disposal

25. In view of the above findings and conclusions, the appeal was dismissed, although I was satisfied that the 5% allowance for layout should be applied to the whole assessment and not as line adjustments this made no difference to the RV. The appellant had not satisfied me that a further allowance for mixed age is appropriate as this had been taken into account in the assessment of the subject property as it had been in other similar properties in the area which established the tone for the locality. There had also been no specific evidence adduced of the mixed age being a significant disadvantage that warranted an allowance.

Description	**Area m/^{2}**	**unadjusted rate £/m^2**	**rel**	**Adjusted rate £ m^2**	**Value £**
Production area	973	20.00	0.92	18.40	17,903.20
Warehouse	110.3	20.00	1.00	20.00	2,206.00
Office	319.30	20.00	1.20	24.00	7,663.20
Warehouse	1,302.00	26.00	1.00	26.00	33,852.00
Warehouse	1370.00	40.00	0.98	39.00	53,430.00
Office	8.50	40.00	1.20	48.00	408.00
Portable building	22.50	40.00	0.75	30.00	675.00
Portable building	45.40	40.00	0.75	30.00	1,362.00
Subtotal	**4,151.00**				**117,499.40**
Layout allowance				-5%	5,874.97
Total					**111,624.43**

Order

26. The Tribunal orders that the assessment is altered to reflect the layout allowance is applied across the assessment. This will make no alteration to the Rateable Value of £110,000.

Date issued to parties: 16 May 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.
