VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Accuracy of the RV in the Rating List; Tyre and exhaust centre and premises; End allowance for divide/split unit; Comparable properties; appeal dismissed.

APPEAL NUMBER: CHG101072074

RE: 16 and 17 Oak Industrial Park, Dunmow, Essex CM6 1XG (the "subject property")

BETWEEN: Micheldever Tyre Services Ltd — Appellant

and

(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 08/08/2024 10:00

BEFORE: Mrs R Heald, Senior Member
Mr P Phelps, Member

CLERK: Mrs S D Morgan

APPEARANCES: Mr S Cyrille – Appellant's representative (Altus Group)
Mr L Stevens – Valuation Officer's representative

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed. The assessment was confirmed as £38,750 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. The subject property had been entered in the 2017 Rating List as 'tyre and exhaust centre and premises' at a RV of £38,750 with effect from 1 April 2017.

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO). After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to that effect was served on the appellant on 11 March 2024 and his representatives then appealed the VO's decision to the Tribunal on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. Mr Cyrille appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Cyrille's' declaration of truth included a statement that he understood and accepted that his duty is 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.

5. The panel 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).

6. Mr Stevens appeared as advocate and expert witness on behalf of the Valuation Officer.

7. The hearing was held remotely via Microsoft Teams.

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

Background

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included comparable assessments, location plans, photographs of the subject property and their skeleton arguments.

10. The subject property is a Tyre and Exhaust Centre and Premises situated within the Oak Industrial Park in Dunmow, Essex on a corner plot with two separate buildings. It has a Total Significant Area (TSA) of 720.49m^2. It was built in 1987 and includes partial central heating but no air conditioning. The property is valued on scheme 369171 for properties on Oak Industrial Park at an unadjusted rate of £45.66/m^2. There is an element included in the assessment for plant and machinery and on-site car parking. There are no allowances included in the assessment.

11. The issue in dispute was whether or not a 5% end allowance was justified for divide/split site. The appellant's representative sought a revised RV of £36,750 and the VO's representative believed that the current RV of £38,750 was correct.

Relevant Law

12. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

"(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;

(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.

Discussion

13. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

14. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

15. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day was 1 April 2017.

16. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

17. The starting point for consideration was the actual rent passing on the subject property. The subject property was held on an annual rent of £46,000 with effect from 2007 and remained the same at 1 November 2022 review date. As this rent was 3 years prior to the antecedent valuation date (AVD), the panel contended that little weight should be attached to it.

18. In support of his case the appellant's representative referred to a factory and premises at Jenson House, 10/11 Flitch Industrial Estate, Dunmow. This property had a total area of 1544m^2. A 5% allowance was included in its assessment for divide/split site. The store and premises at sheds 6-7 Concord Farm, School Road, Rayne in Braintree had an area of

1717.03m^2. This assessment included a 5% allowance for merged units. The third comparable property was a warehouse and premises at Units 12/13/14 Carlton Place, Shire Hill, Saffron Walden. It had a total area of 903.64m^2 and the assessment included a 10% allowance for divide/split unit. In view of these allowances the appellant's representative believed that the comparable properties he had provided, in particular Jenson House, which had similar disabilities to the subject property, supported his request for a 5% end allowance for divide/split site.

19. The VO's representative considered that the rent passing on the subject property, although 3 years post AVD, did carry some weight. It was set in 2007 with five yearly rent reviews. In November 2012 a review had taken place and the rent remained at £46,000 pa which analysed to £60.81/m^2 against an adopted value of £45.66/m^2. He was of the opinion that this supported the current RV of £38,750.

20. Reference was also made to 4-4A, Oak Industrial Park, Dunmow. This property was slightly larger than the subject property with a TSA of 769.70m^2. There was a new lease in September 2013. Allowing for a 3-month rent free period the rent analysed to £47.45/m^2 against an adopted value of £45/m^2. This lower rate reflected quantum on the valuation scheme.

21. Other comparable properties on Oak Industrial Park included two larger properties where £43.99/m^2 and £45/m^2 had been applied and for a smaller property an adopted value of £50/m^2 had been used.

22. In response to the appellant's representative's comparable properties, the VO's representative stated that all three properties were not in the same valuation scheme as the subject property. Furthermore, he contended that no explanation had been given as to how these allowances related to the subject property. Jenson House had an allowance for fragmentation within the two units. Access from one building to the other was across a car park. The VO's representative contended that for a split allowance it should only be considered if there is an obvious impact on the hypothetical tenant. He believed this not to be the case with the subject property.

23. In relation to Sheds at 6-7 Concord Farm, the 5% allowance had been granted when the properties were merged in the 2017 list. The 5% was granted for poor interconnectivity on the site. In this scenario the hypothetical tenant needed to enter the store area to access the other shed. The allowance was given for fragmentation rather than a split site and therefore it was not comparable to the situation at the subject property.

24. The units at Carlton Place were merged during the 2010 list and included three separate industrial units. There were two units on one side of the site and one on the other. To access the units the hypothetical tenant would have to cross the site from one side to the other. The VO's representative was of the opinion that the allowance was not unreasonable in this situation.

25. The VO's representative stated that within valuation scheme 369171 there were four properties with more than one unit which did not have an allowance for split site. He believed that having more than one unit within the assessment had been reflected in the scheme.

26. The panel considered the comparable properties submitted by the appellant's representative, and concluded from that evidence that end allowances of this nature were specific to the individual circumstances of each property and should not be applied solely on the basis that

a similar allowance had been conceded in the valuation of another property. Furthermore, the appellant's representative had not given detailed reasons for those allowances which may have been unique to those premises, or evidence to substantiate such an allowance.

27. The panel noted that the physical situation with the subject property had not changed between the 2010 and 2017 Rating Lists. In the 2017 list, the price per m^2 had been reduced from £55/m^2 to £45.66/m^2 to reflect the change in tone even though the rent remained at £46,000 pa. It was also relevant to note that no allowances were included in the assessment.

28. Having examined the evidence presented by the parties, the panel determined that no allowance for divide/split site was justified. The comparable properties put forward by the appellant's representative were not in the same scheme as the subject property which covered Oak Industrial Park. The VO's representative had contended that there were other properties in the same valuation scheme as the subject property where no allowances had been given for having more than one building. The panel found that the photographs of the subject property showed that the two buildings were not of a significant disadvantage to the trading potential of the subject property, to reflect it in the hypothetical tenant's bid. One part of the building was used as workshop with customer parking and the other was solely a workshop. It appeared that each part was capable of being self-contained in its operation and that the access and proximity of one building to the other was not as significant as in the comparable properties.

29. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for an allowance for divide/split site. Consequently, the panel was satisfied that the grounds for the appeal were not substantiated, and the appeal was dismissed.

Disposal

30. In view of the above findings and conclusions, the panel was satisfied that the appeal should be dismissed.

Date issued to parties: 4 September 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.
