VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Warehouse, Offices and premises; air conditioning; appeal dismissed.

APPEAL NUMBER:	CHG101097034
RE:	Severalls Hall, Severalls Lane, Colchester CO4 5JS (the “appeal property”)

BETWEEN:	Rapid Electronics Limited	Appellant
	and	
	Karen Giles (Valuation Officer)	Respondent

SITTING:	*Remotely using Microsoft Teams*
ON:	10 April 2025
BEFORE:	Ms TM Blades, Presiding Senior Member Mr SC Kamalan, Senior Member
CLERK:	Mr R Gath IRRV(Hons)
APPEARANCES:	Mr Philip Emerick on behalf of the Appellant Ms Nnennaya Awoyokun on behalf of the Valuation Office

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel was satisfied that the appeal property had air conditioning rather than a comfort cooling system and was therefore satisfied the existing rateable value (RV) was correct.

Introduction

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) on 12 July 2023. 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 12 June 2024. His representatives then appealed the VO's decision to the Tribunal on 17 July 2024, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appeal property was a warehouse, offices and premises located close to the Severalls Industrial estate which was just off the A12 and A120. It had a total area (GIA) of 4,380.50m² with additions for land, a portable building, five storage containers, plant and machinery and 92 Car parking spaces. It had been valued using an unadjusted rate of £47.50/m^2.

5. As Mr Emerick 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. This question was raised in view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC).

6. He declared that his firm is on a contingency fee basis. Mr Emerick confirmed 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 supported the client's case.

7. 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).

8. Ms Awoyokun confirmed that she was representing the VO as advocate and expert witness.

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

Background

10. The issue in dispute before the panel was whether the appeal property should have a 10% uplift due to air conditioning. Mr Emerick submitted that the appeal property only had comfort cooling which was not subject to a 10% uplift and sought a reduced entry of £228,500 RV, based on an unadjusted value of £45/m^2. On behalf of the respondent, Miss Awoyokun defended the VO's existing assessment of £250,000 which included the 10% uplift for air conditioning.

11. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, the appellant's revised assessment, a map of the locality and photographs of some of the appeal property.

Relevant Law

12. The term ‘rateable value’ is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “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 –
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> 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; and
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> 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. Mr Emerick argued that for air conditioning, the units must be capable of heating, cooling, filtration and humidity control, and are only used when humidity control is necessary, such as laboratories, paper and envelope storage and computer facilities.

14. In his evidence bundle he described the various systems such as two and four pipe systems with four pipe systems providing basic cooling but he accepted this was an outdated system but would have an uplift of 2.5%; comfort cooling were packaged systems using cassettes which would result in a 5% uplift and a Variable Air Volume (VAV) system which also only provides comfort cooling but allows more control would have a 7.5% uplift.

15. He argued that the appeal property only had packaged systems which only provided heating and cooling which was not air conditioning. In response to questions from Mr Emerick, Ms Awoyokun confirmed that air conditioning is included in the base price for industrial units but with offices, air conditioning is added as an adjustment on the valuation.

16. Ms Awoyokun had inspected the appeal property on 7 April 2025 and confirmed during that inspection the appeal property had partial air conditioning. She had also confirmed that the system heated and cooled the appeal property. But, whilst there was no humidity control, the system had air filtration and that it should be reflected in the valuation.

17. The panel applied significant weight to Ms Awoyokun’s contentions that the VO would apply an uplift to all properties irrespective of the model and type of air conditioning and that cassette systems fell within the generic description of air conditioning.

18. The VO’s challenge decision stated that it had applied an uplift to the first floor offices and the ground floor office of 593.22m^2, but not the ground floor office of 64.64m^2. This was supported by the valuation which showed a relativity of 1.32% to the offices stated by the VO, but only an uplift of 1.2% to the office of 64.64m^2.

19. The panel was therefore satisfied with the VO's contentions that the system was a ceiling mounted cassette air conditioning system and the uplift had been applied to the appropriate areas within the appeal property. Whilst the panel understood Mr Emerick's argument that there were different types of systems for heating and cooling, no evidence had been presented by Mr Emerick to prove that the system at the appeal property was not as the VO had described it and neither had he presented any arguments to prove that the air conditioning system had not been installed to the areas where the VO had applied the uplift. The panel was therefore satisfied that the 10% uplift for air conditioning should be applied.

20. Mr Emerick also argued that the appeal property should not be placed in the same scheme, number 379414, which was for industrial units the Severalls Industrial Park, as the appeal property was located outside of the main Severalls Lane area. As such, it should not be included in the same scheme. The panel was disappointed that Mr Emerick had raised the specific issue of the VO scheme during the appeal as he had not mentioned the scheme within his challenge, which appeared to be made purely on the basis of the lack of air conditioning.

21. Although the location map showed that the appeal property was located away from the main industrial area, the panel applied significant weight to Ms Awoyokun's contentions that the appeal property was located within the CO4 postcode area, just off Severalls Lane and was therefore close enough to Severalls Lane to be included within that scheme.

22. Furthermore, the panel noted that Mr Emerick did not provide any evidence to prove that the appeal property should be placed in a different scheme. Although he did provide some comparable properties within the CO4 postcode which had been valued at an unadjusted rate of £45/m^2. But, the panel applied less weight to these comparable properties as most of these were valued as Workshop and Premises or Factory and Premises, whereas the appeal property was valued as Warehouse and Premises.

23. The panel noted that Unit 2A Wyncolls Road had been valued at £45/m^2 and was a Warehouse and Premises. However, the actual warehouse had an area of 2,920m^2 whereas the main warehouse for the appeal property had an area of 2,379m^2 although there was another entry in the valuation of the appeal property for another warehouse with an area of 381m^2 which would suggest it was separate from the main warehouse. Ultimately, a larger warehouse may well benefit from a quantum allowance which may explain the difference between the unadjusted values for the two properties. Ultimately, both parties had not produced any evidence to suggest that Unit 2A Wyncolls Road would not benefit from a quantum allowance.

24. However, although the challenge stated that the appellant disputed the RV as shown in the valuation list, the VO understood that Mr Emerick was only disputing the uplift for air conditioning. Therefore, the VO had not provided any evidence in response to Mr Emerick's verbal argument that the appeal property should valued at £45/m^2.

25. However, as Mr Emerick had also failed to produce any substantial evidence to demonstrate that the appeal property should be valued at £45/m^2, by reference to any rental or tonal evidence, the panel was satisfied that the appeal property had been placed in the correct scheme and correctly valued at an unadjusted rate of £47.50/m^2.

Disposal

26. In view of the above findings and conclusions, the Tribunal panel was satisfied that the RV was reasonable and the panel dismissed the appeal.

Date issued to parties: 7 May 2025

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.