

THE VALUATION TRIBUNAL FOR ENGLAND



2017 Rating List – rental evidence – comparable hereditaments – was rent excessive - appeal dismissed

Re: Jolleyes Pet Supplies, Thetford Retail Park, Thetford, IP24 2BU

APPEAL NUMBER: CHG100793444

BETWEEN:	Jolleyes Pet Supplies	Appellant
	and	
	Ms J Moore	Respondent
	(Valuation Officer)	

PANEL: Mr W Read (Presiding Senior Member)
Ms P Jarrett (Senior Member)

CLERK: Mr A Jolly

REMOTE HEARING: Friday 8 September 2023

APPEARANCES: Mr J Watson of Evans and Payne LLP representing the appellant
Mr C Cole representing the respondent

Summary of decision

1. Appeal dismissed. Rateable Value £38,750 confirmed with effect from 1 April 2017 based upon rental evidence.

Introduction

2. This appeal has been brought in respect of the following: An appeal was lodged by Evans and Payne LLP on behalf of the occupier on 18 May 2023 against the Valuation Officer's Challenge Decision Notice of 27 January 2023.
3. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.
4. Mr Watson 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), Mr Watson's declaration of truth included a statement that he was instructed under any conditional fee arrangement.

5. Mr Watson 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.
6. 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).
7. Mr Cole was appearing as both advocate and expert witness.

Preliminary Issue

8. On Wednesday 6 September 2023 the respondent submitted evidence in relation to an agreement reached on a challenge in relation to another retail warehouse in the Thetford area. The appellant's representative objected to the inclusion of the evidence due to the lateness of submitting the evidence. In questions Mr Cole informed the panel that he had only recently agreed the challenge and that it was not available before the challenge decision for this appeal had been issued.

[17A Admission of new evidence on NDR appeal]

[(1) On a NDR appeal, the VTE 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.

9. The panel accepts that the evidence was not available before the proposal was determined and therefore meets the criteria. However, the Consolidated Practice Statement under paragraph 6 and 7 deals with the service of new evidence and in paragraph 7 states:

7) Such an application must be made **four weeks** before the hearing date. In making application the new evidence must be provided to all parties and the Tribunal.

10. As the application for the service of new evidence had not been made four weeks before the hearing the panel had to consider whether the evidence should be admitted having regards to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach; if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred; if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an incorrect liability and the need to enforce compliance with the rules, directions and orders of the Tribunal.

11. In questions the respondent advised that he had only recently taken the case from another caseworker and that he was then on leave. He did confirm that he had agreed the challenge, which he wished to admit, at the beginning of August 2023 before he went on leave and that he was also aware that he would be dealing with this appeal at hearing before he went on leave.
12. The panel considered that the respondent having recently agreed the challenge and that he knew he was dealing with this appeal before his holiday had not provide good cause why he had not served the application to admit new evidence at least four weeks before this hearing or at least before his holiday and therefore the panel did not admit the evidence.

Issues

13. The issue before the panel concerned the price per m² to be adopted.

Evidence and submissions

14. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.
15. Mr Watson was seeking an RV of £34,000 with effect from 1 April 2017 based on £72.50 per m² having regards to the rents on Thetford Retail Park being excessive and also the price per m² differential between the appeal hereditament and the VO's comparable hereditaments situated on a superior retail park.
16. Mr Cole was defending the entry in the 2017 rating list of £38,750 based on a price of £82.50 per m² due to rents on both Thetford Retail Park and Forest Retail Park.

Decision and reasons

17. Mr Watson informed the panel that rents on Thetford Retail Park had remained the same since 2003/4 and that in 2019 there had been a rent reduction on review for the Halfords unit when the rent remained the same but a three month rent-free period was given. He considered that this illustrated that the rents were initially excessive.
18. Mr Watson considered Forest Retail Park was superior to Thetford Retail Park as it was a considerably larger park with more occupiers and was anchored by Sainsbury's supermarket. There was also a McDonalds with drive through and a petrol filling station. The rents on these units were considerably higher than those on Thetford Retail Park but the rate per m² was only £2.50 higher which equated to a difference between rate per m² and rent of approximately 40%. He considered that the difference in the rate per m² for Thetford Retail Park and Forest Retail Park should be wider and requested the panel allow the appeal.
19. Mr Cole considered the rental evidence for the appeal hereditament supported the price per m² adopted together with other rental evidence within the Thetford Retail Park.
20. As further support, Mr Cole provided rental analyse from other retail units in Forest Retail Park, some ten minutes' drive from Thetford Retail Park. He accepted that in Forest Retail Park, the rental analysis was considerably higher than the price per m² and alluded that from

the rental evidence the price per m² could have been higher but that it did not mean that the rate per m² adopted for the appeal hereditament was incorrect.

21. The panel noted that the rental level for the appeal hereditament had remained unaltered for a number of years and that Mr Watson considered this was due to the rents being excessive in the first instance.
22. The panel noted that the rents had not been increased since originally set but had not been persuaded by Mr Watson that the rents were excessive in the first instance as the rents were what someone was prepared to pay for the units at the time of leasing the premises.
23. The panel noted the difference in rents between the two different retail parks and that the rents in Forest Retail Park were considerably higher than those in Thetford Retail Park whilst the difference in price per m² was only £2.50 per m². This did not mean that the rate per m² adopted for those units in Thetford Park was incorrect especially when considered with the rent passing.
24. From the rental evidence the panel had not been persuaded by the appellant's representative that £82.50 per m² was incorrect and accordingly dismiss the appeal.

Date: Monday 2 October 2023

Appeal number: CHG100793444

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.