Which THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list; compiled list appeal; land used for storage and premises; rental evidence; comparable assessments; price applied to the rough surfaced fenced land in dispute; appeal allowed in part.

Re: Grange Fencing (East), Stour Road, Harwich CO12 3HS

APPEAL NO: CHG100781225

BETWEEN:	Grange Fencing Ltd	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent

PANEL: Miss K B Riddy (Presiding Senior Member)
Mr J M Imperato (Senior Member)

CLERK: Mrs A Keohane

HEARING: Remote Hearing No. 2 on 10 August 2023

APPEARANCES: Mr M Clayton of Altus Group on behalf of the appellant as advocate and expert witness
Mr J Kent representing the Valuation Officer (VO)

Summary of decision

1. Appeal allowed in part. The assessment of Grange Fencing (East), Stour Road, Harwich CO12 3HS (the appeal property) was reduced to £73,000 rateable value (RV) with effect from 1 April 2017, reflective of a price of £3.94/m^2, for the rough surfaced fenced land.

Introduction

2. This appeal, received by the Tribunal on 2 March 2023, was brought by Altus Group on behalf of the appellant and was against the appeal property's entry in the 2017 rating list as Land Used for Storage and Premises, £76,000 RV with effect from 1 April 2017.

3. The appeal property has a total area of 13,712.67m^2 and is situated on the A120, close to Harwich International Port. It comprises 9,522.17m^2 of hard surfaced fenced land and 4,190.50m^2 of rough surfaced fenced land. It is subject to a rent of £135,878 per annum effective from 1 January 2017, however, this rent is not only in respect of the appeal property but includes the West plot of land at Stour Road, which is also in the appellant's occupation.

4. Mr Clayton appeared on behalf of the appellant in the dual role of advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) Mr Clayton confirmed that he was instructed on a contingency fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and would comply with this as well as the requirements of his professional body, regardless of whether the evidence supported his client's case.

5. It was therefore appropriate for the panel to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

6. This decision document is not and does not purport to be a verbatim record of proceedings.

Issue

7. There was no dispute between the parties over the price/m^2 applicable to the hard surfaced land, both valuations reflected this at £5.25/m^2. As this had been accepted, the panel did not find it necessary to examine the rental and assessment information used to determine this value. There was also no dispute over the areas of land included in the assessment for the panel to consider.

8. Mr Clayton contended that the rough surfaced land within the assessment should be valued at £2.63/m^2, in effect, 50% of the price adopted for the hard surfaced land, which gave a revised assessment of £67,500 RV. The VO contended for the existing assessment of £76,000 RV which included the rough surfaced land valued at £4.73/m^2, a 10% reduction to the hard surfaced land price.

Evidence and submissions

9. A bundle of evidence comprising the information and correspondence exchanged between the parties during the challenge process was provided for consideration.

10. Mr Clayton did not consider the appeal property's rental evidence to be particularly helpful. He argued the level of value he had adopted for the appeal property's rough surfaced land was supported by the assessments of 29 comparable properties ranging in size between 60m^2 to approximately 6,900m^2 in the East Anglia area. Within these assessments, rough surfaced unfenced land was valued at 50% of the price adopted for the hard surfaced land.

11. Mr Clayton argued that the 10% price difference adopted by the VO to reflect the rough surfaced land within the appeal property's assessment did not fairly reflect its value. He considered that rough surfaced land was less valuable and suffered from inherent problems such as drainage issues. He believed that a mix of surfaces was disadvantageous and restricted the use of the site as a whole.

12. Mr Kent accepted that rough surfaced land attracted a lower value. The appeal property was within a scheme comprising mixed surface sites and their assessments showed a variety of adjustments for the rough surfaced land. Although none were within the appeal property's locality, Mr Kent provided these to demonstrate that the approach to the valuation of rough surfaced land varied depending on its utility and the value of land in its particular location.

13. Mr Kent referred to two comparable properties at Site D, Stour Road and Land at Unit 1 Former Car Storage Facility, Stour Road. These were part of the reconstitution that

created the subject property and had comprised rough surfaced land valued at £5/m^2. Mr Clayton argued that as the reconstitution of Unit 1 (the property closest in size to the appeal property) had taken effect from 1 April 2017, the assessment had never been live in the rating list. In response, Mr Kent confirmed that the assessment had been in the list until 2019 and up to that point had not been challenged. Having regard to the £5/m^2 applied to Unit 1 and allowing for an element of quantum, given the appeal property was larger, Mr Kent argued his adopted rate of £4.73/m^2 for the rough surfaced land was reasonable.

Decision and reasons

14. The appeal hereditament must be valued for the purposes of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions detailed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015, the AVD. Matters affecting the physical state or enjoyment of the property, or the locality, were to be taken as at 1 April 2017 (material day) for this appeal.

15. 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 the correct starting point but, where available, rents on similar properties were also to be considered. The assessments of other comparable properties could also be relevant. All the evidence could then be weighted.

16. As outlined in *Lotus and Delta*, the starting point was consideration of the appeal property's rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account. The rent for the subject property commenced on 1 January 2017 which the panel considered was too far removed from the AVD to be reliable. In addition, adjustment was required as the rent included another piece of land in the occupation of the appellant. The panel concluded that this rental evidence did not assist in determining the matter before it and moved on to consider the assessment evidence.

17. Mr Clayton provided numerous assessments where the price of rough surfaced unfenced land was 50% of the figure adopted for the hard surfaced land. He considered it incorrect to look at stand-alone sites with one land surface when valuing mixed surface sites. Mr Kent pointed out that only two of the comparable sites provided by Mr Clayton had mixed surfaces, but accepted there was limited evidence for mixed surface sites of the appeal property's size. The panel noted that Mr Clayton's comparable properties were some distance from the appeal property being between 17 and 80 miles away, were smaller, and in the absence of photographs, it was unable to determine the nature and comparability of these sites.

18. There was no evidence to suggest it was standard valuation practice to automatically allow a 50% differential between the prices of hard and rough surfaced land. The panel believed that each property had to be valued on its own merits based upon its attributes and a key factor was the utility of the land, its potential for use, and access. In the subject case, Mr Clayton had indicated there was little difference in the use of the hard and rough surfaced land at the appeal property.

19. The panel found the photographs of the appeal property's site to be useful as they demonstrated the appeal property's rough surfaced land was accessed via the hard surfaced land. This gave ease of movement throughout the mixed site and in the panel's

view enhanced the use capabilities of the rough surfaced land. On balance, the panel was not persuaded by Mr Clayton's argument that the price differential between the hard and rough surfaced areas should be 50%.

20. Mr Kent considered that his price/m^2 for the rough surfaced land was reasonable, particularly having regard to the assessments of Site D Stour Road and Unit 1. The panel considered this, but having regard to the photographs it was not convinced that the price he had applied fully and fairly reflected the rough surfaced land, which although had good utility, was by its nature of inferior quality, of an uneven surface and likely to suffer from issues such as drainage. The panel considered £3.94/m^2 was reasonable for this land, which reflected a 25% reduction to the price applicable to the hard surfaced land.

21. In light of the above, the panel determined the following:

Floor	Description	Area m^2/unit	£ per $m/^2$ unit	Value £
	Hard surfaced, fenced land	4699.23	5.25	24,671
	Hard surfaced, fenced land	4822.94	5.25	25,320
	Rough surfaced, fenced land	4190.50	3.94	16,510
			Sub total	**66,501**
	Additional Features of the valuation			
	Canopy	28.06	6.00	168
	Portable Building	13.94	30.00	418
	Portable Building	29.60	30.00	888
	Portable Building	19.38	30.00	581
	Portable Building	29.60	30.00	888
	Portable Building	53.86	30.00	1,616
	Store – Open Fronted	85.12	20.00	1,702
	Store – Open Fronted	12.16	20.00	243
			Total Value	**73,005**
			Rateable Value	**73,000**

Order

22. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the appeal property's entry in the rating list within two weeks of the date of this order to show a revised assessment of £73,000 RV with effect from 1 April 2017.

Refund of fees

23. 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 (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 7 September 2023
Appeal number: CHG100781225

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.