VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; level of end allowances for mixed age and access in dispute; comparable properties; appeal dismissed.

RE: Astley Dye & Chemical Co Limited, Mallison Street, Bolton, BL1 8PP

APPEAL NUMBER:	CHG100785794	
BETWEEN:	Acdoco Ltd	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent
PANEL:	Mrs F Rahman-Cook (Presiding Senior Member) Mr D Hogg (Senior Member)	
CLERK:	Mrs J Smith IRRV(Tech)	
REMOTE HEARING ON:	Friday 8 March 2024	
APPEARANCES:	Mrs E Draycott of Altus Group (representing the appellant as advocate and expert witness) Mr S Wright (representing the Valuation Officer as advocate and expert witness)	

Summary of decision

1. Appeal dismissed. The panel determined the current rateable value (RV) of £86,500 with effect from 1 April 2017, was not excessive.

Introduction

2. This is a 2017 rating list appeal. Astley Dye & Chemical Co Ltd, Mallison Street, Bolton, BL1 8PP, (the ‘appeal property’) had been entered in the 2017 rating list as ‘warehouse and premises’ at a RV of £86,500 with effect from 1 April 2017.

3. The challenge proposal was submitted by Altus Group on behalf of Acdoco Ltd and was received by the Valuation Officer on 16 March 2022. It had been made on the grounds that

the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £79,500 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 27 January 2023 which disagreed with the proposed alteration of the list. As this was a compiled list appeal, the material date was 1 April 2017.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 19 May 2023.

6. Mrs Draycott 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), Mrs Draycott confirmed that she was instructed under a contingency fee and she declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that 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.

7. 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).

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

9. The appeal property is a predominately 1960's built warehouse of brick construction, under pitched, corrugated, asbestos roofs. It is situated north of Bolton town centre in a residential location of late 1800's and early 1900's, terraced properties. To the front of the warehouse is a 1928 single storey building of brick construction under a pitched roof. The property was extended to the side in 1997 to create further workshop/warehouse space.

10. The present assessment of £86,500 RV is based upon a total area of 2,865.1m^2. The buildings aged between 1940 and 1964 had been valued at an unadjusted price of £29/m^2 and the more modern 1997 building had been valued at an unadjusted price of £45/m^2. An end allowance of 2.5% for access had been applied.

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

Issues

12. In this appeal there were two issues in dispute:

    I. Whether or not an end allowance of 5% was warranted to reflect the mixed ages of the buildings; and
    II. Whether an increased end allowance of 5% to reflect poor access was warranted.

13. The appellant sought an end allowance of 5% for the mixed ages of buildings at the appeal property. She also sought an increased end allowance from the existing 2.5% to 5% to reflect poor access. This resulted in her proposed assessment of £79,500 RV, with effect from 1 April 2017.

14. The Valuation Officer defended the present RV of £86,500 with an end allowance of 2.5% for access. He did not feel an end allowance for mixed ages was warranted.

Evidence and submissions

15. The panel had been provided with an evidence bundle, which comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, challenge further exchange, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

Preliminary Issues

16. Mr Wright, for the Valuation Officer, objected to the inclusion of some comments made by Mrs Draycott in her appeal submission that were not mentioned in the original challenge. These comments related to the age of the front section of the building and the replacement of the original roof.

17. Mr Wright argued that he had not been afforded the opportunity to respond to these comments during the challenge process.

18. Mrs Draycott conceded that, whilst she had highlighted with an arrow the front section of the building in an aerial photograph, she had not followed the correct procedure and addressed this and the replacement of the roof in a rebuttal statement. She admitted this had been overlooked by her due to her annual leave from work and the Christmas holidays.

19. Having regard to this situation, the panel considered the matter in accordance with Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended), the Valuation Tribunal for England may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if –

(a) that evidence—
   (i) is provided by a party to the appeal;
   (ii) relates to the ground on which the proposal was made; and
   (iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or
(b) all the parties to the appeal agree in writing to the party providing the new evidence.

20. As the Valuation Officer had objected to this new evidence, the panel considered the matter of the appellant's non-compliance in light of the Upper Tribunal decision in *Simpsons Malt Ltd and Other v Jones* (VO) UKUT [2017] 460. The Upper Tribunal's guidance to tribunal panels was that the three stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction.

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

Stage 2 – If it is a serious breach, the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal 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;

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).

The panel considered each of these three stages in light of the events.

Stage 1 - The panel did consider the breach by the appellant's representative was serious.

Stage 2 – The panel did not accept the appellant's representative's submission that she was absent from work due to her annual leave to be a good reason.

Stage 3 – As there was prejudice to the respondent who had not had the opportunity to consider these comments, the panel decided to impose a sanction and not allow the additional evidence.

21. Mr Wright had also objected to the inclusion of the following cases that were not mentioned in the appellant's challenge submission:

I. *Archer v Robinson VO 2003 EWLT RA 19*
II. *McDougall and another v Easington District Council CA[1989] 1 EGLR 93*
III. *Morcrom v Campbell-Johnson [1956]1 QB 106*
IV. *Hoare (VO) v National Trust [1998] RA 39*

22. However, the panel was aware that case law is not regarded as evidence and therefore it did not have any regard to this particular issue; the judgments were admitted.

Decision and reasons

23. 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 (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

24. The panel had regard to the Lands Tribunal judgement of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976],* as quoted in the Valuation Officer's Decision. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration as to how that rent compared to the statutory definition of rateable value.

25. Taking the first proposition as set out in *Lotus & Delta*, the panel acknowledged that there was a rent passing on the appeal property of £106,500 per annum, which had been set in July 2018. Mr Wright had argued that the rent passing was considerably in excess of the current RV and did not suggest that any further allowances were appropriate. The panel was aware that the rent had been set between connected parties and was therefore not an open market agreement. As such, the panel placed caution on the appeal property's rent. The panel also noted that no rental evidence was submitted by either party in respect of any comparable properties. As such, the panel went on to have regard to proposition four as set out in *Lotus & Delta* and have regard to the assessments of comparable properties.

26. The panel began by considering the end allowance of 5% for the mixed ages of the appeal property as sought by Mrs Draycott. Mr Wright had maintained that the age of each component part had already been taken into account and reflected in the valuation of each of the three separate survey units. An unadjusted rate of £29/m^2 had been used for the older buildings and £45/m^2 for the more modern 1997 parts. He further asserted that all the older workshops on the site had been fully re-roofed, and that no addition had been made for these improvements. In his view, any end allowance would, in effect, be double counting.

27. Mrs Draycott had contended that an end allowance of 5% was justified to reflect the mixed ages of the appeal property which she stated consisted of four different age buildings. She maintained that the appeal property, which had been developed piecemeal, was not as beneficial to an occupier as a single age site. She added that the disparity in age of each part inhibited the flow and use of the space. In support of her argument, she had referred to a schedule detailing four comparable properties located within Bolton where different values had been attributed to the different aged buildings in addition to having an end allowance for mixed ages of 5%.

28. The panel considered the four comparable properties submitted by Mrs Draycott. They were all classed as 'workshop and premises' and ranged in size from $523.4m^2$ to $1438.3m^2$. The difficulty the panel had with the schedule was that it wanted to know more about those properties and how they compared with the appeal property. When asked, Mrs Draycott was unable to provide any further information regarding the ages of the component parts of the comparable properties and without sufficient evidence the panel were unable to take a view as to their similarities to the appeal property.

29. Mr Wright had referred to the previous Valuation Tribunal decision of The Occupier v Stauder (VO) – 232017696805/125N10 which stated that *"…the granting of end allowances will always depend on the particular facts affecting any property. It is unreasonable to assume that, simply because one property has an assessment incorporating an end allowance, that another should automatically be entitled to the same allowance."*

30. The current panel acknowledged that unlike judgements from higher courts, it was not bound to follow other Valuation Tribunal decisions. However, it found this a fair statement and was also of the opinion that when considering an end allowance each case should be considered on its own merits. As such, on the issue of an end allowance for mixed ages, the panel determined that insufficient evidence had been provided to demonstrate that one was warranted.

31. The panel then turned to consider the second part of this appeal regarding an increased end allowance for access.

32. In arguing for an increased access allowance of 5%, Mrs Draycott stated that the appeal property occupied a tightly restricted site in a wholly residential area, where most of the surrounding roads were narrow. Furthermore, she maintained that speed bumps had been installed along Seymour Road which was the point of access to both the rear and the front parts of the site.

33. Mr Wright acknowledged that the appeal property was situated in a residential area and that it had been valued in accordance with a valuation scheme for non-estate properties with access issues associated with their location. He explained that units valued within this valuation scheme were valued at a lower unadjusted rate compared to those other units located on industrial estates. He added that the current end allowance of 2.5% had been carried through from the 2010 rating list. The 2.5% end allowance had been agreed with a

representative on behalf of the ratepayer in respect of the 2010 rating list and there had been no significant changes since then.

34. The panel could see from the photographs submitted by Mrs Draycott that Seymour Road was primarily residential. The appeal property had two points of access and the large loading bay was situated to the rear of the property, accessed from the A58 via Back Seymour Road which was just off Seymour Road. The front of the site was accessed further along Seymour Road.

35. In support of her argument Mrs Draycott had provided a table of 16 comparable properties, together with undated photographs obtained from Google maps. She argued that, aside from Pipe & Tube Group Ltd, Progress Works Off Crompton Way, Bolton, BL1 8TJ, which was currently at challenge stage, the other 15 properties each had end allowances of at least 5% for access. Mrs Draycott contended that an end allowance of 5% for access was justified for the appeal property in view of this evidence.

36. In considering the appellant's representative's comparable properties, it was difficult for the panel to identify the disadvantages, in terms of access, from the photographs alone. Some of the properties were on industrial estates whilst others appeared to be accessed directly from main dual carriageway roads. The panel was aware that an allowance for access can be applied for a number of reasons, such as shared access and not solely to reflect the surrounding location. Without further details, the panel could not be certain that Mrs Draycott's comparable properties suffered the same disadvantages and to the same severity as the appeal property.

37. After careful consideration of all the evidence, the panel was not satisfied that there was sufficient evidence to support an increased end allowance for access. The fact that allowances had been granted for other properties in the locality did not automatically mean that an allowance was warranted for the appeal property.

38. In appeals of this nature, the burden of proof was on the appellant to provide evidence to demonstrate that the existing assessment was excessive. However, having regard to the evidence before it, the panel was not convinced that an increased end allowance for access or an end allowance for mixed ages were warranted.

39. Accordingly, the panel confirmed that the appeal property had been correctly valued at £86,500 RV, with effect from 1 April 2017 and the panel dismissed the appeal.

Date: 4 April 2024

Appeal number: CHG100785794

Refund of fees:

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.

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.