THE VALUATION TRIBUNAL FOR ENGLAND

Summary of decision: non-domestic rates; 2017 rating list appeal; factory and premises; end allowance sought for flooding; panel considered flood risk reflected in revaluation and not a material change; evidence showed that the existing valuation was reasonable;.appeal dismissed.

RE: Trico VE Ltd, Castlefields Lane, Bingley, BD16 2AB

APPEAL NO: CHG100915232

BETWEEN: Mariner Holdings plc represented by Altus Group Appellant

and

Mrs J Moore (Valuation Officer) Respondent

BEFORE: Mr D Hogg (Senior Member) and Mr S Hooberman

CLERK: Mr J Massey

REMOTE HEARING: 12 January 2024

APPEARANCES: Mr M Iles of Altus Group (on behalf of the Appellant)
Mr H Hussain (Respondent's representative)

Summary of decision

1. Appeal dismissed. The panel determined the Rateable Value (RV) of Trico VE Ltd, Castlefields Lane, Bingley, BD16 2AB ("the subject premises") at £54,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of subject property, which was entered in the 2017 rating list as "Factory and premises" at rateable value (RV) £70,000, effective from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The challenge process began on 8 February 2023 when the appellant had made a proposal to the Valuation Officer (VO) that the entry shown in the rating list for the appeal property on 1 April 2017, was wrong and that it should be reduced to RV £46,500.

4. Having considered the challenge the VO issued a decision on 4 May 2023 stating that the VO was of the opinion that the current RV of £70,000 attributed to the appeal property from 1 April 2017 was unreasonable but disagreed with the entry proposed in the challenge. The tone applied to the appeal property was reduced from £19.50 per m^2 to £15 per m^2 which resulted in a reduced entry of £54,500.

5. In accordance with regulations[1], an appeal was made on 17 May 2022 to the Valuation Tribunal for England (VTE) on the grounds that the subject property suffers from a severe disadvantage due to the high chance of flooding across the site. On this basis the appellant sought a 15% end allowance to reflect the risk of flooding, which would result in a RV of £46,500.

6. The subject premises is a factory built prior to 1919 with a total significant area of 4,317m^2 spread over four floors. It is situated adjacent to the Castlefield Industrial Estate in Bingley, in a prominent industrial location off the A650, providing good access to Bradford and Keighley and other regions via the M62 motorway.

7. Mr Iles was appearing on behalf of the appellant as both 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).

8. Mr Iles' statement of truth confirmed that Altus Group was representing the appellant in this appeal on a contingency fee basis. However, 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 supports his client's case.

9. The panel has 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.

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

Issue

11. Was a 15% end allowance warranted to reflect the continued risk of flooding?

Evidence and submissions

12. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the appellant's summary of evidence statement, comparable assessments, the parties' valuations, photographs of the subject premises and other buildings in the locality, photographs of the flooding of the nearby river Aire, and a copy of the VO's challenge decision notice.

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[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

13. Mr Iles argued that the 2017 assessment was incorrect and excessive and should be reduced by way of an end allowance account for the permanent disadvantage of the high risk of flooding. He referred to the location of the subject premises adjacent to the river Aire and information from the Environment Agency that it was at high risk of flooding, having flooded in 1948, October 2000 and December 2015. He stated the December 2015 flood was the most severe, with flood water between 1.5m and 5m deep causing losses of around £2.5 million. Since this latest flood, no flood defences had been built at the site, and its continued exposure to flooding had resulted in the subject premises being practically impossible to insure.

14. The appellant had provided details of a professional valuation of the subject premises in August 2020 of £890,000 which was carried out on the assumption that flood defences were adequate, and a valuation of the subject premises in its current condition of £490,000. He stated that this showed that the value of the subject premises was clearly affected by the flooding issues, and he believed that this would be reflected by the hypothetical tenant in making his rental bid.

15. Mr Iles was aware that no other properties in Bingley had been granted an allowance for flood risk, however he contended that the subject premises was located directly adjacent to the river and a drainage culvert, and other properties in the locality may not have been at sufficient risk of flooding to warrant an allowance. In support of his application for an end allowance, Mr Iles referred to a schedule of ten comparable properties outside Bingley as evidence that allowances of between 5% and 20% had been allowed on properties in other areas which had a high risk of flooding. To conclude, he sought a 15% end allowance for the continued risk of flooding to the subject premises, which resulted in an assessment of £46,500 RV, with effect from 1 April 2017.

16. Mr Hussain argued that the flooding event in December 2015 must be ignored for the purposes of the subject premises' valuation for the 2017 rating list as it occurred after the AVD of 1 April 2015. He considered that the rental evidence at the AVD would have reflected the existing flooding risk, having found that floods had also affected this area of Bingley in 2002 and 2012. No allowances had been granted in respect of previous rating lists despite these flooding events. Mr Hussain stated that this approach is in line with the guidance as set out in the rating manual. He also referred to the Upper Tribunal decision *Moore (VO) (2018) UKUT* 0324 (LC).

"*The VO submits that had the flooding caused damage sufficient to render the property incapable of beneficial occupation, it would be regarded as having no rateable value. But that is not the case. Where flooding is a periodic occurrence, this would be reflected in the rental evidence available at the antecedent valuation date ("AVD" - 1 April 2008 for the 2010 rating list). If it had not happened for many years, where flooding occurs before the AVD, a perceived higher risk would be reflected in the subsequent rating list at revaluation*".

17. Mr Hussain contended that, although a major flood event had taken place in December 2015, the VO had to consider the subject premises as it stood on the material day of 1 April 2017. On the 1 April 2017, the subject premises was not flooded and the flooding event from December 2015 did not affect the physical state or physical enjoyment of the subject premises as it stood (rebus sic stantibus) at the material day. In support of the current assessment, Mr Hussain referred to five other properties on Castlefield Industrial Estate, also adjacent to the river Aire, none of which had allowances for risk of flooding. He also referred to Brown Cow Inn, Ireland Bridge, Bingley, West Yorkshire, BD16 2QX, situated on

the river Aire for which no allowances have been given for flooding despite it being severely flooded during the December 2015 flooding event. He also referred to a similar case which was dismissed by the VTE in relation to a 10% allowance for flooding in respect of British Bung Manufacturing Co Ltd, Lowland Works, Hurst Lane, Mirfield, West Yorkshire, WF14 8LY.

18. Mr Hussain considered that the comparable properties cited by Mr Iles were from different locations and none were close to the subject premises or affected by the flooding of the river Aire. Furthermore, he stated that the allowances applied to these comparable properties were not solely due to risk of flooding and, due to their distance from the subject premises, did not indicate that an allowance for risk of flooding was appropriate for the subject premises. Accordingly, he sought dismissal of the appeal.

Decision and reasons

19. 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 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

20. The panel noted that the rent passing on the appeal property was an interconnected rent with the parent company from 2001 and therefore held little weight in determining the RV for the 2017 rating list.

21. The respondent had referred to the Rating Manual (Section 3 Valuation Principles Part 2 Practice Note 1) which he considered outlined the appropriate way to deal with floods;

    "where flooding is a periodical occurrence the AVD rental evidence will already reflect the flooding risk. Where flooding has not previously occurred or has not happened for many years, the attitude of prospective tenants in the real world may be altered by the now perceived higher risk of flooding. Providing the flooding occurs before the AVD, this attitude should be reflected in valuations for the next revaluations."

22. The panel considered that the flooding events in 2000, 2002 and 2012 indicated that flooding in the locality was a reasonably regular occurrence and would have been reflected in the subsequent valuations. It also found that this was supported by the Upper Tribunal decision *Moore (VO) (2018) UKUT* 0324 (LC) referred to by the respondent. Therefore, it considered that application of an allowance for risk of flooding would amount to double counting and was therefore not appropriate.

23. The panel noted that the flooding event in December 2015 was more severe than previous events and had caused significant damage and disruption to the subject premises, which was evidenced by the photographs and the insurance claim for £2.5 million. The appellant had referred to the difficulties in obtaining insurance after this event, which he considered would affect the rental bid of a prospective tenant, who would consider the event to be a material change in circumstances which occurred after the AVD and was physically manifest at the material date.

24. The panel considered the assumption in Schedule 6 that the tenant is responsible for insurance of the premises to be important, as insurance premiums are likely to be higher and thus a lower rental bid would be expected. However, the panel found that this matter would

be addressed at revaluation. It also referred to the VOA's Rating Manual Section 2: Valuation Principles Part 7;

Appendix 1: Guidance on particular events and whether they constitute a material change in circumstance.

Flooding, as such, is not considered to be a change in the physical state of the locality. "Physical state" connotes some degree of permanent change as opposed to transient phenomena. Flooding may be present for a few days only and is no more a change to the physical state of the locality than are wet pavements after rain, a heavy snowfall or a sunny day, even if the phenomenon can be very much more noticeable.

25. The panel considered that whilst the river Aire was a permanent feature in the locality of the subject premises, its flooding was a transient phenomenon, which it did not consider was present at the material day. It did not consider that the increased risk of flooding at the material day due to the flood in December 2015 was a change to the physical state of the locality which should be reflected by the application of an allowance for flood risk.

26. The appellant had referred in particular to four properties for which allowances had been applied:

    - David Halsall Plc, Copse Road, Fleetwood, Lancs, FY7 6RP - located adjacent to Fleetwood Reservoir - allowance of 20%.
    - Marston House, Otley Road, Bradford, BD17 7JR - located close to the subject property (7 miles away) – agreed with a 5% allowance.
    - Tullis Russell, Church Street, Bollington, Macclesfield, Cheshire, SK10 5QF- a 7.5% flood risk allowance has been agreed despite flood defences being erected and an actual flood occurred after the material day.
    - Morphy Richards, Mexborough, S64 8AH - flood risk allowance increased from 7.5% to 10% in the 2017 list as subject to a flood in December 2015.

27. With respect to the comparable properties referred to by Mr Iles, the panel was unable to attach significant weight to the key comparable of Marston House, which was closest to the subject premises. The panel was satisfied that the allowance applied in this case was due to an inherent problem with drainage of the building which caused a build-up of rainwater resulting in water ingress into the building. It did not consider this comparable supported a flood risk allowance in respect of the subject premises.

28. It noted that the allowance of 20% for David Halsall Plc was for a number of issues and only 5% was attributed to flood risk, and the 2.5% increase in allowance for Morphy Richards was actually applied due to layout issues. The panel considered that the allowances applied to these two properties were based on their specific physical characteristics and did not support an allowance for flood risk on the subject premises.

29. The panel noted that, whilst a 7.5% allowance for flood risk had been applied for Tullis Russell in Macclesfield, this was approximately 70 miles from the subject premises in a different county and not situated on the same river. No allowance for flood risk had been applied to the respondent's five comparable properties located in close proximity to the subject premises in Castlefields Industrial Estate, or to the Brown Cow Inn, one mile away

on the river Aire. Therefore, the panel did not consider the allowance applied in respect of Tullis Russell supported an allowance for flood risk on the subject premises.

30. In appeals of this nature the burden of proof rests on the appellant to provide evidence to confirm that the appeal property is over-assessed. In the appeal before it, the panel concluded that it had not been provided with sufficient evidence to justify an end allowance. Accordingly, the panel confirmed that the current assessment of £54,500 RV, with effect from 1 April 2017 was not excessive and dismissed the appeal.

Dated: 1 February 2024

Appeal Number: CHG100915232

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.