VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) Regulation 17A; challenge against complied list entry; warehouse and premises; accuracy of rateable value; Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; dismissed.

APPEAL NUMBER:	CHG100827029	
RE:	Formerly Yokohama Htp Ltd, Dawson Road, Milton Keynes MK1 1QY (the "subject property")	
BETWEEN:	Rhenus High Tech Ltd	Appellant
	and	
	Nicola Johnson (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	4 April 2025 reconvened on 25 June 2025	
BEFORE:	Mr P Patel, Presiding Senior Member Mr WJ Read, Senior Member	
CLERK:	Miss F Willson	
APPEARANCES:	Mr M Webb of Colliers (on behalf of appellant acting as advocate and expert witness) Mr S Kelly (acting on behalf of the respondent as advocate and expert witness)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel confirmed the rateable value (RV) to be £270,000 with effect from 1 April 2017.

Introduction

3. This appeal had been brought in respect of Formerly Yokohama Htp Ltd, Dawson Road, Milton Keynes MK1 1QY (the subject property), which was entered in the 2017 Rating List as 'warehouse and premises' at an RV of £270,000 effective from 1 April 2017.

4. The Challenge was submitted by Colliers on behalf of the appellant on 11 July 2022 and sought a reduction in the RV to £211,000 with effect from 1 April 2017. The appeal to this Tribunal was made on 15 March 2023, following the valuation officer's (VO) Decision Notice of 17 November 2022 in respect of the subject property.

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.

6. The subject property is a 1975 workshop and premises with the addition of a modern warehouse in the 2000's located on an industrial estate in North-East Bletchley, which is south of the centre of Milton Keynes and the A5. It was agreed between the parties that it had a total area of 7,158.31m^2. The 1975 structure was built to a typical 70's – 80's standard and the more modern part had higher eaves and was built to a better specification.

7. Mr Webb was appearing on behalf of the appellant as advocate and expert witness. Mr Kelly was also appearing as both advocate and expert witness but for the respondent. Therefore, it was important to ascertain if Mr Webb was instructed on a success related fee 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 Webb confirmed that neither him nor his firm were representing the appellant on a success related fee basis. Mr Webb and Mr Kelly both declared that they understood and accepted that their duty was to the Tribunal in giving their evidence and they would comply with this as well as the requirements of their professional body regardless of whether or not the evidence supported their client's case.

8. This appeal first came before the panel on 4 April 2025 but the panel found that it required more information from the parties before it could make a fair and reasoned decision. The hearing of this appeal was therefore reconvened on 25 June 2025 before the same panel and with the same representatives as noted above.

9. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Preliminary issue

10. At the hearing on 4 April 2025 both parties wanted to introduce new evidence. Mr Webb wanted to introduce a previous lease of the subject property and Mr Kelly wanted to include details of five settlements on comparable properties.

11. The panel was aware that the relevant law was contained in Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) Regulation 17A):

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.

(2) If the VTE admits new evidence under paragraph (**1**), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—

(a) the new evidence; and
(b) the ground on which the proposal was made.

(3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal.

12. The panel firstly considered Mr Webb's request to introduce a previous lease on the subject property which he had only obtained after the conclusion of the challenge stage. The lease was an office copy entry from the Land Registry in connection with a former tenant. The panel then considered Mr Kelly's submissions that it was hard to believe that in a case which relied heavily on the lease on the subject property that Mr Webb had not entered the lease into evidence more than a couple of days prior to this hearing. Mr Kelly submitted that the lease was in existence prior to the challenge stage being concluded but that he could not ignore such important evidence and so agreed that the lease be put into evidence.

13. The panel then considered the new evidence of the five settlements on comparable properties which Mr Kelly sought to introduce as evidence at the hearing. The panel took into account that Mr Webb objected to the new comparable properties being included and stated that if they were allowed into evidence he would require an adjournment for time to consider and rebut this evidence.

14. The panel was frustrated that both parties had sought to submit late evidence only days before this hearing when this case had already been live since March 2023 and there had already been two postponements. Having considered the relevant legislation under regulation 17A of the comparable properties introduced by Mr Kelly the panel found three of the five settlements were only agreed after the challenge stage was concluded and fell under Regulation 17A and so could be included under that regulation.

15. Having determined that the three settlements could be included under regulation 17A the panel then had to address the breach of the Tribunal's directions, using the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 and then determine if any sanctions should be applied. 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 inaccurate entry in the rating list and the need to enforce compliance with the rules, directions and orders of the Tribunal.

16. The panel found that the respondent's breach was significant and serious as the evidence was only served a day prior to the hearing on 4 April 2025. The panel was required to consider whether relief from sanctions sought by the respondent, in allowing the admission of his late evidence, was warranted. It considered that the reasons put forward by the respondent that the settlements were only finalised recently was a good reason for this breach and therefore decided to grant relief. The panel therefore determined that three of the five settlements could be admitted into evidence.

17. The panel appreciated that the appellant's agent would require time to consider those settlements. On the grounds that litigation needs to be conducted efficiently the panel granted a three hour adjournment for the appellant's agent to consider the settlements and then proposed that after that the hearing should then go ahead.

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18. Mr Webb however stated that he did not want to have a three hour adjournment and was content to proceed immediately with the hearing. He also agreed that the three settlements could be included. The panel therefore found that as Mr Webb had waived the opportunity for an adjournment that it was in the interests of justice to proceed and hear the case with three settlements included.

Issue

19. The issue for the panel was to make a finding of what was the correct RV for the subject property with effect from 1 April 2017. In particular the current value of £50/m^2 which the appellant submits is unreasonable for the newer part of the subject property. Mr Webb on behalf of the appellant proposed a value of £30/m^2 on the older part with an uplift of 10% on the newer part of the assessment. The appellant further proposed that a 5% end allowance for fragmentation be included due to a dividing wall causing problems accessing parts of the subject property. The VO submitted that the present rateable value was reasonable and asked the panel to dismiss the appeal.

Relevant Law

20. In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, 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;
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> (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.

21. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

22. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material date is 1 April 2017 as the appeal sought to challenge the compiled list entry in the rating list.

Discussion

23. The panel was aware that where rental evidence on the subject property was available, then weight is to be attached as set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The first two propositions relate to the rent on the subject property:

(1) Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

24. The panel found that in accordance with the case of *Lotus and Delta* the rent on the subject property was always the starting point for developing a basket of evidence and carried the most weight. The subject property was, according to the appellant, let to the original occupier from April 2012 under a ten year lease as a new letting. It included a rent of £282,758 and had a thirteen months' rent free period. The lease then stipulated that the rent should rise to £320,000 from January 2016. The panel noted that when the lease was assigned to the appellant in 2014 this was one year prior to the AVD. In 2014 when the appellant took over the lease they would have been aware of the increase in the rent from January 2016 to £320,000.

25. Mr Webb submitted that due to the large number of leases which the appellant took over from the original company they would not have been able to scrutinise all the leases in detail. The panel took into account the fact that the appellant was aware in 2014 when they took over the lease that there was a rent increase due to take place in January 2016. If in 2014 they determined that the rent increase was unreasonable, taking into account the rental market in 2014, the appellant could have chosen not to take on the lease. The panel put weight on this evidence. The appellant then renewed the lease with effect from May 2022 for a further ten years but this was too remote from the AVD to be of any assistance to the panel. The panel found that it would need good reason to move away from the 2012 lease with the rent

increase in January 2016. The panel found no reason which supported not putting weight on the lease and therefore the current RV.

26. The panel was aware that the subject property was made up of two separate buildings with different eaves height which are joined and utilised together by the appellant and was not one homogenous unit. Mr Webb therefore submitted that this supported a 5% end allowance for fragmentation on the subject property. The panel noted the three comparable properties presented into evidence by Mr Webb were all divided buildings and were given a fragmentation end allowance. The ACO Business Centre which had a 5% fragmentation end allowance, TT UK Ltd, 10 Windsor Road which had a 7.3% fragmentation end allowance and finally Jenna House which had a 5% fragmentation end allowance. The panel noted from the photographs put into evidence that the subject property had two large access points between the two parts of the building. The panel therefore found that an end allowance for fragmentation was not applicable.

27. The panel noted that neither party had offered any additional rental evidence to support their case as set out in *Lotus and Delta*. The panel therefore turned to the tonal evidence. The VO had submitted one comparable property into evidence Daimler Chrysler UK Ltd, Tongwell. It comprised of multiple survey units with different eaves heights which the panel found was similar to the subject property. In the case of this property the older part of the assessment had been valued at £38.11/m^2 and the modern warehouse space had been given a value of £43.88/m^2. The panel found that although this comparable property was significantly larger than the subject property the same method of valuation had been applied to it as to the subject property. The panel also noted that this comparable property also supported a rate of £30/m^2 for the older part and £50/m^2 for the newer part of the subject property.

28. The panel then turned to the comparable property put forward by Mr Webb which was Cinram Logistics UK Ltd, a site which was predominantly a 1980's standard industrial unit with a modern addition. This comparable property was valued based on the dominant part which was the old warehouse having an unadjusted rate and an uplift for the increased eaves height and newer build. Mr Webb submitted that this should be the same approach used to value the subject property. He therefore proposed that the subject property was valued at £30/m^2 with an uplift of 10% applied to the newer part of the assessment.

29. The panel found that this property was 20 miles away from the subject property in a different town. The panel was unable to place much weight on this comparable property as it was too far away from the subject property. The panel also found that the methodology used was not supported by any other comparable properties put into evidence. The panel was aware that it must treat each separate hereditament on its own merits. A number of other comparable properties using the same method in the same locality are required to be put into evidence to establish that this method of valuing should have been utilised when valuing the subject property. The panel found that this one comparable property could have been valued in this way for something particular to this comparable property or due to there being no rental evidence. The panel therefore could put little weight on this method of valuing the subject property especially when there was a rent on the subject property that could be used to value it.

30. The panel then turned to the new settlement evidence from the VO which had been allowed into the hearing. Cummins Electrified Power was a large industrial unit built in 1991 and was five miles away from the subject property. It was 3,512m^2 and had a main space rate of £50/m^2 giving an RV of £206,000. 10 Klevin Drive was three miles away and was 2,368m^2 and

had a main space rate of £50/m^2 and was built to the same specification as the subject property. This comparable property also had a 2.5% allowance for being a split site but that was as a result of it having only one access point unlike the subject property. The panel found that these comparable properties demonstrated that a tone had been set for properties similar in size, age and location to the newer part of the subject property having an agreed main space rate of £50/m^2. The panel found that the rate for the older part of the subject property was uncontested by the appellant's agent at £30/m^2. The panel found that these comparable properties despite being hybrid properties supported a main space rate of £50/m^2 for the newer areas of the subject property. The panel put weight on this evidence.

31. The panel found that the rental evidence on the subject property was the best starting point when valuing a property. The panel noted that after the necessary adjustments had been made to the rent to bring it in line with the statutory definition it was still higher than the current RV and so supported it being reasonable. The panel also took into consideration the fact that the settlements on comparable properties supported a main space rate of £50/m^2 for the newer part of the subject property. The panel also found that an end allowance of 5% for fragmentation was not appropriate in this case. The panel therefore confirmed that the current RV on the subject property was reasonable.

Disposal

32. The panel found that in considering the 'basket of evidence' the present RV of £270,000 was reasonable and dismissed the appeal.

Date issued to parties: 22 July 2025

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.
