THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; land used for storage and premises; accuracy of rateable value in list; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*; John Laing and Sons Ltd v Kingswood Assessment Committee and others* [1949]1 KB 344, 350*; Cardtronics UK Ltd and others (Respondents) v Sykes and others (VO) (Appellants)* [2020] UKSC 21*; appeal allowed in part.*

RE: Moor Lane Self Storage, ADJ 1, Moor Lane, Birmingham B6 7AE

APPEAL NUMBER: CHG100167123

BETWEEN: Moor Lane Self Storage Appellant

and

Mr Dal Virk
(Valuation Officer) Respondent

PANEL: Dr J Johnson (Senior Member)
Mrs S Nix (Member)

CLERK: Ms R Muller

HEARING: Remote Hearing No. 2 on 5 September 2022

APPEARANCES: Mr Paul Rabbette from Rabbette Chartered Surveyors, the representative for the Appellant
Mr Darren Byrne, the representative for the Respondent

Summary of decision

1. Appeal allowed in part. The current entry in the 2017 Rating List is to be reduced to £12,250 Rateable Value (RV) with effect from 8 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the subject property was originally £22,000 from 8 April 2017, as land used for storage and premises. The material day for this appeal was 8 April 2017, the date when the subject hereditament was entered into the 2017 Rating List. A check had been submitted on 1 November 2019 and it was completed on 5 November 2019 and the entry of the subject hereditament was reduced to £21,750 RV with the same effective date of 8 April 2017. A challenge was submitted on 13 February 2020 and was completed on 2 July 2021.

3. An appeal was received by the Tribunal on 2 November 2021, made on the grounds that the valuation for the hereditament was not reasonable. The proposed RV sought by the appellant was £10,300. However, at the hearing, Mr Rabbette, the representative for the appellant stated that he had made an error in his calculations and as such, he had amended his valuation and proposed a revised assessment of £8,600 RV with effect from 8 April 2017.

4. Mr Rabbette 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), his declaration of truth included a statement that as advocate, he was instructed on a conditional fee and as expert witness, he was instructed on a retained fee basis. He 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 supported the client's case.

5. 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

6. The premises was originally rated as warehouse and storage land, which had been entered into the 2017 Rating List with an RV of £24,000 with effect from 1 April 2017. When the original assessment had been split, the subject hereditament, described as land used for storage and premises was entered into the 2017 Rating List at £22,000 RV with an effective date of 8 April 2017. However, as stated above, at check, the assessment on the subject hereditament was reduced to £21,750 RV with effect from 8 April 2017.

7. Mr Byrne joined the hearing without his camera working. However, he was able to hear and present his case with no issues.

8. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Issue

9. The issue between the parties at the time of the hearing, was the measurement of the yard, the method of valuing the yard and if end allowances should be included within the assessment for the subject hereditament of 5% for lack of mains water and drainage and 10% for the topography/sloping nature of the yard.

Evidence and submissions

10. The panel was presented with a combined bundle of evidence which included details of the subject hereditament, the issue in dispute and the contentions by both parties. Along with the case law of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141; *John Laing and Sons Ltd v Kingswood Assessment Committee and others* [1949] 1 KB 344, 350 and *Cardtronics UK Ltd and others (Respondents) v Sykes and others (VO) (Appellants)* [2020] UKSC 21.

11. Mr Rabbette had sought a reduction to £8,600 RV with effect from 8 April 2017, which was based on a revised area to be valued of 559.49 m^2 (which did not include the area of the storage containers). He considered that £150 per storage container was excessive, therefore, he provided a revised figure of £82.39 for the equivalent of 49 containers using the Valuation Officer's (VO)'s cost guide, an end allowances of 5% for lack of mains water and drainage and 10% for the topography / sloping nature of the yard.

12. Mr Byrne sought to defend the existing assessment of £21,750 RV with effect from 8 April 2017 and submitted that no evidence had been provided to support that end allowances for lack of mains water and drainage or the sloping nature should be applied to the subject hereditament's RV assessment.

13. All other matters had been resolved and were not disputed by the parties.

Decisions and reasons

14. The subject 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 be let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 8 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

15. Where rental evidence is available, the weight to be attached should be considered in light of the six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. However, the panel noted that the subject hereditament was freehold and as such, no passing rent was applicable.

16. The measurement of the yard was still in dispute. Mr Byrne, the representative for the respondent stated that he had remeasured the site using digital mapping giving a revised yard area of 1,458 m², whereas, Mr Rabbette had conducted an inspection on 10 September 2019 and had confirmed that the yard measured 1,328 m². As Mr Rabbette had visited the subject hereditament and measured the yard himself, the panel held that the correct measurement of the yard was 1,328 m².

17. The panel then considered the area of the yard which was valued at £10 /m². Mr Byrne was of the opinion that the total area should be valued at £10 /m² and then the value of the storage containers should be valued separately at £150 each. However, Mr Rabbette stated that the area of the land where the storage containers were situated should not be included in the total area valued at £10 /m² if the storage containers had a separate value on them within the assessment, as this was double counting.

18. Mr Rabbette had stated that at first, he had considered that the storage containers were not rateable and had referred to the cases of *John Laing and Sons Ltd v Kingswood Assessment Committee and others* [1949] 1 KB 344, 350 and *Cardtronics UK Ltd and others (Respondents) v Sykes and others (VO) (Appellants)* [2020] UKSC 21 in support of this statement. However, he had since reconsidered his argument and now held that he was in agreement that the storage containers were rateable.

19. Mr Rabbette was of the opinion that the value applied by the VO of £150 per storage container was excessive. Therefore, in order to obtain the correct value for each of the storage containers, he considered the VO's cost guide, as storage containers were included within this guide as follows:

    'Secure storage containers 2.44m x 2.59m x 6.10m long 2.44m int height 15.79m² 42U30P Second hand standard ISO shipping container of all steel construction typically used for secure site storage. Available in standard sizes. £1,498 Each'

20. Mr Rabbette informed the panel that these are 'cost' as in capital cost to purchase. Therefore, he reduced the figure to rental basis, by decapitalising at the rate of 5.5%. His revised figure for each storage container was obtained by using the following calculation: 6.1 m per container is valued at £1,498 x 5.5% = £82.39. Mr Rabbette was of the opinion that each of the storage containers should be valued at £82.39.

21. The panel was in agreement with Mr Byrne that the value of the storage containers should remain at £150 each due to the comparable properties cited below. However, the panel agreed with Mr Rabbette when he stated that the area of the land where the storage containers were situated should not be included in the total area due to the figures provided by Mr Rabbette concerning the same comparable properties below:

    (i). Bluloc Self Storage, Thimble Mill Lane, Birmingham B7 5HT. The assessment of this property had 68 storage containers which had been valued at £150 per container. The panel noted that Mr Rabbette had used Google Earth Pro to estimate the total area of land on which the storage containers were situated, which he had calculated at 2,928 m² against the area used by the VO within this comparable property's assessment at 1,091 m². The panel agreed that this supported the contention that the area on which the storage containers were sited should be deducted from the assessment of the subject hereditament.

(ii). 1 Fort Parkway, Birmingham B24 9AW. The assessment of this property had 68 storage containers which had been valued at £150 per container. Using again Google Earth Pro, Mr Rabbette stated that the total area of the land for this comparable property was estimated to be 12,597 m². The area used with the assessment of this property was 8,778 m² which the panel held again supported the contention that the area of which storage containers are situated should be deducted from the total area of the yard with regards to the subject property's assessment.

22. The panel turned its attention to the end allowances for sloping site. Mr Rabbette was of the opinion that an end allowance of 10% should be included within the subject hereditaments assessment. In support of this statement, he provided one comparable property for the panel's consideration:

(i). 22-24 Church Road, Northfield, Birmingham B31 2JY – This property slopes slightly from the road and is largely covered with buildings. It has a 5% end allowance for sloping site. Mr Rabbette was of the opinion that this property was not as disadvantaged with the slope to the extent of the subject hereditament. Mr Byrne argued that this property had an awkward triangular shape and was much smaller in size to the subject hereditament. He was not persuaded that the slope on the subject property impacted the site like it did for this comparable property.

23. Considering the photographs of 22-24 Church Road and the sloped area, the panel noted that the subject hereditament's sloped area was somewhat longer, but the panel was not persuaded that the appeal property had a greater disadvantage that this comparable property. Therefore, the panel held that an end allowance of 5% for sloping site was applicable.

24. With regards to the end allowance for main water and drainage. The panel noted that there was no requirement for mains water or drainage at a hereditament that was used solely for storage. Therefore, the panel held that no end allowance was necessary for the lack of mains water or drainage.

25. In conclusion, the panel determined that the correct RV for the subject hereditament would be as follows: total area of 1,328.66 m². Area used without storage containers was calculated as follows: (49 containers x 6.1m; containers 15.79 m² each x 49) = 773.71 m²; 1,328.66 m² – 773.71 m² = 554.95 m²:

Description	**Area (m²)**	**Price (£/m²)**	**Value (£)**
Hard Surfaced, Fenced Land	554.95	10.00	£5,549.50
Additional Features of the Property Included in the Valuation			
Storage Containers	49	150	£7,350
	Subtotal		**£12,899.50**
Deduct sloping site	5%		-£644.98
Valuation sub-total			£12,254.52
		Say RV	**£12,250**

26. The appeal was therefore allowed in part.

27. 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).

Order

28. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £12,250 RV for Moor Lane Self Storage, ADJ 1, Moor Lane, Birmingham B6 7AE with effect from 8 April 2017.

29. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 14 September 2022

Appeal number: CHG100167123

Right of 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.