VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; warehouse and premises; correct main space rate to be applied; end allowance sought by the appellant; appeal allowed in part.

APPEAL NUMBER: CHG101094031

RE: 212 Gooch Street, Birmingham B5 7HY
(the "subject property")

BETWEEN:	George Ahmed	Appellant
	and	
	Lucy Formela-Osborne MRICS (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Monday 16 December 2024

BEFORE: Mr N De Freitas, Presiding Senior Member
Mr PA Jennings, Senior Member

CLERK: Mr R Patel IRRV(Hons)

APPEARANCES: Mr P Wintle of Paul Wintle & Co Surveyors (on behalf of the appellant as both advocate and expert witness)
Mr Z Ashgar (on behalf of the respondent as both advocate and expert witness)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined the appeal property's existing assessment of £12,500 Rateable Value (RV) was unreasonable and reduced it to £10,500 RV, with effect from 29 September 2017.

Introduction

3. This appeal had been brought in respect of the following: 212 Gooch Street, Birmingham, B5 7HY, which was entered in the 2017 Rating List as warehouse and premises, at £12,500 RV, effective from 29 September 2017.

4. The appellant's challenge to the Valuation Officer (VO) was made on 20 July 2023. The appeal to this Tribunal was made on 14 July 2024, following the VO's decision notice of 14 March 2024, in respect of the appeal property (hereditament). The VO's decision notice made no change to the £12,500 RV assessment, effective from 29 September 2017. This is a compiled list appeal so the material day is 29 September 2017.

5. The appeal property comprises a terraced industrial unit of concrete frame construction arranged over two floors, which is partly heated and opens directly onto the street. There is a first floor to the property which was converted into living accommodation over 25 years ago to which there is shared access with the commercial accommodation, including an office, which is at the front of the building, adjacent to the loading area. The loading bay is stated to have a ceiling height of only 2.36 metres. The rear of the property is stated to have an irregular shape. At the check stage of the dispute process, the VO stated the gross internal area of the subject property was 371.59m^2, a figure Mr Wintle still disagreed with.

6. The subject property is stated to have been primarily constructed approximately 60- 65 years ago, although it was also said that the brickwork suggests the property is pre-World War 2. Located off the A38 and A4540, the property was said to have good links towards the M6. It was situated within the Birmingham Low Emission Zone, in an area with both industrial units and residential accommodation. The appellant states there is limited street parking.

7. Mr Wintle was appearing on behalf of the appellant as advocate and expert witness. Therefore, it was important to ascertain 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).

8. Mr Wintle confirmed that he was not representing the appellant at the hearing on a contingency fee basis. He also declared that he understood and accepted that his duty was 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 or not the evidence supports his client's case.

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

<u>*Preliminary issue*</u>

10. In the week prior to the hearing, the clerk received numerous emails from Mr Wintle, which included a revised evidence bundle, information and photographs of the subject and comparable properties that had been referred to by the parties, as well as evidence pertaining to a comparable property which the appellant had not referred to at the challenge stage. The clerk forwarded all this information to the respondent and the panel in advance of the hearing. Both parties were advised that the panel would deal with the introduction of the late evidence as a preliminary matter on the day of the hearing, before the parties made their verbal submissions.

11. There were a number of preliminary issues raised by the clerk, as follows:

i) Mr Wintle provided late evidence that he wished to be admitted in relation to a comparable property, which was introduced following a Valuation Tribunal decision made after the challenge submission for the subject property was submitted.

ii) In the challenge submission to the VO, a reduction in RV to £10,250 was sought, however in the appellant's revised evidence bundle and at the hearing, the appellant sought a reduction in the RV to £9,350. This lower RV reduction was based on a number of factors. Firstly, that the current unadjusted rate value (UAR), also referred to as the main space rate, used to calculate the RV, should be £29/m^2, rather than £31/m^2, as originally submitted. Secondly, the comparable property evidence, referred to in point i) above, supported the lower UAR requested, and finally, that an end allowance should be awarded, due to the subject property having poor loading facilities and an unusual building shape.

12. Mr Ashgar accepted that the information in respect of the additional comparable property was not available at the time of the challenge, raising no objection to this. However, whilst not raising any particular objection to the panel having regard to the overall revised evidence bundle, he took issue with the appellant's request for a lower RV of £9,350, specifically with the request for the UAR to be reduced to £29/m^2 and with the end allowance request, both of which he stated were not requested in the challenge documents received by the VO.

13. Mr Wintle informed the panel that he asked for an end allowance to be awarded for the whole of the property, with the VO awarding an allowance only in respect of part. Furthermore, he stated that he had been dealing with a different representative from the Valuation Office, with whom the area of the subject property had not been agreed, despite his requests for a joint site visit. The panel were informed that Mr Ashgar had taken on this case from a colleague, eight weeks prior to the hearing, Mr Wintle stated in an email to the clerk sent on 9 December 2024, that he had contacted Mr Ashgar on 5 December 2024, regarding this issue and had been waiting for a response.

14. The panel considered the matter in light of the Upper Tribunal's judgment in Simpsons Mall Ltd etc v Jones (VO) UKUT [2017] having regard to Denton v TH White Ltd [2014] as follows:
   - Stage 1: Does the panel conclude that the breach is not serious or significant. If so, relief from sanctions should usually be granted.
   - Stage 2: The panel needs to consider why the failure or default occurred. The burden is on the defaulting party to persuade the Tribunal to grant relief from sanctions. The defaulting party must explain what happened and why.
   - Stage 3: The panel must consider all the circumstances of the case, including:
     a. The need for litigation to be conducted efficiently & at a proportionate cost
     b. The failure to grant a sanction may leave an inaccuracy being uncorrected
     c. The need to enforce compliance with rules, directions and orders. Such matters, however, are the handmaids and not the mistress of justice and
     must never be allowed to assume a greater importance than doing justice

15. The panel determined that it would allow the revised submission, as well as the photographs and information in respect of the subject and comparable properties, which the appellant had recently submitted. The panel concluded, in light of the above, it was fair and just to consider the substantive issues, taking into account this evidence, which both parties had sight of before the hearing. Neither party had been prejudiced, as the breach of submitting this late evidence was not considered serious or significant. The panel determined that it would not be in the interests of justice to exclude the appellant's revised and additional evidence.

Background

16. The main issues for the panel to determine, as requested by the appellant, were as follows:

    i. Whether to allow the reduction sought to the current unadjusted rate (UAR) from £34.00/m^2 to £29/m^2. Mr Ashgar supported the existing rate of £34.00/m^2.

    ii. Whether to allow the relativities sought, in respect of
    - the office space should be an uplift of 20% of the £29/m^2 UAR value. Mr Ashgar supported the existing relativity of 8%
    - the loading bay area should be applied at 66% of the £29/m^2 UAR, as consideration should be taken of the low eaves height and lack of heating of the loading bay, less a further 2.5% for a lack of heating. Mr Ashgar supported the VO's decision made at challenge stage to adjust 5% for quality and 2.5% for no heating, for this specific area.

    iii. Whether an additional end allowance of 5% should be applied to reflect the unusual shape of the building and the poor loading facilities. Mr Ashgar did not believe an allowance for these reasons was warranted.

Relevant Law

17. 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 29 September 2017 for this appeal.

Discussion

18. 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 Wintle sought a reduced UAR of £29/m^2 after having regard to the assessments placed on his comparable properties. Whereas Mr Ashraf supported the existing UAR of £34/m^2.

19. 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.

20. The appellant owned the freehold of the appeal property, therefore there was no rental evidence available in respect of it, for the panel to consider. The panel therefore considered the assessment evidence in respect of comparable properties presented by both parties.

21. When the panel had questioned Mr Ashraf on the evidence to justify the current rate of £34/m^2, the panel noted that reference was made to three assessments in support of the current UAR:
    i) Ground Floor, 220 Gooch Street, which had been valued with a UAR of £34.00^2;
    ii) 194-200 Gooch Street, which had been valued with a UAR of £31.05/m^2.
    iii) 44-52 Gooch Street, which had been valued with a UAR of £28.28/m^2.

22. Including the details of the comparable property that was confirmed in August 2024, Mr Wintle provided evidence in respect of four properties regarded as comparable to justify his request of a £29/m^2 UAR, as follows:
    i) Units 13-14, at 52-53 Birchall Street, built in the late 1970's, which had been valued with a UAR of £34/m^2
    ii) Unit 178-182 Gooch Street, of a similar age to the subject property, which had been valued with a UAR of £29/m^2.
    iii) 194-200 Gooch Street, also of a similar age to the subject property, which had been valued with a UAR of £31.05/m^2.
    iv) 107 Elkington Street, the valuation of which Mr Wintle stated he had agreed in August 2024 with the Valuation Office, using a UAR of £28/m^2.

23. The panel had regard to the comments made by both of the parties about the comparability of the aforementioned properties. Taking into account the ages, location, sizes, eaves height and other pertinent information impacting on these properties, such as quality, use, parking and in this instance, the Birmingham Low Emission Zone, the panel found that the current UAR of £34/m^2 was not reasonable. The panel decided that £31/m^2 was appropriate, based on the evidence submitted, and more fairly reflected the subject property's attributes.

24. Moving on to address the other two issues, concerning the relativities and end allowance sought by the appellant, the panel acknowledged that the loading bay of the subject property had a relatively low ceiling height, in addition to being unheated. It agreed, with the decision of the VO, at challenge stage that in respect of the loading bay, a relativity of 95% be applied for the low ceiling height, plus a further 2.5% reduction to the relativity for the lack of heating. The panel, however, was not persuaded that the evidence submitted warranted a relativity of 66% in this instance, as was stated to be the case for 107 Elkington Street. The panel also found no evidence submitted to convince them that the relativity applied to the office required amendment.

25. With regard to the appellant's request for an end allowance to be awarded to reflect the unusual shape of the building and the poor loading facilities, the panel deemed that the onus was on the appellant to evidentially demonstrate that the subject property was disadvantaged to an extent in comparison to other similar properties, such that it necessitated an end allowance. No evidence had been presented to show this. The panel had allowed for the features of low ceiling height and lack of heating in the loading bay to be adequately reflected in the relativities applied to this area and determined that no end allowance was justifiable. The panel noted that the 5% end allowance awarded for the layout of 178-182 Gooch Street, where three units were combined into one, was not applicable to the subject property.

26. Finally, the panel determined the issue regarding the size of the appeal property, with Mr Wintle's revised submission providing a total gross internal area of 351.89m^2, compared to the 371.59m^2 figure provided in the respondent's submission. Mr Wintle stated that the area of the subject property had not been agreed between the parties, despite his requests to the VO for a joint site visit. Mr Ashgar stated that the appellant had not disputed the size of the subject property at the appropriate and earlier stages of the check, challenge and appeal

process, as required. Had this been the case, having taken on the case from a colleague, he would have arranged a joint inspection. Nevertheless, Mr Ashgar stated that he inspected the subject property on 21 November 2024.

27. There were three separate areas, with measurements for each, used to calculate the valuation of the subject property. Both parties agreed the area of the loading bay as 46.21m^2. There was a minor difference of 0.79m^2 in respect of the office area, with the appellant providing a higher area of 29.96m^2. It was the workshop area where the parties differed on size. The appellant's revised bundle stated this to be 275.72m^2. During the hearing, Mr Ashgar stated that the appellant had provided a later measurement of 288.7m^2, which was only 5.3m^2 more than the 294m^2 measurement that he established during his inspection in November 2024. The panel resolved to calculate the valuation based on the VO's measurements in respect of the office and workshop areas, with the latter being the 294m^2 obtained during the most recent to the property.

Disposal

28. 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 £10,500 RV more accurately reflected the appeal property, and the panel calculated a revised valuation, as shown below:

Floor	Description	Area m^2	£/m^2	Relativity	Value (£)
Ground	Offices	29.17	29.00 **31.00**	1.08	913.60 **976.61**
Ground	Workshop	294.00	29.00 **31.00**	-	8,526.00 **9,114.00**
Ground	Loading Bay	46.21	29.00 **31.00**	0.925	1,239.58 **1,325.07**
	Valuation Total				10,679 **11,415.68**
	Say **£11,250** Rateable Value, with effect from 29 September 2017				

Order

29. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £10,500 RV, with effect from 29 September 2017, within two weeks of the date of this Order.

30. 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: 15 January 2025 (reissued on 9 May 2025)

31. Amended decision in accordance with Regulation 39 – Clerical mistakes and accidental slips or omissions, of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. The rateable value had been calculated using the current unadjusted rate value (UAR) of £29.00/m^2 that was requested by the appellant, rather than the £31.00/m^2 that was determined by the panel, as referred to in paragraph 23 above. The valuations in bold on the revised valuation in paragraph 28 above, indicate where there has been a revision. The rateable value is corrected, with the Valuation Officer ordered to reduce the 2017 Rating List Entry to £11,250 with effect from 29 September 2017.

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.