THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; warehouse and premises; end allowance sought for split nature of site; Appeal dismissed.

APPEAL NUMBER: CHG101058581

BETWEEN:	Healthy Food Brands Ltd	Appellant
	and	
	Amanda Hitchings Valuation Officer	Respondent

RE: M2A House, Priestley Road, Worsley, Manchester, M28 2LX ("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 Owen Scorer, from Altus Group (on behalf of the appellant as both advocate and expert witness)
Mr Stewart Wright (on behalf of the respondent as both advocate and expert witness)

Summary of Decision

1. The appeal was dismissed; no change was 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 £62,500, with effect from 1 April 2017. The appellant submitted the challenge on 5 May 2023 and the Valuation Officer determined the proposal to reduce the RV not well-founded. The decision was appealed to this tribunal. 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 outside of Manchester City centre, close to both the M60 motorway and the main East Lancashire Road. Constructed in the 1960s of brick with a pitched asbestos roof, the property was extended in the 1970s and the roof of the main building was replaced with insulated profile metal. It sits on a generous plot with parking at the front and open storage land to the right.

4. In order to assist the panel, the parties had agreed all basic facts before the hearing. The measurements of the component parts were not in dispute: the total area of the unit is 1875.86m^2.

5. Mr Scorer was appearing before the panel as both advocate and expert witness. 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 Scorer had confirmed that he was representing the appellant in this appeal on a contingency fee basis. However, he understood and 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 his 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.

Issue

10. The issue before the panel was whether an end allowance of 5% to the appeal property's assessment was warranted in recognition of the split nature of the site.

Evidence and submissions

11. The evidence before the panel comprised of all the evidence and information 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 photographs of the subject property and comparable properties.

Preliminary Issues

12. Mr Wright, for the Valuation Officer, raised an objection about the issue before the panel. He stated that the original challenge had contended that the valuation of the subject property should be reduced from £62,500 to £39,750 RV, based on the appeal property's rent of £38,834 per annum, with effect from 13 November 2015 and his proposed reduced basic rate from £27.50/m^2 to £15.81/m^2. He added that the issue of the end allowance had not been raised in the original challenge documentation and had only been raised at the rebuttal stage.

13. Mr Wright argued that he had not been afforded the opportunity to respond to the issue of the end allowance during the challenge process. He added that it was fresh evidence that the appellant's representative should have been aware of at the time of the original challenge.

14. Mr Scorer advised the panel that the subject of end allowance had been raised during the challenge process, following email communication with Mr Wright on 11 August 2023, when he had provided a settlement summary detailing comparable assessments. One of these was Unit 1 and 2 Smithfold Lane, which had been valued at the basic rate of £30.00/m^2 which a 5% end allowance to reflect the split nature of the site. Having considered the email of 11 August 2023, Mr Scorer accepted the existing basic rate of £27.50/m^2 but sought a 5% end allowance for the split nature of the appeal property in line with the allowance applied to Unit 1 and 2 Smithfold Lane. This resulted in his revised proposed assessment of £59,500 RV, with effect from 1 April 2017.

15. The panel considered the matter in accordance with Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended). The Valuation Tribunal for England 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.

16. As the Valuation Officer had objected to this new evidence, the panel considered the matter in light of the Upper Tribunal judgment decision in *Simpsons Malt Ltd and Other v Jones* (VO) UKUT [2017] 460. 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 one – If the panel concludes that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53). In this case the panel determined that the breach was serious and moved to stage two.

Stage two – The panel considered why the failure or default occurred. The defaulting party must explain what happened and why. The appellant's representative explained that he re-worked his valuation based on the information from the Valuation Officer but he did not offer any meaningful explanation for his failure to seek the end allowance earlier in the process.

Moving on to stage three, the panel considered all the circumstances of the case including:

a. The need for litigation to be conducted efficiently and at a proportionate cost;

b. A failure to grant a sanction may leave an inaccuracy being uncorrected;

c. The need to enforce compliance with rules, directions and orders (para. 55). However, such matters must never be allowed to assume a greater importance than doing justice (para. 56).

17. The panel considered that the valuation Officer had suffered prejudice. Having said that, it also noted that the Valuation Officer had been able to address the request for the end allowance within the Challenge Decision notice and had given several comparable properties in support of not allowing such an allowance. However, the panel determined that in the interest of justice an adjournment would be in order to allow Mr Wright any time he required to prepare a fuller response.

18. The panel offered Mr Wright the opportunity to take either an immediate short adjournment, or, if he believed that would insufficient, an adjournment to a different date. Mr Wright advised that he did not need either and that he was able to proceed, and on that basis the panel continued to hear the appeal solely on the issue of whether or not a 5% end allowance was warranted to reflect the split site.

19. A little later in the proceedings Mr Scorer objected to the comparable properties put forward by the additional Valuation Officer within the Challenge Decision notice, stating that they had not been provided at the challenge stage. The panel adjourned to discuss the matter, following the Denton test as detailed above.

20. The panel determined that the first time that the evidence had been presented was within the Challenge Decision notice. However, this was mitigated by the fact that it was in response to the appellant's representative's late request for a 5% end allowance. The panel also noted that the comparable properties referred to had been occupied by clients of the Altus Group. The panel determined in the circumstances, that the same offer of an adjournment should be made to the appellant's representative. Mr Scorer confirmed that he did not require an adjournment and that he was able to proceed without prejudice to his case. Accordingly, the panel proceeded to hear the appeal having regard to all of the evidence submitted.

Decision and reasons

21. 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).

22. 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.

23. 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 Lands Tribunal judgment outlined six propositions detailing the weight to be attached to rental and assessment evidence. The starting point was the rent, if any, passing on the subject property and how closely it related to the statutory definition of rateable value. The appellant's representative adjusted the appeal property's rent to £38,834 per annum (pa) from 13 November 2015. The Valuation Officer's figure was £42,124 pa. The panel noted that both figures were lower than the RV. The Valuation Officer contended that the rent could be lower in part because the occupier had spent £100,000 on fit out in September 2016. Unfortunately, there was little additional information provided in relation to the fit-out cost. Furthermore, the panel noted that at the next rent review the appeal property's rent had seen a significant increase to £75,000 in November 2020. Therefore, the panel treated the appeal property's rent with a degree of caution. As such, rather than make a decision having regard to one rent in isolation, in accordance with *Lotus*, the panel considered the assessments on other comparable properties.

24. In support of a 5% end allowance to reflect the appeal property's split nature, the appellant's representative had relied on one comparable property namely, Units 1 & 2 Smithfold Lane. This property had been granted a 5% end allowance due to the split nature of the site, the disability being an internal wall division between the two units comprising the hereditament. No further information about the rationale for granting the end allowance was available to the panel.

25. The disability for the appeal property was stated to be that the two main warehouse units have no internal connection, meaning that people, material and goods must be moved across the yard. The appellant's representative did not offer an explanation as to how this would adversely impact the occupier other than the movement required between buildings. The appellant's representative opined that a hypothetical tenant would adjust the rental bid for the disadvantage of having to move people and goods between buildings. However, the panel was not persuaded that in this case the arrangement was particularly detrimental. The panel had been advised that each unit had loading doors that backed onto each other.

26. The Valuation Officer provided details of four comparable properties with similar arrangements of buildings. The assessments of those properties had been agreed by the Altus Group and no end allowance had been awarded for fragmentation or split site. He also 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. It is unreasonable to assume that, simply because one property has an assessment incorporating an end allowance, that another should automatically be entitled to the same allowance." 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.

27. In this appeal the panel found that it had been provided with insufficient evidence to demonstrate that an end allowance was warranted on the basis of the split nature of the site. The panel was of the opinion that a blanket approach should not be adopted for end allowances, with such an allowance only being granted if the evidence suggests it was warranted. Whilst the panel accepted that the appeal property comprised two separate units, it had not been demonstrated how this warranted a 5% end allowance. Accordingly, the panel confirmed the existing assessment of £62,500 RV, with effect from 1 April 2017.

28. The appeal was therefore dismissed.

Date: 9 April 2024

Appeal number: CHG101058581

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.