

# THE VALUATION TRIBUNAL FOR ENGLAND



*Non-domestic rating; 2017 Rating List appeal; workshop used as car parking and premises; ability to be in rateable occupation in dispute; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; John Laing & Son Ltd v Kingswood AC Thornbury RDC and Gloucestershire CVC [1949] 1 KB 344; appeal dismissed.*

RE: R/O 129 (pt of 121-127), London Road, Kingston Upon Thames, KT2 6NH

APPEAL NUMBER: CHG100814941

|          |                                      |            |
|----------|--------------------------------------|------------|
| BETWEEN: | Fulfords of Kingston                 | Appellant  |
|          | and                                  |            |
|          | Mr A Ricketts<br>(Valuation Officer) | Respondent |

PANEL: Ms C Y Jones (Presiding Senior Member)  
Mr P Blythe-Bartram (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 11 March 2024

APPEARANCES: Mr P Rabbette from Paul Rabbette Ltd (on behalf of the appellant)  
Mr L Lanham (on behalf of the Valuation Officer)

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## Summary of decision

- 1 Appeal dismissed. The panel confirmed the rateable value (RV) of £14,250 with effect from 1 April 2017.

## Introduction

- 2 This is a 2017 rating list appeal for R/O 129 (pt of 121-127), London Road, Kingston Upon Thames, KT2 6NH (the subject property) which was entered in the 2017 rating list as 'workshop used as car parking and premises' at an RV of £14,250 with effect from 1 April 2017. The challenge proposal was submitted on 6 June 2022. The challenge sought a revised assessment of £0 RV with effect from 1 April 2017. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice on 4

July 2023 which stated that based upon the evidence and information available, the rating list entry of £14,250 RV was reasonable.

- 3 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, this appeal was received by the Tribunal on 21 August 2023.
- 4 Mr Rabbette appeared on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Rabbette confirmed that he was instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported his client's case.
- 5 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).
- 6 The panel therefore considered the expert evidence and attached such weight to it as it saw fit.
- 7 The subject property consists of an industrial unit with brick walls and steel trussed roof. It was originally part of 121-127 London Road until it was split in 2012. It borders on the grounds of Tiffin School. It is located off London Road in Kingston Upon Thames.
- 8 This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

## **Issue**

- 9 The issue between the parties is should the appeal property be valued at £0 due to the fact the subject premises was incapable of all four tenets of rateable occupation.

## **Evidence and submissions**

- 10 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, VO's challenge case decision notice, and appellant's challenge submission.
- 11 Mr Rabbette, on behalf of the appellant, submitted that a reduced RV of £0 was reasonable as the subject property was incapable of all four tenets of rateable occupation.
- 12 The VO submitted that the subject property was capable of occupation due to the Deed of Exchange allowing ingress and egress to the subject property and the RV of £14,250 was therefore reasonable.

## Decision and reasons

- 13 The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:
- 2(1) 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.
- 14 Mr Rabbette submitted that in the case of *John Laing & Son Ltd v Kingswood AC Thornbury RDC and Gloucestershire CVC* [1949] 1 KB 344 the Court of Appeal established that there are four ingredients for rateable occupation of a premises to be possible. These are the occupier must have actual occupation, exclusive occupation, beneficial occupation and that occupation must not be too transient. Mr Rabbette argued that in the case of the subject property the appellant did not have actual and beneficial occupation and so the RV should be reduced to £0.
- 15 The appellants had a fully executed Deed of Exchange over the land that a person would need to cross to get to the subject property allowing "that right is a right for purposes only of ingress, egress and regress to pass and repass with or without horses, carts, carriages and other vehicles" from the road to the subject hereditament. The owners of the land over which the appellant had to cross to enter the subject property had installed a gate with a pass code at the entrance to the land and had refused to give the appellant the pass code unless asked for and they changed that pass code regularly. The owners of the land over which the appellants had a right of way also had vehicles and refuse bins positioned across the land making entry into the subject property impossible without them being removed. Mr Rabbette submitted that these obstacles meant that the appellant was unable to use the subject hereditament for parking cars or in fact for any type of business usage as the subject was effectively 'landlocked'. He did however concede that the appellant had not sought to enforce his legal right of way through the courts.
- 16 Mr Rabbette further maintained that vacant and to let the subject property would not be able to attract a tenant due to these obstacles. In fact, the appellant had advertised the subject property as for let but no one had approached them about letting it. He stated that he failed to see what kind of business could use the subject premises under the present circumstances.
- 17 The panel was aware that the appellant had not attempted to enforce the right of way that was contained in the Deed of Exchange and based on the wording of the Deed the

anticipated use being as a car park was specifically included in the right of way. The panel put little weight on this evidence.

- 18 The subject premises also had no services to it including water, drainage, power or gas. The electric supply had to cross the same land over which the appellant had a right of way. It had been no more than an 'extension cable' and could not be used as a source of electric to the subject property. This meant that anyone parking on the subject property should they have been able to gain access would have no lighting. This again meant, in his opinion, that vacant and to let there would be no tenant willing to enter a tenancy for the subject property leaving it with no value.
- 19 Mr Lanham submitted that the Deed of Exchange clearly laid out the right of way for the appellant to gain entrance to the subject property and this could be enforced through the court. The subject property could still be used as a car park without the services. The obstructions across the right of way would, he argued, need to be removed under the terms of the right of way allowing the subject property to be used as a car park. The subject property was therefore of value and could indeed be used as a car park under the terms of the legal right of way. He therefore submitted that the RV of £14,250 was reasonable.
- 20 In full consideration of all the evidence, the panel concluded that the subject property was capable of rateable occupation and that the appellant had a legal right of way which could be enforced through the court. The use as a car park was specifically included in the terms of the Deed of Exchange. The panel found, therefore, that the present RV of £14,250 was not unreasonable and therefore the appeal was dismissed.

**Date:** 5 April 2024

**Appeal number:** CHG100814941

**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.