THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; warehouse and premises; end allowance for fragmentation and poor / shared access; Appeal dismissed.

APPEAL NUMBER: CHG101050167

BETWEEN:	W Southerington & Sons Ltd and	Appellant
	Joanne Moore Valuation Officer	Respondent

RE: W Southerington & Sons Ltd, Leicester Road, Melton Mowbray, LE13 0DA ("the appeal property")

PANEL: Mrs Fiona Cortese (Presiding Senior Member)
Mrs Ann Fielder (Senior Member)

CLERK: Mrs Deborah Davies BA (Hons), IRRV (Hons)

SITTING ON: 26 March 2024 (Remote Hearing 2)

APPEARANCES: Mr Andy Simons, from Altus Group (on behalf of the appellant as both advocate and expert witness)
Mr Daniel Wilson (on behalf of the respondent as both advocate and expert witness)

Summary of Decision

1. The appeal was dismissed; there was no change made to the appeal property's assessment.

Introduction

2. This is a 2017 rating list appeal. The appeal property had been entered in the 2017 list as warehouse and premises with a Rateable Value (RV) of £44,750, with effect from 1 April 2017. The appellant submitted the challenge on 14 April 2023 and the Valuation Officer determined the

proposal to reduce the RV not well-founded. The decision was appealed to this tribunal and the appeal was registered on 17 October 2023, the grounds being that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. The appeal property is located behind a tyre and exhaust centre on Leicester Road in Melton Mowbray. It is comprised of two warehouses of different ages, and a workshop.

4. In order to assist the tribunal, the parties had agreed all basic facts before the hearing. The total area of the component parts is 1116.7m^2 and the unadjusted rates (UAR) of £33.64 per m^2 and £51.68 per m^2 were not in dispute.

5. Mr Simons was appearing before the panel as both advocate and expert witnesses. 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).

6. Mr Simmons had confirmed that he was representing the appellant in this appeal on a contingency fee basis. However, he fully accepted that his duty was to the Tribunal in giving evidence and that he would comply with this as well as the requirements of the professional body, regardless of whether or not the evidence supported the client's case.

7. The panel accepted the expert witness evidence on the above basis: the appeal was not considered complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions - general) of the Procedure Regulations. The panel determined that it was appropriate to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

8. This hearing was held remotely via Microsoft Teams. There were some intermittent technical difficulties, but the hearing was unaffected.

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

Issues

10. The issues before the panel were:

a. whether an end allowance of 2.5% should be applied for fragmentation, and

b. whether an end allowance of 5% should be applied for poor access.

Evidence and submissions

11. The evidence before the panel comprised all of the evidence disclosed and exchanged during the challenge process. This included rating assessments in support of tone, the parties' skeleton arguments, a schedule of comparable assessments, copies of the current and proposed valuations and a photograph of the exterior of the subject property.

Decision and reasons

12. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

13. The material day (the date by which physical factors have to be considered) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. As this is a compiled list appeal the material day is 1 April 2017.

14. The panel analysed the competing evidence with reference to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, which was included within the evidence provided by the Valuation Officer. The starting point would be the subject property's rent and how closely that rental evidence fitted with the statutory definition of rateable value. However, the panel noted in this case the property was owned freehold. In addition no further rental evidence had been provided. Therefore, in accordance with the six propositions outlined in *Lotus*, the panel moved on to consider the assessments on other comparable properties.

15. Firstly, the panel addressed the issue of whether or not an end allowance for access was warranted. The appellant's representative sought a 5% end allowance for access, whereas the Valuation Officer considered such an allowance was not justified. The appellant's representative argued that the most persuasive factor in support of the appellant's case was the fact that a 5% end allowance for access had been applied to the hereditament directly in front of the appeal property, which was a tyre and exhaust centre. The two properties shared an access road and the appellant's representative contended that the disability for the appeal property was worse because it was behind the tyre and exhaust centre. There was a single photograph to illustrate this, but the panel found it difficult to ascertain a sense of scale from the one perspective offered. There was no obvious issue with access; the shared road seemed wide and unhindered. Whilst the Valuation Officer had removed the end allowance for access from the neighbouring property's assessment for the 2023 Rating List, it had remained present in the 2017 Rating List.

16. The appellant's representative provided a schedule of properties in the locality that had been granted an end allowance for 'access' or right of way running through the premises. The reductions were in the main 5%, with one at 6% and an outlier at 30%. The panel found it difficult to make a judgement about similarity or otherwise with the appeal property because there was no pictorial evidence or detail as to the type of 'access' issue. In some cases, the representative was able to identify that a building was behind another, or that access was shared with another occupier, but this was of limited help to the panel in its deliberations.

17. The panel then turned to the second issue and considered whether or not an end allowance to reflect fragmentation was warranted. The appellant's representative had sought a 2.5% end allowance for fragmentation, whereas the Valuation Officer contended that no such allowance was warranted. On this issue, the panel was faced with the same lack of detail in respect of the fragmentation end allowance. The appeal property consisted of three buildings; two warehouses of differing ages and a workshop. However, the panel had not been provided with details as to any obvious specific disadvantage associated with the layout. The panel would have found a layout plan of the hereditament to be of assistance when considering this issue.

18. The Valuation Officer referred to the previous Valuation Tribunal decision of The Occupier v Stauder (VO) – 232017696805/125N10 which stated that "…the granting of end allowances will always depend on the particular facts affecting any property". The panel, whilst aware that it was not bound to follow the decisions of another Valuation Tribunal, nevertheless concurred

that each case should be considered on its own merits. Whilst the panel had been provided with a schedule detailing comparable properties that had been granted such allowances, there was a lack of detail regarding those properties and how they compared to the appeal property. The panel was of the opinion that a blanket approach should not be adopted and just because one property had an end allowance did not automatically mean the same allowance was warranted for the appeal property; it had to be supported with evidence.

19. In appeals of this nature, the burden on proof is placed on the appellant to demonstrate that the existing assessment was excessive. In this appeal the panel determined that it had been provided with insufficient evidence to demonstrate that an end allowance was warranted either for poor/shared access or fragmentation. Accordingly, the panel confirmed that the appeal property had been correctly valued at £44,750 RV, with effect from 1 April 2017.

20. The appeal was therefore dismissed.

Date: 9 April 2024 **Appeal number:** CHG101050167

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.