VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Local Government Finance Act 1988; office, laboratories and premises; relativity of main space rate to be applied to laboratory and workshop areas; appeal dismissed.

APPEAL NUMBER:	CHG101044532
RE:	Cambridge Microfab, Broadway Barns, Bourn, CB23 2TA (the "subject property")

BETWEEN:	Cambridge Microfab Limited	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	Friday 2 August 2024
BEFORE:	Dr T Webb, Presiding Senior Member Mr SMA Ullah, Senior Member
CLERK:	Mr R Patel IRRV (Hons)
APPEARANCES:	Mr T Kinsey of Gerald Eve LLP, on behalf of the appellant as advocate and expert witness Ms A Przyborski, on behalf of the respondent as advocate and expert witness

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel determined the assessment of the subject property should remain at £38,250 rateable value (RV), with effect from 1 April 2017.

Introduction

3. This appeal had been brought in respect of the following: Cambridge Microfab, Broadway Barns, Bourn, CB23 2TA, which was currently entered in the 2017 Rating List as office, laboratories and premises" at a RV of £38,250, with effect from 1 April 2017.

4. The challenge proposal submitted by Gerald Eve LLP on behalf of the appellant was received by the Valuation Officer (VO) on 3 April 2023. It had been made on the grounds that the £55,500 RV shown in the rating list on 1 April 2017 was excessive, with a reduced RV of £28,000 sought.

5. The VO issued a challenge case decision notice on 17 July 2023, which stated that based upon the evidence and information available, the VO accepted that the rating list entry was unreasonable however disagreed with the proposed RV of £28,000. As such within the challenge decision, the VO reduced the subject property's assessment to £38,250 RV, with effect from 1 April 2017.

6. The appellant remained dissatisfied with the RV of £38,250, and as the respondent did not consider it warranted any further reduction, an appeal was received by the Tribunal on 9 October 2023 with the appellant's representative proposing an assessment for the subject property of £32,250 RV, effective from 1 April 2017. The appeal was lodged in accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, made on the grounds that the valuation for the hereditament is not reasonable. This is a compiled list appeal so the material day is 1 April 2017.

7. The subject property is entered in the 2017 Rating List as an office, laboratories and premises. It is stated to be a converted barn/cow shed. The property is used for manufacturing, production, and lab use, with ancillary offices and storerooms. The property is a 'U' shaped building with relatively long and thin floor plates, with solid internal walls and no windows on the majority of the road-facing part of the building.

8. The property was purchased by the ratepayer in 1999 and planning permission for B1(iii) use was obtained. The property was refurbished in 2003 and comprises solid concrete floors, block work and brick elevations and a pitched tile roof. It is currently occupied by Cambridge Microfab Ltd, a supplier of thin film deposition and processing services and specialised mechanical components. As at 1 April 2017, the hereditament consisted of laboratory, production/manufacturing, and office and ancillary space, with a total area of the property of 292.01m^2.

9. On the ground floor the property is divided into four main areas, a workshop manufacturing area, a production area, a laboratory area, and an office and ancillary area (including WC, kitchen, reception). The workshop manufacturing space has a concrete power floated floor with underfloor heating. The production and laboratory space is the same basic specification as that applied to the manufacturing space, except that the floor has a static dissipative covering. The ancillary office space has the same basic fit out as the manufacturing space,

but with a laminate timber floor covering and CAT II fluorescent lighting. A first floor 'attic' area in the eaves exists that houses the plant for the building. This area is accessed only via a single pedestrian staircase with a restricted head height. This area is used to contain the plant used in the laboratory space and for rough storage of small items.

10. Mr Kinsey was appearing on behalf of the appellant as 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).

11. Mr Kinsey confirmed that he was not representing the appellant at the hearing on a contingency fee basis. He also declared that he understood and accepted that his duty was 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.

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

Preliminary issues

13. There were two preliminary issues raised by the clerk:

    i) In the appeal submission provided by Mr Kinsey prior to the hearing, he had sought a reduction in RV to £32,250. However, at the hearing he stated that a reduction to an RV of £34,500 was now sought, with effect from 1 April 2017. Paragraph 17 of this decision refers to the changes sought by Mr Kinsey. There was no objection to this revised valuation by Ms Przyborski.

    ii) Mr Kinsey had provided late evidence prior to the hearing that he wished to be admitted, in relation to fit out costs incurred by the appellant in making changes to the subject property. Whilst Mr Kinsey accepted that the information had been available at the time of the challenge, it was not in the current form, which had taken some time to compile, and he had not believed that such detail would be required. An objection to this evidence being admitted had been made by Ms Przyborski, as it had not previously been provided in the challenge process.

14. As such the panel had regard to Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended), which stated that the Valuation Tribunal for England may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if –

    (a) that evidence—
        (i) is provided by a party to the appeal;

(ii) relates to the ground on which the proposal was made; and
(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence.

15. The panel determined that this evidence had been available at the challenge stage. The panel further concluded that to include it at this late stage would cause prejudice to the respondent. As such the panel excluded the appellant's additional fit out costs evidence.

16. On the basis that there was no objection to the appellant's revised valuation and that the panel determined to exclude the appellant's addition 'fit out costs' evidence, the panel proceeded to hear the appeal having regard to Mr Kinsey's revised assessment however not to his additional evidence.

Background

17. There remained two main issues in dispute, namely:

i. Mr Kinsey sought a reduction in the relativity applied to the current unadjusted main space rate (UAR) for the workshop area of $68.7m^2$, shown in the valuation as "ground floor office. The UAR of £135/m^2 was not disputed, however Mr Kinsey having initially sought a relativity of 50%, requested at the hearing a relativity of 70% be applied, which in part resulted in his new request for the RV to be reduced to £34,500. Ms Przyborski supported the existing relativity of 100%.

ii. Mr Kinsey sought a reduction in the uplift applied to the current UAR for the laboratories, which comprised a total area of $63m^2$. He sought a relativity of 105% be applied at the hearing, instead of the 100% relativity that he had previously requested. Again, this in part resulted in his new request for the RV to be reduced to £34,500. Ms Przyborski supported the existing relativity of 120%.

Relevant Law

18. 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, the Antecedent Valuation Date (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.

Discussion

19. The appellants owned the freehold of the appeal property, therefore there was no rental evidence available in respect of it, for the panel to consider .

20. In arriving at its decision, the panel, prior to considering the two issues in dispute, was mindful that a previous decision of this Tribunal had considered these same issues in a 2010 Rating List appeal in September 2016 (053024000766/538N10). The panel were mindful that this previous decision was not binding upon it and appreciated that the arguments made in that case were considered on the merits of the case presented at the previous hearing.

21. Nevertheless, whilst this previous decision related to a different rating list, the panel was also aware that the decision arrived at then would be based on the same principles. Notwithstanding, the issues under consideration in this appeal were to be resolved with regard to the AVD of 1 April 2015, as opposed to the decision on the 2010 Rating List assessment that had regard to the AVD of 1 April 2008. The panel thought the previous decision should have some bearing, as it was for the same property, and attached weight to this previous decision especially where it reflected much of the same arguments, reasoning and rationale presented for the current appeal.

22. Firstly, turning to Mr Kinsey's request for a lower relativity to be applied to the workshop area within the appeal property's valuation, the panel was more persuaded by the evidence of Ms Przyborski that the workshop area was of the same quality as the offices within the building. There was no dispute that there had been no change to this workshop area since the 2010 Rating List decision, with the workshop area having plastered and painted walls and ceilings with good natural light, as well as under floor heating. The only difference between the office areas and the workshop remained a lack of carpet or tile finish to the concrete screed floor. It remained the belief of this panel that 'vacant and to let', this area could be used as offices, requiring little or very insignificant alteration to do so.

23. Moreover, reference by Mr Kinsey to the workshop area being valued '*Rebus sic stanticus'* did not persuade the panel to change the existing relativity. However, the panel was of the opinion that applying a relatively of 100% to the workshop area did not offend the principle of *Rebus sic stantibus*, which allowed for minor alterations. The panel was of the opinion that with only minor alterations the workshop area could be used as offices.

24. Next, the panel addressed the appellant's request that the uplift to the laboratory areas was warranted at a relativity of 5%, rather than the current 20% applied. Ms Przyborski stated that the usual approach was to apply a 20% uplift to laboratory areas within offices and 10% to laboratory areas within industrial hereditaments. As the subject property was classed as an office, and that the laboratories were accommodation of a specialist nature with the requirement of controlled environments and clean rooms, she stated this approach supported the existing relativity uplift of 20%. Mr Kinsey argued that the existing relativity was based on the previous 2010 Rating List decision. Mr Kinsey contended that there was no rental evidence to justify the existing relativity. He contended that a 5% relativity was reasonable, taking into account that the laboratory space, save for specialist flooring, paint, extraction, and filtration, was similar to the workshop/manufacturing area.

25. At the hearing Mr Kinsey made reference to evidence he had submitted at challenge, as examples of assessments in the locality where he stated that no uplift for laboratory use has been applied over the standard office fit out uplift, or where laboratory space has been valued at less than the office fit out, as evidence that a 5% uplift on the main rate should be adopted. Two of the eleven comparable properties referred to were “offices, (laboratories), and premises” Unit 5, Duxford Business Park, Hurdles Way, Duxford, Cambridge CB22 4PA and Unit 1 at 27, Cow Lane, Rampton, Cambridge CB24 8QG, with the remainder shown as ‘factory and premises’, ‘warehouse and premises’, or ‘workshop and premises’. At the hearing, he referred fleetingly to these properties, stating that they supported his argument that an uplift of 5% was reasonable.

26. The panel noted that there was no evidence to show there had been any change to the ‘laboratory area’s clean rooms’ since the 2010 Rating List decision. This previous decision, albeit made by a different panel, stated that they were not convinced that no uplift was warranted on these specialist areas. Although Mr Kinsey had accepted that there should be an uplift, of 5%, the panel was not persuaded that the evidence presented was sufficient to reduce the existing relativity. The previous VT decision was supported by a comparable office and laboratory at Units 31-35 Science Park, Milton Road Cambridge CB4 0FX which had had an appeal withdrawn with an uplift of 20% for the specialist areas. Although Ms Przyborski had not inspected that comparable property, this did not dissuade the panel to attach weight to the previous VT decision with regard to this particular disputed issue.

27. The burden of proof is on the appellant to persuade the panel that the assessment was excessive. On the evidence before it, the panel found that the relativities applied to the workshop and laboratory areas were fair and reasonable and that no evidence had been presented to demonstrate that the relativities sought by the appellant were warranted.

Disposal

28. In view of the above findings and conclusions, the panel was satisfied that the appeal property’s current assessment in the 2017 Rating List from 1 April 2017 at a Rateable Value of £38,250 was not unreasonable. Accordingly, the appeal was dismissed

Date issued to parties: 30 August 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.
