VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeals: end allowances for fragmented layouts; appeals allowed/allowed in part.

APPEAL NUMBERS:	CHG101050986 and CHG101055086
RE:	Units 1E & 1G, Peckleton Business Park, Peckleton, Leicester ,LE9 7RN Unit 5 and Unit 10, Peckleton Business Park, Peckleton, Leicester, LE9 7RN

BETWEEN:	David Ross Fabrications Limited SP (Leicester) Limited	Appellants
	and	
	Joanne Moore IRRV (Hons) (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	03 June 2024
BEFORE:	Ms CJ Jones (Presiding Senior Member) Ms J Gittens (Senior Member)
CLERK:	Mrs J Smith IRRV (Tech)
APPEARANCES:	Mr A Wilson of Altus Group - (representing the appellant) Miss F Nadeem - (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. Appeal CHG101050988 is allowed. The panel determined a rateable value (RV) of £29,250 with effect from 1 April 2017, based on an end allowance of 5% for fragmented layout. Appeal

CHG101055086 is allowed in part. The panel determined a RV of £59,500 with effect from 1 April 2017, based on an end allowance of 2.5% for fragmented layout.

Introduction

2. These are 2017 rating list appeals. Units 1E & 1G, Peckleton Business Park, Peckleton, Leicester, LE9 7RN had been entered in the 2017 rating list as 'warehouse and premises' at a RV of £30,750 with effect from 1 April 2017. Unit 5 and Unit 10 had been entered in the 2017 rating list as 'factory and premises' at a RV of £61,000 with effect from 1 April 2017.

3. Since the appeal properties were in the same locality and the appellant's evidence similar, with the agreement of the parties, the panel decided to hear both the cases together.

4. The challenge proposals were submitted by Altus Group on behalf of both David Ross Fabrications Ltd and SP (Leicester) Limited. They had been made on the grounds that the RVs shown in the rating list on 1 April 2017 were inaccurate. Revised RVs of £29,250 and £58,000 respectively were proposed with effect from 1 April 2017.

5. The Valuation Officer (VO) issued challenge case decision notices on 28 September 2023 which disagreed with the proposed alterations of the list. As these were compiled list appeals, the material date was 1 April 2017.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal were made on the grounds that the valuation for the hereditaments are not reasonable. These appeals were received by the Tribunal on 1 November 2023.

7. Mr Wilson 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), Mr Wilson confirmed that he was instructed under a contingency fee and 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.

8. The panel accepted this expert witness evidence on the above basis as the appeals were not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was 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).

9. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

10. Miss Nadeem appeared as advocate only.

11. Unit 1E and 1G, Peckleton Business Park, is a brick built warehouse situated next to the A47 in the Hinckley and Bosworth District of Leicestershire. The property consists of warehouse space, internal storage, workshop space, an area under a supported floor and a mezzanine floor, with a total area of 968.82m^2.

12. Unit 5 and Unit 10, is a ‘factory and premises’ which is also situated on Peckleton Business Park, and has a total area of 2353.50m^2. The property consists of two production areas, a warehouse and office space on the ground floor and further office space and storage on the mezzanine.

13. Mr Wilson was not challenging the unadjusted rates of £32.50/m^2 and £27.00/m^2 adopted by the respondent VO for the subject properties. The issue between the parties was whether an end allowance of 5% was warranted in both cases due to the poor, fragmented, layout of the properties.

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

Preliminary issue

15. Midway through the hearing Miss Nadeem, on behalf of the VO, raised an objection to evidence which had been received from the appellant’s representative after the VO had issued her initial response. This evidence took the form of three additional comparable properties which had not been included within the appellant’s proposal.

16. Miss Nadeem argued that this additional evidence was in breach of regulation 9(10) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This was because they were known by the proposer or could reasonably have been acquired before the proposal was made.

17. In reply, Mr Wilson conceded that the additional evidence he provided after the proposal was submitted was intended to bolster the appellant’s proposal, as opposed to being a response/rebuttal of the VO’s evidence.

18. The panel retired to consider the matter and, after doing so, it decided to exclude the additional comparable properties which had been submitted by the appellant. In reaching this decision, the panel had regard to regulation 9(10):

> “9(10) Before the proposal is determined, the proposer may provide the VO with further evidence relating to the grounds of the proposal if that evidence was not known to the proposer and could not reasonably have been acquired by the proposer before the proposal was made.”

19. As a result of the objection being raised partly through the hearing, and because the Chair did not wish to interrupt Miss Nadeem’s’ presentation of her case, there was a slight variation in the Tribunal’s model procedure in that questions to the appellant’s representative were not invited until after the respondent VO had presented her case.

Discussion

20. The appeal hereditaments must be valued for the purposes of non-domestic rating on the basis of the rent at which they 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 properties or the locality were to be taken as at 1 April 2017 for these appeals.

21. The panel had regard to the Lands Tribunal judgement of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976],* as quoted in the Valuation Officer's Decision. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration as to how that rent compared to the statutory definition of rateable value.

22. Taking the first proposition as set out in *Lotus & Delta*, the panel acknowledged that there was a rent passing on Units 1E and 1G of £36,375 per annum across two leases, which had been agreed in October 2022. The rent passing on Unit 5 and Unit 10 was £81,455 per annum, across two leases, with effect from September 2018. The panel was aware that these rents were both quite remote from the AVD, in particular the rent for Units 1E and 1G, and they were of little assistance in determining the RV in these cases. The panel also noted that no rental evidence was submitted by either party in respect of any comparable properties. As such, the panel went on to have regard to proposition four as set out in *Lotus & Delta* and have regard to the assessments of comparable properties.

23. The panel considered the table of comparable properties submitted by Mr Wilson in support of his argument. Number 13-14 Moat Way in Barwell and Automatic Engineers (Hinckley Limited) in Burbage Road both had 5% end allowances for layout, although the VO maintained these were for mixed ages. BW Atkinson at Deepdale Farm in Hinckley had a 10% allowance for layout and shared access although the VO maintained that this information was also inaccurate and that the allowance was for shared access only. When asked at the hearing, Miss Nadeem was unable to explain to the panel why the summary valuations Mr Wilson had taken from the Valuation Office Agency website were incorrect regarding the descriptions of the end allowances in each of his comparable properties.

24. Miss Nadeem had referred to two other properties, also on Peckleton Business Park, which had the same layout at the appeal properties. Units 1A-B had been challenged within the 2017 rating list and the layout was not mentioned as part of that challenge. Number 12/13 Peckleton Business Park had never been challenged throughout the life of the 2017 list. Miss Nadeem was unable to offer any further details regarding the layout of these properties and at the hearing Mr Wilson commented that he had requested plans from the VO but none had been provided.

25. With regards to Units 1E and 1G, Mr Wilson drew the panel's attention to the hand drawn floor plans which illustrated the layout issues. The front of Unit 1E was facing in a different direction to Unit 1G and they were separated by a wall. To access one unit from the other it was necessary to go outside and walk around the corner before entering the other. It was clear to the panel that there was a significant disability in the layout of the subject property and that the hypothetical landlord would accept a reduced rental bid from the hypothetical tenant to reflect those disabilities.

26. With regards Units 5 and Unit 10, the panel was disappointed that the appellant's representative had not submitted any internal photographs or floor plans, instead relying on his description of the layout. He stated that the property had four internal walls, with connecting doorways in each, to allow access for forklift trucks. Whilst the panel was of the view that many large spaces would likely feature some internal supporting structures, overall the divided space would not be as attractive as a fully open plan area. The restrictive layout of the appeal property would reduce its marketability.

27. Whilst there were anomalies regarding the reasons for end allowances allowed in Mr Wilson's comparable properties, the panel considered that both the appeal properties had some disabilities. In Units 1E and 1G, these disabilities were significant, and the panel determined that the appellant's proposed end allowance of 5% was reasonable.

28. With regards to Unit 5 and Unit 10, the panel considered there should be an allowance to reflect the divided space but that since there were access points within the unit the panel was not persuaded that an end allowance of 5%, as sought by the appellant, was warranted. In this case the panel determined that an end allowance of 2.5% was reasonable.

Disposal

29. In view of the above findings the panel concluded that the appellant's representative had successfully demonstrated that the valuations of both hereditaments were unreasonable. For CHG101050986 the appeal was allowed with the addition of a 5% allowance resulting in a reduction in the RV of the subject property to £29,250. For CHG101055086 the appeal was allowed in part with the addition of a 2.5% allowance resulting in a reduction in the RV of the subject property to £59,797 (rounded to £59,500). A breakdown of the assessments has been shown below:

Unit 1E and 1G

Line	Floor	Description	Area m²	£/m²	Value £
1	Mezzanine	Internal Storage	44.19	£17.06	£753.88
2	Ground	Area Under Supported Floor	44.19	£23.89	£1055.70
3	Ground	Workshop	170.84	£34.13	£5830.77
4	Ground	Internal Storage	75.60	£29.95	£2264.22
5	Ground	Warehouse	634.00	£33.27	£21093.18
		Total	968.82	Subtotal	£30997.75
Less 5% for layout					£1549.89
					£29447.86
Say £29,250 Rateable Value, with effect from 1 April 2017					

Unit 5 and Unit 10

Line	Floor	Description	Area m²	£/m²	Value £
1	Ground	Warehouse	493.00	£26.33	£12980.69
2	Ground	Works Office	34.50	£26.33	£908.39
3	Mezzanine	Works Office	34.50	£13.16	£454.02
4	Ground	Production Area	1061.90	£27.00	£28671.30
5	Ground	Area Under Supported Floor	14.30	£18.90	£270.27
6	Ground	Works Office	47.50	£27.00	£1282.50
7	Mezzanine	Works Office	31.10	£13.50	£419.85
8	Mezzanine	Internal Storage	16.40	£13.50	£221.40
9	Mezzanine	Internal Storage	14.30	£13.50	£193.05
10	Ground	Production Area	566.80	£26.33	£14923.84
11	Ground	Staff Toilets	39.20	£25.65	£1005.48
		Total	2353.50	Subtotal	£61330.79
Less 2.5% for layout					£1533.27
					£59797.52
Say £ 59,500 Rateable Value, with effect from 1 April 2017					

Order

30. As a consequence of the above decisions, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Unit 1E and 1G, Peckleton Business Park, to £29,250 with effect from 1 April 2017, and reduce the 2017 Rating List entry for Unit 5 and Unit 10, Peckleton Business Park to £59,500 with effect from 1 April 2017. These alterations are to be made within two weeks of the date of this Order.

31. The appellants are also entitled to a refund in full of the fees paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refunds will take around six weeks to process.

Date issued to parties: 20 June 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.