THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *Virk (VO) and Moor Lane Self Storage Ltd [2023] UKUT 93 (LC); Storage Land and premises; main space price; appeal 1 allowed in part, appeal 2 dismissed.*

RE: Plots A and B at Platt Works, Platt Industrial Estate, Maidstone Road, Sevenoaks TN15 8JL

APPEAL NUMBERS: CHG100732401 (appeal 1) and CHG100731869 (appeal 2)

BETWEEN:	Stanmore Quality Surfacing Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Ms L Moses (Presiding Senior Member)
Mr J Imperato (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING on 11 September 2023

APPEARANCES: Mr J Cheeseman from Altus Group (Appellant's representative);
Mr S Forbes (Valuation Officer's representative)

Summary of decision

1. The panel dismissed appeal 2. In appeal 1 the panel concluded that the main space price should be reduced to £15 per m^2. The resultant rateable value (RV) was £57,000 effective from 19 December 2017.

Introduction

2. The appellant had made two challenges against the accuracy of the compiled list assessments in the 2017 Rating List, by way of two proposals that he served on the Valuation Officer (VO) on 24 September 2021. After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals were not well founded and refused to alter the existing assessment of £45,500 RV effective from 1 April 2017 to 18 December 2017

(appeal 2), and £65,000 RV effective from 19 December 2017 to 23 February 2021 and £67,000 effective from 24 February 2021 (appeal 1). Decision notices to that effect were served on the appellant on 23 August 2022 and his representatives then appealed the VO's decisions to the Tribunal on 21 December 2022, 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.

3. The appeal property was land used for storage and premises with an agreed area of 3,518.00m² with an addition of storage containers with a total area of 194.30m² and a portable building of 55.30m². It had originally been placed in scheme number 341346 with a value of £10 per m^2 for the land. The VO changed it to scheme number 478188 with a value of £17.91 per m^2 for the land with the resultant RV of £65,000 effective from 19 December 2017. The VO then increased the RV to £67,000 effective from 24 February 2021. The only difference between these two later valuations, was the rounding as the RV was initially rounded down from £67,303 to £65,000. The third RV was founded down from £67,303 to £67,000. Mr Cheeseman confirmed that appeal 2 was against the original entry of £45,500 and appeal 1 was an appeal against the increased RV effective from 19 December 2017.

4. Mr Cheeseman had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Cheeseman's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

5. 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).

6. Prior to the hearing, the clerk forwarded the Upper Tribunal judgment of *Virk (VO) and Moor Lane Self Storage Ltd* [2023] UKUT 93 (LC) which he considered to be relevant to this appeal.

7. There was a preliminary issue in that Mr Forbes wanted to introduce late rental evidence for comparable properties that he felt would assist the panel in coming to its decision. He had emailed the evidence to Mr Cheeseman on 20 June 2023 but he failed to copy the Tribunal into the email and only realised a week before the hearing.

8. Mr Cheeseman objected to the late evidence as he considered that Mr Forbes should have made an application to have the late evidence included, to the Tribunal four weeks before the hearing. Furthermore, the evidence was provided after the appeals were listed to a hearing on 5 June 2023. (That hearing was cancelled by the Tribunal). Under questioning, Mr Cheeseman did not consider he was prejudiced by the late evidence if the panel was to allow it.

9. The panel considered the situation in light of the Upper Tribunal decision in *Simpsons Malt Ltd and Other v Jones (VO)* UKUT [2017] 460 and *Denton v TH White Ltd* [2014] 1 WLR 3926 which dealt with non-compliance. This laid out the three-stage test which the panel had to consider.

   Stage 1 – If the panel conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

   Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the panel to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

   Stage 3 – The panel must consider all the circumstances of the case including:

   a) the need for litigation to be conducted efficiently and at a proportionate cost;
   b) a failure to grant a sanction may leave an inaccuracy being uncorrected; and
   c) the need to enforce compliance with rules, directions and orders (para. 55); However, such matters must never be allowed to assume a greater importance than doing justice (para. 56).

10. The panel was disappointed by Mr Forbes' lack of compliance with the Standard Directions and that he had only applied to the Tribunal one week before the hearing. However, as Mr Cheeseman had already seen the evidence and had the opportunity to respond to it, the panel decided that in the interests of justice the new evidence should be allowed.

11. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

12. The issue in dispute was the correct value to be applied to the appeal property. Mr Cheeseman had sought a reduced entry of £39,250 RV based on £10 per m². However, based on the judgment of *Virk (VO) and Moor Lane Self Storage Ltd* he revised his valuation down to £37,250 due to an alternative calculation of the storage containers. On behalf of the respondent, Mr Forbes defended the Valuation Officer's existing assessment of £67,000 based on £17.91 per m².

Evidence and submissions

13. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge process which included rental evidence and its analysis, tonal evidence for comparable properties, the parties' skeleton arguments, location maps and a photograph of the appeal property.

Decision and reasons

14. In the cases under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

15. Mr Forbes stated that the VO had reviewed the assessments for storage land and decided that those in locations close to the M25 should be placed in scheme number 478188. This reflected the proximity to London and that storage land was in great demand due to all of the construction that was taking place within London and the M25, and the need to store building materials and scaffolding within close proximity to the M25. As the appeal property was located off the M26, close to the M25 and M20 it had been moved to the new scheme to reflect the premium location which then increased the unadjusted main space price to £17.91 per m^2.

16. Mr Forbes submitted that Plot C at Platt Works had been moved over to the new scheme but accepted that there were still some assessments to be moved into the new scheme and therefore, they were currently incorrectly valued.

17. The clerk brought to the attention of the panel the judgment of *Ladies Hosiery v West Middlesex Assessment Committee* [1932] RA 679. In his judgment Scrutton L.J. at p.p. 686-688 stressed the "vital principle" of rating law that "*each hereditament should be independently assessed*" and that correctness should not be sacrificed to ensure uniformity so as to "*obtain uniformity by correcting inaccuracies*". The panel concluded that those assessments where the VO was reviewing the errors, were not reliable to determine the main space price for the appeal property. However, by accepting that some of the entries in the rating list were incorrect and had yet to be corrected, Mr Forbes had impugned his rating list.

18. The panel considered that the starting point for these appeals was the actual rent passing on the appeal property. The rent of £59,000 per annum (pa), effective from May 2013 was a new rent. It had been increased to £69,500 pa from November 2018 following a rent review.

19. Mr Cheeseman argued that the rental evidence for the appeal property was not reliable as it was too far from the AVD. He therefore referred to all of the other assessments of which there were 249 varying in size from 750m^2 to 5,000m^2 which had remained in scheme number 341346 and valued at £10m^2.

20. The VO contended that the AVD sat in the middle of the original 2013 rent and the 2018 rent review for the appeal property. He considered these rents were the best evidence to determine the RV. To support this, he produced the rents for two other assessments, which had been analysed to £23.78 per m^2 and £19.95 per m^2.

21. The panel considered that the 2013 rent was reliable as it was only two years before the AVD. Furthermore, it was a new letting. However, the panel applied little weight to the 2018 rent as it considered that it was too far from the AVD to be reliable.

22. Although the 2013 rent had analysed to £13.65 per m^2, the panel noted that in the two new assessments provided by Mr Forbes their rents had been analysed at £23.78 per m^2 and £19.95 per m^2 respectively. These were new lettings which commenced in October 2014 and November 2015. These two properties were smaller than the appeal property at just over 2,000m^2 and had RVs of £35,750

and £58,500 respectively. No explanation or valuation was given by Mr Forbes to explain the reason for the different RVs for similar sized properties.

23. As these two rents were closer to the AVD, they demonstrated to the panel that rents had increased from 2013 and therefore the panel concluded that the unadjusted main space price for the appeal property should be £15 per m^2 to reflect the increase in the rental values from 2013 to 2015.

24. Turning to the judgment of *Virk (VO) and Moor Lane Self Storage Ltd,* Mr Cheeseman confirmed that the rent was purely for the land. He had also provided a calculation for the storage containers based on this judgment. However, Mr Forbes had only recently been made aware of this judgment and had not considered the value of the storage containers in line with this judgment. He suggested that Mr Cheeseman submitted a new proposal citing this judgment for the VO to consider changing the valuation of the storage containers.

25. The panel understood Mr Cheeseman's calculation of the storage containers. However, the panel concluded that the VO had not been given sufficient time prior to this hearing to consider this judgment and any impact on the value of the storage containers at the appeal property. The panel therefore decided that it would be unfair to consider the value of them in these appeals and left the value of these items as per the VO's calculation in the evidence bundle.

26. The revised valuation is shown below effective from 19 December 2017:

Floor	Description	Area m^2	£ per m^2	Value
Ground	Hard Surfaced, fenced land	3,518.00	15.00	52,770.00
			Sub total	52,770.00
Storage container		194.30	15.00	2,914.50
Portable building		55.30	25.00	1,382.50
			Total	57,067.00
		Rateable value say		57,000.00

27. The appellant's grounds of appeal was therefore made out for appeal 1 as the existing assessment was unreasonable. However, as the appeal property was placed in the new scheme effective from 19 December 2017 and the revised RV as determined by this Tribunal was higher than the original RV of £45,500 for the period from 1 April 2017 to 18 December 2017, the panel dismissed appeal 2.

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 reduce the entry in the rating list to rateable value £57,000 with effect from 19 December 2017.

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

Refund of appeal fees

30. As the grounds of the appeal have been made out, a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs)

provided there is no review of the Tribunal’s decision. The refund will take around six weeks to process.

Date: 4 October 2023

Appeal numbers: CHG100732401 and CHG100731869

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.