VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; warehouse and premises; correct main space rate to be applied; office relativity; external display building; appeal allowed in part.

APPEAL NUMBER: CHG101088359

RE: WM Smith & Sons (Barnard Castle) Ltd, Stainton Grove, County Durham DL12 8UH (the "subject property")

BETWEEN:	W M Smith & Sons (Barnard Castle) Ltd	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Thursday 22 August 2024

BEFORE: Mr SMA Ullah, Presiding Senior Member
Mr K Everett, Senior Member

CLERK: Mr R Patel IRRV(Hons)

APPEARANCES: Mr K Batty (Appellant's representative)
Mrs S Taylor (for the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined that the appeal property's existing assessment of £49,750 Rateable Value (RV) was unreasonable and reduced it to £49,500 RV, with effect from 1 April 2017.

Introduction

3. This appeal had been brought in respect of the following: WM Smith & Sons (Barnard Castle) Ltd, Stainton Grove, County Durham DL12 8UH 9NB, which was entered in the 2017 Rating List as warehouse and premises at £49,750 RV, effective from 1 April 2017.

4. The appellant's challenge to the Valuation Officer (VO) was made on 13 July 2023. The appeal to this Tribunal was made on 17 April 2024, following the VO's decision notice of 20 December 2023, in respect of the appeal property (hereditament). The VO's decision notice reduced the assessment from £50,000 to £49,750 RV, with effect from 1 April 2017. This is a compiled list appeal so the material day is 1 April 2017.

5. 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 Ken Batty Chartered Surveyors on behalf of the appellant.

6. As Mr Batty appeared on behalf of the appellant as both advocate and expert witness, the clerk asked 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).

7. Mr Batty stated that historically he had been instructed on a conditional fee arrangement, however, he declared that he had received payment for this hearing. He confirmed 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. Due to technical issues, Mr Batty was unable to participate whilst on camera. He initially joined the hearing when he could be seen on camera, however there were some difficulties in being able to hear him. It was agreed by all present that the hearing continued with Mr Batty taking part via telephone link, to avoid an unnecessary adjournment. No parties had any objections to this.

9. The appeal property is a detached warehouse and premises, built in 2015 which includes ground and first floor office space. To the front of the building is a small building with a full glass frontage, sliding doors and brick walls. External to the subject property there is an area of 758m^2 hard fenced land.

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

Background

11. There remained three main issues in dispute, namely:

    i) Mr Batty sought a reduction to the current unadjusted main space rate (UAR) from £32.50/m^2 to £30/m^2. Mrs Taylor supported the existing rate of £32.50/m^2.

    ii) Mr Batty contended that the 'ground floor external area' building was not a store-room and used to display an historic company feature and should be valued at one third of the main space rate. Mrs Taylor stated that this 'ground floor external area' building was more akin to display room rather than a storage room and should be classed as a display unit and not as storage, arguing that having the same quality as the main warehouse space, no reduced relativity should be applied, although a 2.5% allowance for lack of heating is appropriate.

iii) Mr Batty sought a reduction in the uplift applied to the offices from 20% to be reduced to 15%, stating that the 20% uplift did not reflect the quality of the offices.

Preliminary issue

12. There was a preliminary issue raised by the clerk. Mr Batty had provided late evidence that he wished to be admitted in relation to the ground floor external area to support his request for a decrease in the value of this element of the subject property's valuation.

13. Mrs Taylor raised no objection to Mr Batty's additional evidence. As such, the panel proceeded to hear the appeal having regard to the additional evidence.

Relevant Law

14. 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

15. In arriving at its decision, the panel turned to each issue in dispute. Firstly, addressing whether the current UAR applied to the appeal property's assessment was unreasonable. Mr Batty sought a reduced UAR of £30/m^2 after having regard to the assessments placed on his comparable properties. Whereas Mrs Taylor supported the existing UAR of £32.50/m^2.

16. The panel was aware that the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. 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 rent on the subject property, where available, was considered to be the correct starting point and consideration to how that rent compared to the statutory definition of rateable value. The rents on similar properties were also considered and assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

17. In considering whether the current UAR was reasonable, the panel turned to the rent passing on the appeal property as at the AVD. This was a letting from 1 April 2016 for a term of 5 years. The passing rent was £90,000 per annum. The VO had analysed this rent £58.37/m^2.

18. The panel noted that the VO's evidence also referred to 22 Stainton Grove, Barnard Castle, in support of the current UAR. The VO analysed the rent of this comparable property, agreed 10 months prior to the AVD, to £61.02/m^2 and it had been valued at a UAR of £42.20/m^2.

19. Mr Batty provided evidence in respect of eight comparable properties with UAR values ranging from £26.83/m^2 to £31.25/m^2. Other than Carrs Billington Agricultural Ltd, which was situated 1.2 miles away, the other seven were located at least 9 miles away from the subject property. During the hearing, Mr Batty accepted that these properties were not in the same

Valuation Scheme *(Industrial Units built after 1989 located at Stainton Grove)* as the subject property or 22 Stainton Grove. The panel was mindful that there were limited comparable properties within the scheme, with Mr Batty commenting that this resulted in the reliance on comparable properties within the locality but from a wider area.

20. In considering the comparable evidence, the panel attached greater weight to that submitted by Mrs Taylor. The comparable evidence provided by Mr Batty was drawn from properties further afield than the comparable property relied upon by Mrs Taylor. The property at Carrs Billington Agricultural, whilst only 1.2 miles away, was a pre-1970's build, unlike both the post 1989 subject property and 22 Stainton Grove, and with the former having a UAR of £30/m^2 , the panel was not persuaded by the evidence that the current UAR of £32.50/m^2 was unreasonable for the subject property.

21. The panel then moved to address the second issue in respect of the external display building located on the ground floor outside the main property. Mr Batty referred to the glass fronted building as a display unit, stating as it was of single brick construction it would not meet building regulation requirements and be unlawful to use in the same way as the other buildings.

22. Whilst the panel acknowledged that the respondent had made an adjustment for the lack of heating of the external display building, via a 2.5% allowance, the panel did not agree that it was of the same quality as the main warehouse space. Furthermore, it found that the use of the building was purely to house an historical artefact. As a single purpose space for this particular use, the panel decided that it should attract a value of half of the £32.50/m^2 main space rate.

23. Finally, the panel reflected on the issue raised by Mr Batty regarding the uplift applied to the offices, on the basis that this did not reflect the quality of the offices. The respondent had already reviewed the evidence provided with the challenge submission and having noted that it had already been agreed that the uplift on the office space was reduced from 20% to 10%, the panel did not need to review this issue any further.

Disposal

24. In view of the above findings and conclusions, the panel was satisfied that the current assessment was unreasonable. The panel determined that an assessment of £49,500 RV more accurately reflected the appeal property and its associated advantages and disadvantages. A breakdown of the assessment has been shown below.

Floor	Description	Area m^2	£/m^2	Value (£)
Ground	Warehouse	1,282.42	32.50	41,679
Ground	Office	50.6	35.75	1,809
First	Office	108.03	39.33	4,249
Ground	External Display Building	13.14	16.25	213.53
Additional features of property included in the valuation				
	Loading Area	173.34	1.5	260
	Hard Surfaced Storage Land	585.02	1.5	878
	Storage Container	14.70	10.00	147
	Plant and Machinery			347
Valuation sub-total				49,583
Say £49,500 Rateable Value, with effect from 1 April 2017				

Order

25. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £49,500 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

26. 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 (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date issued to parties: 20 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.
