VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: factory and premises; end allowances for fragmentation, access and location; Local Government Finance Act 1988; appeal allowed in part.

APPEAL NUMBER:	CHG101060442
RE:	Units 7 8 & 9 Test Valley Business Park, Botley Road, Southampton SO52 9AB (the "appeal property")
BETWEEN:	Draper Tools Ltd — Appellant and Lucy Dyer MRICS (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	Friday 28 June 2024
BEFORE:	Mrs F Rahman-Cook (Senior Member) Ms JL Hadley (Member)
CLERK:	Miss K Hendry IRRV(Tech)
APPEARANCES:	Mr M Saxby of Colliers International (representing the appellant) Mr M Ali (representing the respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed in part.

2. The panel determined a rateable value (RV) £186,000 with effect from 7 October 2020.

Introduction

3. This is a 2017 rating list appeal. Units 7 8 & 9 Test Valley Business Park, Botley Road, Southampton SO52 9AB (the appeal property) had been entered into the 2017 rating list as 'factory and premises' at a RV of £210,000 with effect from 7 October 2020.

4. The challenge proposal was submitted by Colliers International on behalf of Draper Tools Ltd and was received by the Valuation Officer (VO) on 22 May 2023. It had been made on the grounds that the RV shown in the rating list on 7 October 2020 was inaccurate. A revised RV of £120,000 was proposed with effect from 7 October 2019, based on the following adjustments; 25% for poor location, 7.5% for fragmentation and 10% for shared access.

5. The VO issued a challenge case decision notice on 11 September 2023 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

6. The day prior to the hearing the appellant's representative provided a revised valuation seeking a reduction to £165,000. This was based on 11.5% for poor location, 5% for fragmentation and 5% for shared access.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was lodged by the appellant's representative on behalf of the appellant and received by the Tribunal on 12 January 2024.

8. Mr Saxby 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 Saxby explained that he was instructed on a fixed fee basis and he declared that he understood and accepted his duty to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether the evidence supported the client's case.

9. The panel accepted this expert witness evidence on the above basis as the appeal was 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

10. Mr Ali who appeared on behalf of the Valuation Officer (VO) also stated he was acting in a dual role capacity, as expert witness and advocate. However, he confirmed he had not inspected the appeal property.

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

Preliminary issue

12. Mr Ali objected to the inclusion of settlement information on the distribution centre adjacent to the appeal property which was reduced by 11.5%. Mr Saxby explained that the settlement information was contained within their appeal evidence statement which was submitted to the tribunal when making the appeal and no objection had been raised. The settlement occurred after the decision notice had been issued which is why it had only been included at that stage.

13. Mr Ali apologised, he had not realised that it was included in the appeal evidence statement and accepted the reasons provided by Mr Saxby as to why it had not been mentioned earlier.

14. Having regard to this situation, the panel considered the matter in accordance with Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended), 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. Since it was clear that this evidence was not available before the proposal was determined and neither party objected to its inclusion, the panel allowed the settlement informationto be admitted.

Relevant Law

16. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

> 2(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;
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> (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.

17. 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).

18. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 24 May 2019, being the date the appeal property was amended in the list.

Discussion

19. Mr Saxby stated that the appeal property was a factory and premises which was situated in the rural village of North Baddesley. The whole park was originally occupied by Draper Tools, the landlords. They constructed additional warehouse space on the site and were able to let units 7,8 and 9 as one. He sought for allowances to be applied due to the shared access, fragmented nature of the property and the poor location.

Access

20. The appeal property has to contend with large articulated lorries daily which regularly block access into the appeal property causing operational inefficiency which other small occupiers in the locality do not suffer from. Therefore a 5% allowance was sought by the appellant's representative.

21. In response, Mr Ali was of the opinion that there was insufficient evidence to support a reduction. Whilst three comparable properties had been sited by the appellant's representative, he had not given any explanation as to how they are similar to the appeal property. He argued that the appeal property was no more disadvantaged than other sites with several occupants.

Fragmentation / Layout

22. The appellant's representative sought 5% allowance for poor accessibility between the main areas, inefficient layout and fragmented nature of the site. He argued that it was not a typical desired warehouse space for the hypothetical tenant. There were two main buildings with a small office situated on the site. The two warehouses were of different construction with conflicting roof structures, and different eaves height. This meant that the occupier had to cater for each warehouse differently. He also stated that there was a small internal access point between the two warehouse buildings with a large dividing wall. When questioned, Mr Saxby stated that the internal access was large enough for a forklift to fit through. Mr Saxby did not consider the letting particulars for the site to be reliable as positive language is used to portray the property in a good light in order for it to be let quicker.

23. Mr Saxby stated that since the original submission, a 7.5% allowance for layout had been agreed on the neighbouring distribution centre for having a number of buildings with some level of internal access.

24. Mr Ali in response argued that the letting particulars did not indicate that there was an issue with internal access between the units. He stated that Units 7 and 8 had an eaves of 6.2m and Unit 9 was 8.7m. He stated that nearby industrial estates have eaves of 5.5m, and perhaps an uplift could be applied.

Location

25. The appellant's representative sought an 11.5% allowance due to the poor location. He argued that the property is located within the rural village of North Baddesley. The closest motorway was four miles away meaning that navigation to the site was by small villages and country roads. Therefore, it did not have good transport links to London and the Southeast. He stated that because it was a large manufacturing industrial unit, it was more disadvantaged compared to the other smaller units nearby. Mr Saxby confirmed to the panel

that he had agreed an 11.5% reduction on the neighbouring property which demonstrated that the location was far inferior.

26. Mr Ali in his opinion stated that the appeal property had good transport links. He stated that the presence of an industrial estate a mile down the road, and further two situated three miles away indicates that the area is desirable for the property class. He went on to argue that the neighbouring property was not given a reduction due to location, and that it was based on the rent not supporting the tone.

27. Having regard to the evidence presented, the panel was of the opinion that an allowance should apply for the location at 11.5% as this was awarded on the neighbouring distribution centre. However, with regard to the shared site access and fragmentation, the panel found that there was a lack of evidence to support how these were a disadvantage to the appeal property. No information had been provided as to how frequently the large articulated lorries blocked access to the site and what impact that had on day to day operations. No photographs had been provided of the internal layout to show how the interconnecting walls and layout of the building impacted the appeal property. It was explained that access between the connecting units was possible and wide enough to be able to fit a forklift through. The panel allowed the appeal in part.

Description	**Area m2/unit**	**£ per m2/unit**	**Value (£)**
Works Office	78.22	47.25	3,696
Warehouse	1840.55	47.25	86,966
Warehouse	2621.08	45.00	117,949
Canopy	261.28	6.75	1,764
			210,375
	Location	-11.50%	24,193
			186,181

28. This gives a total of £186,181 which will be rounded down to a rateable value of £186,000

Disposal

29. In view of the above findings and conclusions, the panel is satisfied that the entry in the list at £210,000 RV is not reasonable.

30. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry in the 2017 Rating List to a rateable value of £186,000 with effect from 7 October 2020. The Valuation Officer must comply with this Order within two weeks of its making.

Refund of appeal fees

31. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations

2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Date issued to parties: 22 July 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.