THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeals; Local Government Finance Act 1988; Access; End Allowance; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal dismissed.

RE: Unit 2, The White Warehouse, Commercial Road, Darwen, Lancashire BB3 0DH

APPEAL NUMBER: CHG100829716

BETWEEN:	SOS Laminators Ltd	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

BEFORE:	Mrs Maxine Cole	(Chair and Senior Member)
	Mr Philip Blythe-Bartram	(Senior Member)

CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 3:	26 October 2023	
PARTIES PRESENT:	Mr Callum Hodgkinson	Appellant's representative
	Mr Alexander MacRury	Respondent's representative

Summary of decision

1. Appeal dismissed. The Rateable Value (RV) of the appeal property was confirmed as £28,250 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the non-domestic rates payer of the appeal property at Unit 2, The White Warehouse, Commercial Road, Darwen, Lancashire BB3 0DH.

3. The RV of the property was £28,250 and the appellant had proposed that it was over-assessed and should have two end allowances of 5% each considering the disadvantages of the property when compared to similar properties in the locality. The appellant stated that the access to the site was poor as well as being shared. The proposal was later amended to seeking one end allowance of 5% for poor access thereby reducing the RV to £26,750.

4. The valuation officer (VO) disagreed with the proposed alteration of the list and the appellant appealed to the tribunal.

5. Mr Callum Hodgkinson appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement 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 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. Mr Alexander MacRury appeared on behalf of the VO as expert witness. He 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 respondent'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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

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

Issue

9. Whether an end allowance for poor access was appropriate for the appeal property.

Evidence and submissions

10. 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.

11. The appellant's representative contended that vehicles, particularly HGV's, had difficulty in reversing into the site due to the very sharp turn into it. Further, he stated that whilst properties within the same valuation scheme do not have such an end allowance, he had submitted four properties he considered as comparable that did have such an end allowance.

12. During the hearing an issue arose concerning the rental evidence in relation to the appeal property. In response to a question, the appellant's representative could not explain where in his evidence he had included the 2018 rent. The clerk then advised the panel in open session that the 2018 rent should be excluded because it was not in the documentary evidence submitted. However, the panel found afterwards that the 2018 rent was included on page 16 of the VO's decision notice and therefore the panel had regard to it.

Decision and reasons

13. The panel referred to the Local Government Finance Act 1988 in respect of the definition of rateable value in paragraph 2(1), Schedule 6 to the Act (as amended). 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.

14. The material day for this appeal was 1 April 2017.

15. The panel referred to the hierarchy of rental evidence that should be used to determine the RV of the appeal property as detailed in the authoritative and binding Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

16. The panel noted that there was some contention in respect of the rental evidence presented by both parties. Two rents were discussed, both for £30,000 per annum, one from 2012 and one from 2018. The appellant's representative contended that they were not open market rental agreements as they were made between connected parties and could not therefore be relied on as useful evidence in respect of the valuation of the appeal property.

17. The VO had stated that, as far as they were aware, they were open market transactions and suitable evidential weight should be given to them.

18. The panel found them to be equally valuable evidence. They did have some weight as evidence but this was lessened as they were both three years from the AVD.

19. The panel found that no firm evidence had been provided as to whether the rental agreements were open market or not.

20. The panel also found that the evidence in respect of comparable properties as well as the physical situation was sufficient to allow it to make a decision without making direct reference to the rental evidence.

21. The panel did note however, that the rent had stayed the same over a period of six years and was higher than the RV on the property.

22. The panel was presented by the VO with three properties in the locality of the appeal property that had been given a 5% end allowance for poor access. The panel noted both parties' comments in respect of access compared to the appeal property.

23. The appellant's representative also relied on four properties in the locality of the appeal property that had been given a 5% end allowance for poor access.

24. The panel noted the comments by each party. The VO stated that the appellant's representatives comparables were worthy of the end allowance as access to them was considerably worse than for the appeal property. The appellant's representative stated that his comparables were similar to the appeal property and so was worthy of an end allowance.

25. The panel was presented with photographic evidence of the appeal property's access. This showed bollards positioned to protect a fence and a small kerb area that had been damaged because vehicles had driven over it. The panel appreciated the factual issues but found that whilst there was an issue with access, the appellant's representative had not satisfactorily made his case that this caused a difficulty for the occupier. Further, he had not presented sufficient evidence to demonstrate that an end allowance was due in reference to the comparable properties presented.

26. The panel noted the VO's references to two pieces of case law cited in support of its case, *The Occupier v Stauder (VO)* [VTE, 232017696805/125N10] and *J Rosenthal & Son Ltd v Rushall (VO)* [VTE, 237210269817/126N05]. The panel found that the statements quoted from these cases supported the panel's finding that the onus was on the appellant to prove his case.

27. The panel found that his case had not been proven and dismissed the appeal. The RV was confirmed as £28,250 with effect from 1 April 2017.

Date: 7 November 2023

Appeal number: CHG100829716

Rights of appeal

Any party who is aggrieved by the Tribunal's decision 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.