THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Appellant seeking a 5% allowance for the disadvantage of a divided/split layout; Appeal allowed in part.

APPEAL NUMBER: CHG101069637

BETWEEN:	Craintern (UK) Limited	Appellant
	and	
	Joanne Moore (The Valuation Officer)	Respondent

RE:	13-17 Haltwhistle Road, South Woodham Ferrers, Chelmsford CM3 5ZA
PANEL:	Mr S Wood (Senior Member) and Ms S Eze
CLERK:	Mr A Johnson IRRV (Tech)
HEARING:	22 March 2024 (Conducted remotely using Microsoft Teams)
APPEARANCES:	Mr M Clayton from Altus Group (representing the Appellant) Mr L Stevens (representing the Respondent)

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was allowed in part. The rateable value (RV) was reduced to £121,000 with effect from 1 April 2017.

Introduction

2. This decision notice is not a verbatim or contemporaneous record of the proceedings.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The subject property entered the 2017 non-domestic rating list with effect from 1 April 2017. It was described as a ‘factory and premises’ measuring 2,749.5m^2 in size, located on Haltwhistle Road, South Woodham Ferrers, Chelmsford CM3 5ZA, forming part of the Western industrial area. It was described as being a ground floor property with a steel frame construction together with brickwork elevations. The Appellant had sought an alteration of the 2017 non-domestic rating list from 1 April 2017 on the grounds that an allowance of 5% should be made to reflect its divided nature/split layout, thereby reducing the RV to £118,000 (revised from £117,000 after Mr Clayton became aware that the car parking spaces associated with the assessment had been included in the calculation in error). The Valuation Officer had decided that the Challenge was not well-founded and the appellant subsequently submitted an appeal to this Tribunal.

5. The representatives of both parties stated that they were appearing in the dual roles of advocates and expert witnesses. Mr Clayton declared that he was representing the Appellant on a contingency fee basis and both Mr Clayton and Mr Stevens acknowledged that when presenting evidence as expert witnesses, their duty was to the Tribunal regardless of whether or not their evidence supported their respective arguments.

6. Mindful of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT (LC), the panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 concerning 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. It was therefore appropriate for the panel to consider the ‘expert’ evidence and assess what weight, if any, to give it in the context of the issue before it.

Issue

8. The only issue before the panel concerned whether an allowance of 5% should be applied to the RV of the subject property. Factual matters (such as the floor areas) were not in dispute.

Evidence and submissions

9. Mr Clayton considered the current RV of £124,000 to be excessive as it did not reflect the disadvantages caused by the divided nature/split layout of the subject property. My Clayton argued that a RV of £118,000 was reasonable after applying an allowance of 5%.

10. In support of his contention that an allowance of 5% should be applied, Mr Clayton argued that the subject property comprised of two units which were divided by a structural wall with no or very limited access between them. This hindered circulation, loading and unloading between them. Mr Clayton also argued that the unadopted rate of £45 p/m^2 which had been applied to

properties of this nature reflected an open plan layout (which was accepted by Mr Stevens during the remote hearing). In further support, Mr Clayton relied upon four other assessments where allowances had been made, which supported a 5% allowance for the subject property.

11. Before Mr Stevens presented his arguments, he corrected an error contained within the Challenge decision notice which had incorrectly stated that 31-35 Cutlers Road had not been given an allowance. Mr Stevens confirmed that, in fact, an allowance of 5% had been allowed. Mr Stevens went on to argue that the case for an allowance in respect of the subject property had not been made out, adding that the comparables put forward by the Appellant had different disabilities. Mr Stevens also argued that it was for the occupier to decided how to use the units and, together, they did not warrant an allowance.

Decision and reasons

12. The only issue before the panel concerned whether or not an allowance should be applied to the appeal property. The appellant sought an allowance of 5% whilst it was the Valuation Officer's position that no allowance was applicable.

13. The panel considered it unfortunate that it was not provided with any internal photographs of the subject property to show the extent of the alleged disability caused by the presence of a structural wall between the two units. However, the panel was mindful that Mr Stevens had not disputed or in any way contradicted Mr Clayton's submission as far as this was concerned.

14. After considering the evidence and submissions before it, the panel concluded that the case for a 5% allowance had not been made. When considering the comparable properties, the panel observed that Eves Corner, 56 Maldon Road and 31/35 Cutlers Road had benefited from allowances that, broadly speaking, related to access issues over shared yards and not because they were disadvantaged by the presence of dividing structural walls. Given this, the panel was unable to concluded that they supported the Appellant's contention that a 5% allowance was reasonable. However, 78 Maldon Road had itself benefited from a 5% allowance to reflect its divided nature together (and because it contained 'varying floor levels') but insufficient evidence was before the panel to show that the same allowance was warranted for the subject property. Nevertheless, the panel was satisfied that the structural divide present within the subject property would negatively influence the rental bid of a hypothetical tenant. Therefore, the panel found that an allowance of 2.5% was reasonable.

15. In reaching its decision, the panel also accepted Mr Clayton's submission that the unadjusted rate of £45 p/m^2 reflected open plan layouts, a submission which had not been disputed by Mr Stevens.

16. This appeal was therefore allowed in part and the RV of the subject property was reduced to £121,000 with effect from 1 April 2017, as set out below.

	Area M/2	£ per M2	Value
Ground floor warehouse	1,500	45	67,505
Ground floor office	103.9	54	5,611
Mezzanine floor store	119.5	22.5	2,689
Ground floor warehouse	874.8	45	39,366
Mezzanine floor store	75.6	22.5	1,701
Ground floor area under supported floor	75.6	31.5	2,381
	2,749.5		**119,252**
plus: Car parking spaces (32)			4,800
			124,052
less: 2.5% allowance			2,981
			121,071
		RV SAY:	**121,000**

Order

17. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, this Tribunal orders the Valuation Officer to alter the valuation list within two weeks of the date of this order to show the entry in the rating list for the subject property to £121,000 RV with effect from 1 April 2017.

Refund of appeal fee

18. The Appellant is entitled to a refund of the appeal fee in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 18 April 2024

Appeal number: CHG101069637

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.