THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; Store and Premises; Accuracy of Compiled List Entry; Rental Evidence; Comparable Evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal Allowed in Part.

RE: Unit 1 At 29, White Post Lane, London E9 5EN

APPEAL NUMBER: CHG100855060

BETWEEN:	Thames Engineering & Maintenance Services Ltd (Represented by Altus Group)	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs L Bryning (Presiding Senior Member)
Mrs N Carman (Senior Member)

CLERK: Ms R Muller

REMOTE HEARING: Wednesday 10 January 2024

APPEARANCES: Mr M Morrison from Altus Group (Appellant's representative)
Mr A Khan Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part as the panel determined a tone of value of £140 per m². The assessment was therefore reduced from £22,750 to £15,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 compiled rating list appeal. The RV of the appeal hereditament was originally £22,750, with effect from 1 April 2017; therefore, the material day was also 1 April 2017. A Check had been completed on 1 July 2022 and a Challenge submitted on 13 September 2022. The Challenge stage was completed on 6 April 2023 with no change to the RV of the appeal hereditament, therefore, an appeal was received by the Tribunal on 5 July 2023.

3. Mr Morrison 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 Morrison explained that he was instructed on a contingency fee basis and he declared that he understood and accepted his duty 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 the evidence supported the client's case.

4. Mr Khan who appeared on behalf of the Valuation Office Agency also stated he was acting in a dual role capacity, as expert witness and advocate.

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

6. The subject hereditament was a store, which was situated within the London district of Hackney. The subject hereditament had been placed in valuation Scheme 446017 of industrial properties not otherwise classified, with flexible use, built pre 1980 and measured 108.81 m² in size. The hereditament was listed as store and premises and was held on a freehold basis.

7. This document is not and does not purport to be a full verbatim record of proceedings.

Preliminary matter

8. Mr Khan had submitted new evidence two days before the hearing. He had provided photographs of the comparable properties provided by Mr Morrison and details of a settlement of a property within the postcode area of E2 9** which was within the locality of one of his comparable properties.

9. As a preliminary issue, the panel considered whether this evidence should be allowed to be admitted. When questioned by the panel, Mr Morrison had no objections to the inclusion of the photographs, as the panel could compare the character of the subject property with the comparable properties.

10. However, Mr Morrison did object to the inclusion of the settlement of a property provided by Mr Khan, as it had only been included shortly before the hearing and he had not had time to consider the details. The panel noted that this settlement had taken place on 4 August 2023 and therefore, would have been available for inclusion at a much earlier date.

11. As there were clearly issues regarding failures to comply with the requirements of the Tribunal's Standard Directions, the panel had regard to *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460. In this case, 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 – 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:

    I. The need for litigation to be conducted efficiently and at a proportionate cost;
    II. A failure to grant a sanction may leave an inaccuracy being uncorrected;
    III. The need to enforce compliance with rules, directions and orders (para. 55). However, such matters are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice (para. 56).

12. In this case, it was clear that there had been a significant breach. The Valuation Officer had served late evidence only two days prior to the hearing, which had been available for a much longer period of time to be provided to the appellant's representative and to the Tribunal.

13. The panel then considered why the breach had occurred. Mr Khan explained that he had not personally dealt with the challenge and that he had only been assigned this case two days prior to the hearing. After reviewing the case, he had found the settlement of the comparable property and decided to submit it as evidence. The panel understood why Mr Khan had provided the late evidence, but it had to consider the impact that providing this late evidence would have on the appellant's representative.

14. Having had a short adjournment to consider the matter, the panel decided to exclude the settlement details of the comparable property, as it held that Mr Morrison had been disadvantaged by the late service. However, as Mr Morrison had no objections to the photographs provided, the panel decided to allow the photographs as part of Mr Khan's evidence.

Issue

15. The issue for the panel to consider was the correct RV to be ascribed to assessment.

Evidence and submissions

16. Mr Morrison stated that the unadjusted rate of £210 per m² applied to the subject property is excessive, due to the agreements on White Post Lane. He stated that the agreements were of directly comparable assessments between £68.70 per m² and £125 per m². Therefore, the subject property should have an unadjusted rate of £100 per m², which would revise the assessment to £10,700 RV.

17. Mr Khan stated that the subject property was in a different scheme than the other properties located on White Post Lane. The scheme value reflects B1 use, on a flexible unit basis. Therefore, due to the nature of these units, a higher value would be considered as they are flexible in use. He contended that £210 per m² was the correct unadjusted rate for the subject property.

Decision and reasons

18. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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 three assumptions that were noted within the evidence bundle.

19. The material day in this appeal was 1 April 2017 and the antecedent valuation date (AVD) was 1 April 2015.

20. The panel noted that the Lands Tribunal judgment of Lotus and Delta v Culverwell (VO) LVC/376/1975, provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject hereditament was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

21. The subject hereditament was held freehold by the appellant. Therefore, there was no rental evidence for the subject hereditament to determine the rateable value. In the lack of any rental evidence, the panel turned to the following key comparable assessments as provided by Mr Morrison, which were located on the same street as the subject property:

    a. Unit 14 Queens Yard 43, White Post Lane;
    b. Units 5a & 5b Queens Yard 43, White Post Lane;
    c. First Flr Unit G 24, White Post Lane;
    d. Unit 1 At 92a White Post Lane;
    e. Unit 2 Part Gnd Flr 66-78, White Post Lane;
    f. 27, White Post Lane;
    g. Unit 3 Gnd Flr Part 66-78 White Post Lane;
    h. First Flr 5 Hamlet Industrial Estate, 96 White Post Lane

22. The panel noted that the subject property, although described as store and premises, was documented on its assessment as a workshop. Most of the comparable properties provided by Mr Morrison were in different valuation schemes than the appeal property but assessed as workshops. However, the comparable properties of Unit 2 Part Gnd Flr 66-78, White Post Lane and Unit 3 Gnd Flr Part 66-78 White Post Lane were warehouses. 27, White Post Lane was a warehouse with workshops within the assessment, First Flr 5 Hamlet Industrial Estate, 96 White Post Lane was an office and premises.

23. The panel also noted that no rental figures had been provided by Mr Morrison. It was noted that Mr Morrison was reliant on the agreement of reductions of the unadjusted rate on the other units located on White Post Lane to support of a reduction in the unadjusted rate for the subject property.

24. The panel found that some of the comparable properties which were described as workshops were much larger in size and Mr Khan had confirmed that the larger units had quantum allowances for size. Therefore, the panel considered the comparable properties closest in size to the subject property. The panel placed the most weight on the comparable properties of Unit 14, Queens Yard 43, White Post Lane, First Flr Unit G24, White Post Lane and Unit 1 At 92a White Post Lane, which measured between 214.64m2 and 255.30m2. These properties were described as workshops and had unadjusted rates between £92 per m² and £125 per m².

25. Mr Khan contended that the two comparable properties he had provided, which had leases at the AVD of 1 April 2015 showed that the unadjusted rate of £210/m2 for the subject property was not excessive.

26. One of the comparable properties located at First Flr Studio 4 16-22, Pritchards Road, London, had a new lease for a period of three years with an effective date of 1 May 2015 with a rental figure of £14,000. This rental figure had been adjusted for external repairs. The other property located at 2a Heneage Street, London, had a lease renewal for a period of three years, which had commenced on 1 April 2015.

27. The panel held that the location of these two comparable properties were too far away to be of assistance, as both properties were located circa over two miles away from the subject property within the postcode areas of E1 5LJ and E2 9AP. The panel also noted that they were much smaller in size with areas of $29.44m^2$ and $57m^2$. Therefore, it placed less weight on the details of these two comparable properties provided by Mr Khan but did take into account the scheme they were placed in, and the unadjusted rate applied when making its decision.

28. In coming to its conclusion, the panel found that the evidence presented by Mr Morrison, which supported a reduction of the unadjusted rate for the subject property, was compelling. However, the evidence provided by both parties, did not support a reduction to the proposed unadjusted rate as requested by Mr Morrison of £100 per m².

29. When considering all of the evidence before it, the panel held that as the subject property would be valued higher as it was within a different scheme than the two comparables mentioned within paragraph 24, the unadjusted rate would be higher than £125 per m². However, the panel held that £210 per m² was excessive due to the subject properties location and the agreement made for the reduction in values on the neighbouring properties and the comparable properties presented by Mr Khan being in a different location and much smaller in size. Therefore, the panel held that the unadjusted rate for the subject property should be £140 per m², which revised the assessment of the subject property to £15,000 RV.

30. Accordingly, the panel allowed the appeal in part, it found the existing assessment to be unreasonable and determined an assessment of £15,000 Rateable Value, with effect from 1 April 2017. The breakdown of the valuation is shown below:

Unit 1 At 29, White Post Lane, London E9 5EN				
Floor	Description	Area m²	£/m²	Value £
Ground	Workshop	7.27	140	£1,017.80
Ground	Workshop	101.54	140	£14,215.60
Total area		108.81		
		Subtotal		£15,233.40
		Adopted Rateable Value		£15,000

Order

31. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Unit 1 At 29, White Post Lane, London E9 5EN to £15,000 RV, with effect from 1 April 2017 within two weeks of the date of this order.

32. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 29 January 2024

Appeal number: CHG100855060

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.