THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; land used for storage and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; comparable properties; consideration of double counting within the valuation; end allowance sought for lack of services; appeal allowed in part.

Re: Guisborough Storage Services, Morgan Drive, Guisborough, Cleveland TS14 7DH

APPEAL NUMBER: CHG100183604

BETWEEN:	Euremica Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Mr F J Rogers (Presiding Senior Member)
Mr W J Read (Senior Member)

CLERK: Mrs C McAvoy

REMOTE HEARING No.4 on 4 February 2022

APPEARANCES:

Ms J Corney of Knight Frank LLP on behalf of the appellant
Mr R Fuller on behalf of the respondent Valuation Officer

Summary of decision

1. Appeal allowed in part; the rateable value (RV) was reduced to £14,500 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following assessment: Guisborough Storage Services, Morgan Drive, Guisborough, Cleveland TS14

7DH (the ‘appeal property’) was entered in the 2017 Rating List at £23,250 RV effective from 1 April 2017.

3. The appeal property was valued as land used for storage and premises and had a total area of 2,571.44m^2. The land included access, a ramp, access for the mast and storage containers.

4. The challenge process completed on 18 May 2021. The Valuation Officer (VO) did not find the proposed RV to be well founded but had accepted the VO’s initial response that the value of the land could be reduced from £6.08/m^2 to £2.50/m^2. Following a further exchange of information, the VO decided to reduce the overall site area by 108.5m^2, this being the area of the land used as access to the aerial site. The VO also agreed an end allowance which reduced the entire assessment by a further 5% to reflect the shared access arrangement. The challenge decision was issued on 18 May 2021 which reduced the RV to £17,500 with effect from 1 April 2017.

5. Mr Baty submitted the check and challenge on behalf of his company. Mr Baty disputed the revised RV stated on the challenge decision and appealed the decision to this Tribunal. Mr Baty instructed Knight Frank LLP to deal with the appeal on his behalf.

6. On behalf of the appellant, Ms Corney of Knight Frank proposed a reduced RV of £10,500 with effect from 1 April 2017 on the grounds that it was considered that the VO had double counted within its valuation. The proposed valuation also included a further 10% end allowance for lack of services.

7. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

8. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

9. In accordance with that Practice Statement, the hearing of this appeal was conducted remotely via Microsoft Teams conference call using audio/video-link. There was a minor technical issue during Ms Corney’s presentation in that her sound was breaking up. There was a brief pause in proceedings to allow her to leave the meeting and reconnect in the hope that this would resolve the issue, but the sound issues remained. The clerk to the Tribunal called Ms Corney’s mobile phone via the MS teams meeting and Ms Corney continued with the remainder of the hearing via conference call. The

presentation was continued from the point at which the issues arose, and the panel was satisfied that the parties were able to fully participate.

10. Ms Corney 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), her declaration included a statement that she was instructed under a fixed fee.

11. It was declared within her statement that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body regardless of whether or not the evidence supported the client's case.

12. 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).

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

14. 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 coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

15. The issue before the panel was to consider the valuation for the appeal property as it was entered in the compiled 2017 rating list. Specifically, whether the land and containers should both be valued. The VO considered £2.50/m^2 to be reasonable for the gross land whereas the appellant argued that the land should not be valued separately as it was already reflected in the £10/m^2 applied for the area occupied by the storage containers.

16. In addition to the dispute over the valuation of land, the panel were required to consider a 10% end allowance which was being sought for lack of services available at the appeal property.

Evidence and submissions

17. The evidence bundle provided comprised the information exchanged as part of the check and challenge process which included the appellant's challenge submission and the VO's decision notice. Reference was made to the following judgments: *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA 26 CA.

18. Given the size of the bundle put before the panel, Mr Fuller questioned whether it contained new submissions from the appellant. He was informed that this was the information exchanged during check and challenge prior to the challenge completion date. However, it appeared the initial response had been duplicated multiple times in the panel's merged bundle which accounted for it being larger than expected.

19. Ms Corney, on behalf of the appellant, sought a rate of £10/m^2 for the containers which were situated on an area totalling 1244.40m^2. It was argued that the VO's valuation contains double counting. Furthermore, she submitted that the appeal property had no surplus land on the site as the containers cover the majority of the site area with only essential access to the containers remaining.

20. Ms Corney referred to the assessments provided by Mr Baty during the challenge process. In summary, this included the assessment for Screwfix Direct, Morgan Drive, Guisborough; Kwik Fit, Morgan Drive, Guisborough and Howdens, Rectory Lane, Guisborough. These properties were located within close proximity to the appeal property, and it was argued that the buildings were valued but the majority of the land was reflected in the price per m^2. It was therefore submitted that the appeal property should be valued this way given that its dominant use was the buildings and not the land. Parsons Containers (U Hold the Key), Old Station Road, South Bank, Middlesbrough TS6 6AD was also referred to and it was argued that the valuation approach to this assessment supported that the appeal property's valuation contained double counting.

21. Ms Corney referred to Mr Baty's comments on each of the VO's comparable assessments submitted. Mr Baty had also provided copies of the valuations from the Valuation Office Agency's (VOA) online rating list which detailed the scheme and category in which they had been valued. She submitted that they were land with nil or very minimal storage unlike the appeal property which is at maximum capacity. She referred to the VOA's rating manual submitting that when land has over 25% of it covered by buildings, it is not to be valued as land. It was therefore argued that the appeal property should not have been valued the same as the assessments provided by the VO and that this supported her argument that only the 1244.40m^2 should be valued.

22. In respect of the request for a 10% end allowance as the appeal property lacked services, assessments were referred to whereby the VO had awarded a 10% allowance for partial services.

23. Having regard to the evidence presented, Ms Corney asked the panel to allow the appeal and reduce the RV to the proposed £10,500 with effect from 1 April 2017.

24. Following Ms Corney's submission, Mr Fuller stated that some of the assessments referred to were not included in the exchange leading to the initial response. Ms Corney submitted that she had only referred to the evidence in which Mr Baty had submitted as part of the challenge process

prior to the challenge decision notice which was issued on 18 May 2021. It was clarified that this was sent to Martin Hardman, who was the case worker. Mr Fuller questioned if the evidence being considered should be limited to that exchanged in respect of the initial response.

25. The clerk to the Tribunal clarified that the evidence submitted appeared to be evidence exchanged prior to the challenge decision including the VO's revised RV. The evidence is not limited to that of the initial response and in accordance with the consolidated practice statement, no later than four weeks after being notified of the appeal the respondent VO must serve notice on the Tribunal and the appellant if they believe the appeal was not submitted with the correct evidence or information. This is in accordance with regulation 9 of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017. No such notice had been served. Mr Fuller accepted the explanation.

26. Mr Fuller submitted that the VO accepted in the initial response that the value of the land could be reduced from £6.08/m^2 to £2.50/m^2, which is the rate applied to industrial land locally and a schedule of evidence had been provided for land assessments in support of this. Having carefully considered the comments made by Mr Baty in his email dated 18 February 2021, the VO further revised the RV to £17,500 by reducing the overall site area by 108.5m^2 as this was the land used as access to the mast site. The VO had also reduced the entire assessment by 5% to reflect the "shared access" arrangement.

27. Mr Fuller submitted that it is the VOA's policy and practice to value the gross area of land, excluding any permanent roadways, but not deducting anything for notional access. This gross area should exclude any unusable land such as landscaping or embankments. The area of land upon which the containers stand is to be included in the calculation of the gross area. This valuation approach has been adopted for industrial land housing containers for rent in both the 2010 and 2017 rating lists. This valuation approach recognises the fact that the operator of the business can rearrange the layout of the storage containers and add and deduct from their numbers at any time. This flexibility does not exist for a permanent industrial building which benefits from connected services such as gas, electricity, and drainage and, in the majority of cases, would therefore attract a much larger value and, due to their permanent nature, the footprint of the land upon which they were constructed is deducted from the total area of the site.

28. Mr Fuller stated that Mr Baty had expressed to the VOA that he sought an RV of below £12,000 to enable him to benefit from full small business rate relief and commented that this cannot be a consideration of the VO, he must ensure the assessment is accurate. He considers that the valuation approach had been fully explained to the appellant and believes that the appeal property has been sympathetically valued.

29. In respect of the 10% end allowance being sought, Mr Fuller submitted that land is land, and you would not expect services. He does not consider the containers to be buildings. He stated that he is not aware of any land assessments being granted such reduction. Furthermore, the 5% end allowance had been applied to the whole of the assessment when only a slither of the land was impacted.

30. Mr Fuller considered the RV of £17,500 to be fair and reasonable and sought dismissal of the appeal.

Decision and reasons

31. In considering this appeal, the panel had regard to the term 'rateable value' as defined in paragraph 2(1), 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 –
>
> 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".

32. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015, this being the date in which economic factors are considered. As this appeal concerned a challenge to the compiled list entry, in accordance with the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 1 April 2017.

33. The site area of the appeal property was agreed between the parties. During the challenge process, the VO had deducted 108.5m^2 for the aerial site, giving a total area of 2462.94m^2. The VO's valuation had applied £2.50/m^2 to the gross area (2462.94m^2) and then applied £10/m^2 to 1244.40m^2, this being the area occupied by the storage containers. There was no dispute over the £10/m^2 applied for the containers.

34. The panel firstly considered the price per m^2 adopted for the land. In reaching its decision, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141.This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, essentially the starting point is the subject rent. It was noted that the appeal property was freehold and as such there was no rental evidence to consider. It was therefore necessary for the panel to consider rents of similar properties.

35. The rental evidence provided by the VO comprised assessments for land and premises with areas ranging from $113m^2$ to $6836.67m^2$ and a price per m^2 adopted between £2.75 to £3.10. The panel attached greater weight to the rent on the property closest in size and agreed closer to the AVD, this being Units 1-4 Hollybush Trade. It was, however, noted that this assessment had minimal storage.

36. Having regard to the rental evidence in conjunction with the comparable assessment evidence, this demonstrated that properties located within Cleveland, assessed as land used for storage and premises, had a price per m^2 of £2.75. Considering the basket of evidence, the £2.50/m^2 applied to the appeal property's land was considered reasonable.

37. The panel could not attach significant weight to the assessments of Screwfix Direct, Kwik Fit, and Howdens provided by Mr Baty as, in the panel's opinion, they were not directly comparable and were valued as a different mode and category. The panel understood why Mr Baty would consider that the appeal property was over assessed when comparing it to buildings in the locality which appeared superior, but it is important that when valuing by the comparable method, that the properties in question are similar.

38. Having concluded that the £2.50/m^2 for the land was reasonable. The panel then turned its considerations to whether the land should be valued or if, as the appellant asserted, this was 'double counting'.

39. It was noted that whilst the comparable schedule provided by the VO supported that the rate of £2.50/m^2 for the land was reasonable, no breakdown of the valuations in respect of how storage containers had been valued were provided by the VO. It was asserted that it was the VOA's practice and policy to value the gross land plus the containers, but no further explanation or evidence was provided to support this.

40. Mr Baty had commented on the VO's comparable assessments and provided the valuations, and it was noted that most were either land only or minimal storage and therefore were somewhat different to the appeal property which was occupied at maximum capacity. The storage containers on the appeal property occupied 53% of the land and Ms Corney referred to the comparable assessments submitting that, in some cases, the land was only 3% occupied.

41. Ms Corney referred to schemes in which the properties had been valued together with the category code '148G', shown on the valuations which Mr

Baty had obtained from the VOA's rating list. Ms Corney submitted that this scale was for land used for storage and premises located in Teesside but not within a prime location. She referred to the VOA's rating manual in which it states that land is only valued as such when the buildings comprise less than 25% of the rateable value.

42. Mr Fuller rebutted this during proceedings submitting that he considered that containers were not buildings. It is the land which is being valued with the containers sat on it.

43. The panel had greater regard to the assessment for Parsons Containers, Old Station Road, South Bank, Middlesbrough, Cleveland TS6 6AD. This had been referred to in Mr Baty's written submission and a copy of the valuation was provided. The property had approximately 43 containers and land for parking. The RV was £8,200 and the storage containers had been valued at £10/m^2 on an area of 629.52m^2. This area had been deducted from the remaining land which was valued on an area of 430.04m^2. The RV was therefore not calculated as gross land plus containers. The VO had not responded to this point raised by Mr Baty within the challenge, nor was it commented on within the challenge decision. During proceedings, Mr Fuller stated that it may be incorrect, and the valuation may need to be reviewed. The panel considered that the VO had had this information before the challenge decision was reached and it had not been commented on or reviewed prior to the hearing. The panel did not attach any weight to Mr Fuller's submission and accepted the assessment as it was presented before it.

44. Having considered the evidence before it, the panel concluded that there was an element of double counting. Whilst the panel agreed that it is the land on which the containers sat which was being valued, the 1244.40m^2 was charged at £10/m^2 and then charged again within the 2462.94m^2 at £2.50/m^2. For Parsons Containers the land occupied was more significant and therefore more comparable with the appeal property. The land on which the containers sat was not valued twice, but rather only included in the £10/m^2. The panel considered this assessment along with the fact that the appeal property had maximum capacity and therefore even with the flexibility of moving the containers, if reconfigured, it would still hold the same amount.

45. The panel attached significant weight to the assessment of Parsons Containers and found that the area of land at 1244.40m^2 is already reflected in the £10/m^2.

46. The panel found that it was not presented with rental or compelling evidence to support a nil assessment for the surplus land and therefore it was not persuaded that the remaining land should be at nil value. This was an assessment for land with premises and the panel agreed that the land would be used to access the containers. The panel therefore concluded that the £2.50/m^2 was to be applied to the remaining area (1218.54m^2).

47. A 5% end allowance was agreed at challenge. The appellant sought a further 10% for lack of services. The panel found that it was not presented with compelling evidence to demonstrate that the lack of services had an adverse impact on the value of the appeal property significant enough to warrant an allowance. The assessment referred to in support of the granting of an allowance, the Grain Store, was valued as a different mode and category, Warehouse and Premises. Therefore, in the panel's opinion the impact of not having services would have a greater impact in comparison to the nature of the appeal property; valued as land used for storage and premises. The panel would have to be satisfied that the hypothetical landlord and tenant negotiations at the AVD would have been significantly impacted by the lack of services and the panel found that this had not been demonstrated.

48. In view of the foregoing, the panel found that the current valuation was excessive and reduced the RV to £14,500 with effect from 1 April 2017. The appeal was therefore allowed in part and the revised RV was calculated as follows:

Line	Floor	Description	Area m^2	£/m^2	Value £
1	Ground	Land	1218.54	2.50	3046.35
2	Ground	Containers	1244.40	10.00	12,444.00
Subtotal:					15,490.35
Adjustments made:					
Shared Access				-5%	774.52
Total Value:					14,715.83
Adopted Rateable Value:					**£14,500.00**

Order

49. Under the provisions of regulation 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to show the following:

    Guisborough Storage Services, Morgan Drive, Guisborough, Cleveland TS14 7DH to £14,500 with effect from 1 April 2017

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

Refund of Fee

51. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regulations) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 15 February 2022
Appeal number: CHG100183604