VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Warehouse and premises; Unadjusted base rate; Appeal allowed in part.

APPEAL NUMBER:	CHG101207001 and CHG101185221
RE:	HARRIS DISTRIBUTION LTD, JOSSELIN ROAD, BASILDON, SS13 1QF (the "subject property")
BETWEEN:	Waymade Plc (represented by Altus Group) — Appellant
	and
	Jo Moore (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	4 December 2024
BEFORE:	Mr W Hussain, Presiding Senior Member Mrs U Naseem, Senior Member
CLERK:	Mrs S Hodgson IRRV(Dip)
APPEARANCES:	Mr M Clayton for the appellant Mrs N Awoyokun for the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel found that the current rateable value (RV) was unreasonable and determined a revised RV of £335,000 with effect from 18 September 2017, based on an unadjusted base rate of £32.50 per square metre (psm).

Introduction

3. This was a 2017 rating list appeal. The subject property had been entered in the 2017 rating list as “Warehouse and Premises” at an RV of £377,500 with effect from 18 September 2017.

4. The challenge proposals were submitted by Altus Group on behalf of Waymade Plc and was received by the Valuation Officer (VO) on 14 February 2024 and 15 April 2024. They had been made on the grounds that the RV shown in the rating list was wrong and proposed a revised RV of £302,500 for the subject property.

5. The VO issued challenge case decision notices on 25 and 26 June 2024. The VO’s decision was to treat the appellant’s challenges as not well-founded and proposed no change to the rating list.

6. Mr Clayton appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) he confirmed that he was instructed under a contingency fee. He declared 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.

7. The panel accepted this expert witness evidence on the above basis as the appeal was not 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 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. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

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

<u>*Background*</u>

10. The subject property was a large, two-storey, industrial unit that had a total area of 10,566.56m^2. It was located in an industrial area of Basildon, Essex, close to the A127. It had 9.7m eaves and was originally constructed in 1975. The property was valued in a scheme for industrial units in Essex in excess of 10,000m^2. The subject property was valued using an unadjusted base rate of £37.50 psm, and Mr Clayton sought a reduction to £30.00 psm.

11. At the challenge stage there was an error in linking the challenge to the correct assessment. This was corrected prior to the appeal to the Tribunal. While there were two effective dates for this appeal due to two separate entries in the rating list, the RV was the same for both. Both parties were in agreement that any change would take effect from the earlier effective date of 18 September 2017 and their submissions were made in line with this. Mrs Awoyokun sought a dismissal of the appeals leaving the RV as £377,500 with effect from 18 September 2017 and 30 January 2020. Mr Clayton sought a reduction in the RV to £302,500 with effect from 18 September 2017 and 30 January 2020.

Relevant Law

<u>*The Local Government Finance Act 1988*</u>

12. Schedule 6 of the Act provides that:

    2(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.

13. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

14. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 18 September 2017.

Discussion

15. The leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, set out six propositions to be followed when considering the weighting of evidence:

    1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
    2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
    3. Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
    4. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
    5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

16. There was a lease on the subject property of £600,000 per annum which was a rent review from 1 January 2020. Mrs Awoyokun had analysed the rent to £61.37m^2 and stated that the form of return (FOR) the rent was stated as being between unconnected parties and determined on an open market basis. Mr Clayton stated that Waymade Plc own the site and lease the subject property back to themselves. He stated it was a connected party rent and had not been tested on the open market. The panel placed little weight on the rent of the subject property for two reasons, one was the fact it appeared to be connected and was therefore unreliable and two, it was five years post the AVD for the 2017 rating list.

17. The evidence provided by Mrs Awoyokun in support of the current RV was the passing rent on The Cargo Centre in Grays of £569,350 per annum effective from 1 December 2019. Mrs Awoyokun had analysed the rent to £71.92 psm, and it was in the rating list at £60.00 psm. This was a 6-year lease renewal. Mr Clayton stated this was a connected party rent with Transmec Properties the landlord and Transmec UK the tenant, a client of Altus Group. He also stated that the property was located 16 miles from the subject property next to the m25 in a far superior location.

18. Mrs Awoyokun had also referred to settlement evidence on Anton House in Basildon which was agreed with a base rate of £47.50 psm at challenge stage. At the hearing Mrs Awoyokun stated this was superior to the subject property and agreed with Mr Clayton that it was not good comparable evidence.

19. Mr Clayton had provided settlement evidence of three assessments. Gilbarco was constructed between 1955 and 1964 and had an area of 11,618.10m^2 with eaves of 4.27m. Its base rate had been reduced from £35.00 psm to £25.00 psm at a previous Tribunal hearing in 2023.

20. Ecotherm had four buildings constructed at different times between 1955 and 2007. It had a total area of 13,976.50m^2 with eaves at 8.7m, 9.7m, and 10.7m. The unadjusted base rate was reduced from £35.00 psm to £25.00 psm during challenge in 2024. The 2007 elements of the assessment were valued at £36.25 psm.

21. Mr Clayton considered Unit 44 Yardley Business Park to be the best evidence as it was constructed between 1965 and 1970 and was the most comparable to the subject property. It measured 14,850m^2 with 6.1m eaves. It was reduced from £35.00 to £30.00 in 2022.

22. The panel heard from Mrs Awoyokun that there had been some form of refurbishment of the subject property in 2012, and whilst Mr Clayton was unaware of any refurbishment work, he accepted that there was a new roof, and cladding had been added around the steel frame in part. It was Mrs Awoyokun's view that the refurbishment of the subject property and the eaves height of 9.7m made it superior to the comparable properties put forward by Mr Clayton.

23. It was the panel's view that based on the evidence before it, the current RV was unreasonable. The panel placed little weight on the rental evidence of The Cargo Centre as it was a lease renewal from four years after the AVD which the panel found to be too far removed to be of assistance. Mrs Awoyokun had already stated that her settlement evidence of Anton House was not a suitable comparator and therefore the panel placed little weight on this evidence.

24. In regard to the refurbishment of the subject property, the panel accept the degree of refurbishment that was agreed between the parties, but as there was a dispute over the level of the refurbishment the panel found it hard to attribute much weight without evidence which had not been provided. However, it was the panel's view that the level agreed between the parties would have had an effect on the value of the subject property when compared to Gilbarco, Ecotherm and Unit 44, and found it was superior to these properties.

25. The panel noted that the subject property did have higher eaves than Gilbarco and Unit 44, and whilst this may only be one element that effects value, it was the panel's opinion that it would have affected the value in this case. Its eaves were more than double the height of those at Gilbarco.

26. The panel found that the RV of the subject property should be reduced to £335,000 by way of an unadjusted base rate of £32.50 psm.

Disposal

27. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the existing assessment is unreasonable and determined an RV of £335,000 with effect from 18 September 2017.

Floor	Description	Area (m^2)	£/m^2	Value (£)
Ground	Warehouse	4,270.10	31.70	135,362
Ground	Warehouse	4,426.40	31.70	140,317
Ground	Offices Etc	262.80	38.00	9,986
First	Office	157.00	38.00	5,966
Ground	Plant Room	26.70	31.70	846
Ground	Kitchen/Offices	25.20	38.00	958
Ground	Portable Building Office	26.10	38.00	992
Ground	Warehouse	818.00	31.70	25,931
Ground	Canopy	23.06	16.25	375
Ground	Canopy	531.20	16.25	8,632
	Total	**10,566.56**	**Subtotal**	**£329,365**
	Surfaced Open Spaces	40	150.00	£6,000
			TOTAL VALUE	**£335,365**
			Rateable Value	**£335,000**

28. The Tribunal Panel orders pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of Harris Distribution Ltd, Josselin Road, Basildon, Essex SS13 1QF within two weeks, to £335,000 RV with effect from 18 September 2017.

Date issued to parties: 17 January 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.