VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal: valuation of land, end allowances for access and fragmentation and warehouse price per m^2 in dispute; Local Government Finance Act 1988; comparable properties; appeal dismissed.

APPEAL NUMBER: CHG101052321

RE: 35 Horn Lane, Acton, London W3 6NS
(the "appeal property")

BETWEEN:	M Teevan Hire Co. Ltd	Appellant
	and	
	Ms L Dyer (Valuation Officer)	Respondent

SITTING: Remotely using Microsoft Teams

ON: Friday 26 April 2024

BEFORE: Mr J Thomas, Presiding Senior Member
Mr B Proudfoot, Senior Member
Ms R Sharma, Senior Member

CLERK: Mrs L Horne IRRV(Hons) BA (Hons)

APPEARANCES: Mr M Webb from Colliers International, representing the Appellant
Mr Y Napal representing the Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel confirmed the rateable value (RV) of £33,000 with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. 35 Horn Lane, Acton, London W3 6NS (the appeal property) had been entered in the 2017 rating list as 'warehouse and premises' at a RV of £33,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by Colliers International on behalf of M Teevan Hire Co. Ltd and was received by the Valuation Officer on 19 April 2023. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £12,500 was proposed with effect from 1 April 2017, based upon:

   - A reduction in the unadjusted price from £92.30 per m^2 to £75.00 per m^2.
   - A relativity of 0.25 to be applied to the warehouse to reflect its quality as a shed.
   - End allowances of 10% for access, 5% fragmentation and 5% for shape.
   - Removal of land for access/circulation.

4. The Valuation Officer issued a challenge case decision notice on 22 June 2023 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

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. The appeal was lodged by Colliers International on behalf of the appellant, and received by the Tribunal on 18 October 2023.

6. Mr Webb 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), his declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Webb 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 the client's case.

7. The appeal property was a warehouse and premises located on Horn Lane. It had been placed in valuation scheme 337823, applicable to pre 1965 industrial units in Acton. The present valuation of £33,000 RV was based upon a total area of 357.54m^2 for buildings at an unadjusted rate of £92.30 per m^2 and 259.15m^2 of land at £10 per m^2.

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

Preliminary issue

9. On behalf of the Valuation Officer, Mr Napal raised an objection to new evidence submitted by the appellant's representative with the appeal documents: comparable properties submitted in support of an access allowance. He explained that the Valuation Officer had served a notice in March 2023 to alter the end allowance applied from access to fragmentation. As this was prior to the challenge being submitted in April 2023, Mr Napal stated that the appellant had the opportunity to provide the evidence in the challenge submission.

10. In response, Mr Webb stated that he had been unaware of the change in the end allowance. He also confirmed that he was not aware of the Valuation Officer's Notice of Objection served on 30 October 2023.

11. The panel adjourned briefly to consider whether the new evidence should be admitted. In *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460 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 the breach was significant, as the appellant's representative had sought to rely on new evidence which had not been disclosed during the challenge process. The panel was not persuaded that there was a good reason provided for that failure. The panel also took into consideration the failure of the appellant's representative to respond to the Valuation Officer's notice of objection served on 30 October 2023. On that basis, it was reasonable for the Valuation Officer not to have addressed the new evidence and therefore to allow at this stage would cause the Valuation Officer prejudice.

13. Considering all of the circumstances, the panel decided not to allow the new evidence to be admitted into the proceedings.

Issues

14. There were three issues remaining in dispute:

    - A relativity of 0.25 to be applied to the warehouse to reflect quality.
    - End allowances of 10% for access and 5% for fragmentation.
    - Removal of land for access/circulation.

Evidence and submissions

15. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. The Valuation Officer raised no objection to Mr Webb's request to refer to a consent order in respect of Asda Stores Ltd, Anderson Way, Belvedere DA17 6BG, which had been issued on 2 February 2024 (after the appeal had been submitted).

16. Having conceded the unadjusted price of £92.30 per m^2, and a 5% end allowance for shape, Mr Webb provided a revised valuation of £12,750 RV.

17. On behalf of the Valuation Officer, Mr Napal defended the present RV of £33,000 with effect from 1 April 2017.

Decision and reasons

18. In accordance with paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, the appeal property must be viewed vacant and to let and valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions. The date of the hypothetical rent is 1 April 2015, the AVD for the 2017 rating list.

19. 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 day is 1 April 2017. As the appeal property was held freehold, no direct rental evidence was available.

20. The panel referred to the evidence and arguments provided in support of each issue in dispute.

Valuation of the warehouse

21. Mr Webb described the warehouse as “a lean to shed attached to a Victorian terraced building”. With reference to photographs, he highlighted that the roof was made of timber slats with timber trusses, and he sought to show the difference in quality between the appeal property and purpose-built warehouses in the same scheme. Due to its inferior quality, he proposed to value at a relativity of 0.25, as per the valuation scale for a shed.

22. Mr Napal submitted that the warehouse had always been valued as a warehouse without contention on previous lists. He disputed the description of a shed, given that it was a brick built warehouse with a pitched tiled roof. In his opinion, the valuation was correct, and the poor construction and lack of heating had been reflected in the adopted price of £76.94 per m^2 (10% for poor quality and 5% for lack of heating).

23. Although limited photographs were provided of the interior and exterior, the panel acknowledged a difference in quality, compared to the purpose-built warehouses. However, as it was of brick and tile construction, the panel was not persuaded by Mr Webb’s description of the warehouse as a shed. The panel was satisfied that the inferior quality of the building had been reflected in the adjustments made to the base rate.

End allowances

24. Mr Webb stated that at the time of the challenge submission, the valuation included a 5% allowance for access. This had been changed by the Valuation Officer to a fragmentation allowance. Mr Webb contended that the valuation should include allowances for both fragmentation and access. With reference to photographs, he highlighted that the access point was very narrow via a residential road. In addition to being a tight site, access was shared with occupiers of neighbouring hereditaments and flats above the subject property. Mr Webb submitted that this was a health and safety issue as any articulated vehicle would completely block the road when loading, and it was shared with pedestrians on foot.

25. Mr Napal outlined that there had been a 5% end allowance for access in the 2005 list to reflect a temporary road restriction, but this had been removed when the scheme ended. The 5% end allowance at challenge stage was for fragmentation, however, in his opinion, fragmentation was not an issue and he proposed to alter it back to an access allowance. He disputed Mr Webb's proposed 10% end allowance for access as he considered 5% was more than reasonable.

26. With reference to the parties' submissions and aerial photographs, the panel was not persuaded that fragmentation was a significant issue which warranted an end allowance. The parties were in agreement that there should be an end allowance for access, the only dispute was the level of the allowance. The panel considered that 5% was fair and reasonable, and held that there was no justification made for an increase to 10%.

Valuation of land

27. Mr Webb contended that the land area of 259.2m^2 included in the valuation should not be assessed, as this was required for circulation and access. He stated that this had been agreed at check stage, however, the Valuation Officer had added it back following the challenge. In support of the removal of land, Mr Webb cited a number of comparable assessments for which it had been agreed to either reduce or remove the area of land:

    Schenker House, Unit 3, Scylla Road, TW6 3FE

    Land fully removed at Valuation Tribunal as required for access and storage.

    1 Bourne End Mills, Upper Bourne End Lane, Hemel Hempstead, Herts HP1 2UJ

    Land removed at challenge stage.

    Unit 3C, Ridgeway Distribution Centre, SL0 9JQ

    1,000m^2 land removed at challenge as required for access and loading.

    Asda Stores Ltd, Anderson Way, Belvedere DA17 6BG

    4,286m^2 land removed by consent order at appeal stage as required for access, egress and loading, even where parts are periodically used for storage.

28. In the challenge notice, the Valuation Officer referred to images retrieved from Google which clearly showed that the land was used for storage and there were parking spaces at the front. Mr Napal confirmed that he had inspected the appeal property prior to the hearing and noted a large free-standing advertising structure, and land in use as storage. He considered that this supported that the land had value and should therefore be included. Access/circulation had been reflected, as an amount of 100m^2 had been deducted for the land area.

29. While reference to comparable assessments demonstrated a principle that excess land could be removed, the panel held that it was necessary to consider each case on its own merits. The panel noted that 100m^2 of the land had already been deducted to reflect access/circulation. In consideration of the fact that the land was available for use as

storage and also rented out for advertising, the panel was not persuaded by Mr Webb that all of the land area should be excluded from the valuation.

30. In view of the above findings, the panel concluded that it had not been demonstrated that the present RV of £33,000 was unreasonable and therefore the appeal was dismissed.

Date issued to parties: 10 May 2024

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.
