THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; hereditaments, split assessments, Telereal Trillium (Respondent) v Hewitt (VO) (Appellant) (2019) UKSC 23, actual occupation, stores, unit of assessment, appeals allowed.

RE: Units 6, 8 and 9 Centurion Business Park Davyfield Road, Blackburn BB1 2LB

APPEAL NUMBERS: 237225181598/539N10 237225181275/539N10 237225175032/539N10

BETWEEN: Store First Limited — Appellant

and

Owners of the Pods — Interested Parties

and

Ms A Hitchings (Valuation Officer) — Respondent

PANEL: Mr S Wood (Presiding Senior Member)
Dr H Freeman (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING: 27 January 2022 16 June 2022 9 November 2022

APPEARANCES: Mr D Hetherington (representing the Valuation Officer)
Mr J Turner (representing Store First Limited and the Official Receiver)
Mr A Thomas (interested party)
Mr K Hodgson (interested party)

Summary of decision

1 The appeals were allowed, the rateable values were split in respect of each appeal in accordance with the schedules attached to this decision.

Introduction

2 This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before arriving at its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3 The property comprises three industrial units at Centurion Business Park. The units were constructed in 2008 as mainly single storey steel portal framed industrial buildings with profile sheet cladding. The units have since been reconfigured to provide storage pods on ground, first and second floors with extra mezzanine levels being installed to accommodate the extra pods. Centurion Business Park is located in Blackburn. The business park has good motorway access as it is situated between Junctions 4 and 5 of the M65.

4 The President of the Valuation Tribunal for England (VTE) had already heard appeals in respect of Store First Barnsley on 7 June 2017 and 13 July 2017 where both Store First Limited and the valuation officer were legally represented. The appellant in that case had argued that each storage pod was a separate hereditament whilst the valuation officer contended that there was only one hereditament containing all the pods. The President gave an interim decision that each of the pods were separately rateable on 9 August 2017. This was a test case, and the President determined that as each of the Store First sites were operated in the same way, it was expected that the decision in respect of other Store First sites would not be any different. On making his decision the President asked the appellant and valuation officer to agree the rateable value (RV) to be ascribed to each pod.

5 Prior to this hearing of the instant appeals, Store First, which had subsequently been wound up and is now in the control of the Official Receiver, and the valuation officer had agreed the appeals in respect of Units 6, 8 and 9 Centurion Business Park Davyfield Road, Blackburn BB1 2LB and had attended the hearing to ask the panel to ratify the agreed valuations. All other interested parties (IP's), i.e., leaseholders of the individual pods had been informed of the President's decision in the aforementioned test case and of the intention of the valuation officer to split the assessments and enter rateable values in the list for each pod in Units 6, 8 and 9 Centurion Business Park Davyfield Road BB1 2LB.

6 The IP's in these appeals had been contacted by the valuation officer and advised to contact the Valuation Tribunal if they wished to express a view about the proposed entries for the storage pods. This was because they may become liable for business rates when the properties are split.

7 At this hearing two IP's, Mr Thomas and Mr Hodgson, who had a lease on one or a number of pods, had expressed a wish to give their view on the proposals and had attended the hearings to do so.

8 At the hearing on 27 January 2022 both IP's stated that they had evidence to support their assertion that their individual storage pods were worthless and should be reflected as such

in the rating list. The hearing was adjourned to allow them to provide this evidence to the Tribunal and the other parties.

9 At the hearing on 16 June 2022 Mr Hetherington made submissions to the panel regarding the proposed entries in the rating list which had been agreed between the valuation officer and Store First. The majority of the evidence and submissions were heard including that of the IP's, however, this hearing had to be adjourned because Mr Slater, who was representing Store First and the Official Receiver at that time, was forced to leave before the panel had finished questioning him. The appeals were therefore relisted to this Hearing.

Issues

10 The three proposals in consideration addressed the same issue which was whether the self-storage facility should be entered in the Rating List as follows:

- Unit 9 – split into 285 pods, with a total rateable value of £74,414 with effect from 15th June 2012.
- Unit 8 – split into 398 pods, with a total rateable value of £54,358 with effect from 5th September 2013.
- Unit 6 – split into 564 pods, with a total rateable value of £100,060 with effect from 30th December 2013.

Evidence and submissions

11 Mr Hetherington had provided a bundle of evidence which, amongst other things, included: a statement of case; assessment evidence; a valuation; details of the subject properties; plans; details of tenure; a copy of the proposals; the appeal history; and details of comparable properties. He also referred to the judgement in *Telereal Trillium (Respondent) v Hewitt (VO) (Appellant) (2019) UKSC 23*.

12 Mr Hetherington explained that the Store First units had been subject to litigation regarding identification of the hereditaments and whether Store First were rateable occupiers or long leaseholders of the numerous pods within numerous buildings. The Store First appeal in Barnsley was a test case heard before the President of the VTE on this issue. It was decided by the President that each of the pod leaseholders have paramount control of the individual pods. Mr Hetherington submitted that the valuation officer was satisfied that the circumstances affecting the Store First site at Barnsley were replicated in the subject properties in Blackburn. He argued that the rating list should be amended, and individual pods should be separately shown in the rating list as individual hereditaments.

13 With regard to the rateable value (RV) of each pod, Mr Hetherington submitted that there was strong settlement evidence of other Store First facilities in the 2010 Rating List. It was his view that a tone had been set for this type of property. He also submitted that the RV's had been agreed with the appellant and he asked the panel to ratify the proposed agreements.

14 Mr Hodgson, who had purchased several pods as part of an investment in his pension, submitted that the storage pods were worthless, he had provided a document from his pension company to support his argument. He stated that this was a hands off investment sold to him as part of his pension and he was not expecting to have to pay business rates. He had not been able to gain access and had not been able to sell his pods and he had received no rental income, he had tried to give the pods back but had not been allowed to do that either.

15 Mr Thomas also considered the pods to be worthless and had provided a document for the consideration of the panel. He argued that any rental income from the pods was being paid to the Financial Services Compensation Scheme (FSCS); this was disputed by Mr Turner in questioning. Mr Thomas also believed that the pods had been split into individual hereditaments with low RV's, which would benefit from rate relief, in order to avoid paying business rates on a large warehouse and thus defrauding the Government of money.

16 Mr Turner, on behalf of the Official Receiver and Store First, submitted that in answer to issues which had been raised at the hearing on 16 June 2022, there was no dispute between the FSCS and Store First which would cause restrictions on the leaseholders ability to access their pod. He also stated in an email, that Store First in its capacity as freehold landlords of the leasehold interests could not comment on any restrictions on the sale of those leasehold interests entered into by the leaseholder with third parties including the FSCS. He had submitted a letter from Bevan Brittan as evidence to support his contention.

17 Mr Turner submitted that in general the only restriction on the actual use of, or access to, the storage pods by the leaseholders is where the unit has been rented out to a third party tenant. Where this was the case, the leaseholder would need to give reasonable notice to the tenant to vacate the pod. He also stated that there are no restrictions within the leasehold covenants restricting any leaseholder from selling their leasehold interest. In effect the leaseholders were free to use the pods themselves or let them out.

18 Mr Turner was, however, aware that some of the pod owners (including the IP's present at the hearing) who had purchased pods through pension schemes which had since collapsed, had been compensated by the FSCS and were restricted by the terms of the compensation agreements from selling their pods. However, he submitted that none of the pods were worthless.

Decision and reasons

19 Having given careful consideration to all of the evidence presented the panel allowed the appeals.

20 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines that the Rateable Value of a non-domestic property shall be taken to be the amount equal to the rent at which it is estimated the

property might reasonably be expected to let on a year to year basis 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 the 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

21 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. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

22 The panel noted that the IP's were aggrieved because they had purchased the storage pods as an investment as part of a pension scheme prior to the Valuation Tribunal decision that each pod was a separate hereditament for rating purposes. It was aware that because of the President's decision the IP's could become liable to pay business rates on the storage pods which they owned. The panel also noted that neither IP had profited from the pods, and they had not been let for storage purposes.

23 However, the panel was aware that in determining an RV the rating hypothesis requires the valuation officer to assume that the subject property is vacant and to let and to consider what rent a hypothetical tenant coming fresh to the scene would be prepared to pay to a hypothetical landlord to let the property. This matter was dealt with in the Supreme Court judgement of *Telereal Trillium v Hewitt* which had been referred to by Mr Hetherington as it dealt with the matter of demand for a property.

24 In this case it was determined by the Supreme Court that despite the lack of real-world demand for an office building which was empty at the material date the property should still be valued at £370,000 having regard to the general demand for offices in the area at the antecedent valuation date (AVD). In delivering the judgment the Supreme Court stated at paragraph 58

> "*Whether the hereditament is occupied or unoccupied, or an actual tenant has been identified, at the relevant date is not critical. Even in a "saturated" market the rating hypothesis assumes a willing tenant, and by implication one who is sufficiently interested to enter into negotiations to agree a rent on the statutory basis. As to the level of that rent, there is no reason why, in the absence of other material evidence, it*

should not be assessed by reference to "general demand" derived from "occupation of other office properties with similar characteristics"."

25 The panel noted that the IP's had stated that their pods remained unused, however given this authority the panel found that they still had value.

26 The panel did not find the evidence of documents provided by the IP's to be persuasive as neither document actually stated that the value of the pod was nil. With respect to the document provided by Mr Hodgson, which was from the FSCS, the panel noted that it stated that "*We've disregarded the value of store first as it is much too uncertain to value*". The document provided by Mr Thomas was a pension review from Hatley Pensions, it stated that "*we have not been able to obtain valuations of the store pods therefore the value of the investment will be noted as nil for the purposes of this review until accurate valuations are available*". This evidence suggested to the panel that the 'capital' value of the storage pods was uncertain not nil, and in any event, it had to look at the rental value between a hypothetical landlord and tenant.

27 The panel noted that there were some restrictions on the surrender or sale of the pods which had been made as part of an agreement with the FSCS when compensation was paid to the leaseholders, however, whether the IP's were in rateable occupation of the pods was outside of the panel's jurisdiction. There were several different arrangements in place between the investors, pension funds and Store First and the panel determined that it is for the billing authorities and subsequently the Magistrates Courts (if disputes arise) to determine liability.

28 The panel turned to the comparable evidence of other Store First sites and other comparable storage properties. The panel found this evidence to be persuasive and it attached significant weight to it. In particular the panel noted that the RV's for: Store First, Crown Business Park, Queensway, Rochdale; Store First Preston, Millennium Road, Fulwood, Preston; 3-5, Estuary Banks, Liverpool; and Unit 2, Clarke Industrial Estate, St Modwen Road, Trafford Park, Manchester had all been agreed between the appellant and the valuation officer and ratified at Valuation Tribunal and the appeal in respect of Store First Barnsley, Ashroyds Business Park, Barnsley, had been heard at a Valuation Tribunal before the President of the VTE and the appeal had been allowed. The panel noted that none of the Storage Pods had been found to be worthless despite several different arrangements in place between the investors, pension funds and Store First.

29 Having regard to the evidence placed before it, the panel accepted the values placed on each pod by Store First and the valuation officer.

Order

30 Mr Hetherington made application to the panel to extend the two-week requirement to alter the list under an Order to a four-week period, which the panel agreed to as a reasonable measure given the numbers of alterations to be made, in accordance with regulation 6 of the

Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

31 As a result of this decision the valuation officer is required to alter the Rating List in respect of the appeal hereditaments within four weeks in accordance with the attached schedules.

Date: 25 November 2022

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