VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; location, scheme applied related to on airport sites, rent passing on subject property between interested parties; comparable hereditaments; type of surface of land; price per m² to be adopted; allowed in part

APPEAL NUMBER:	CHG101063429
RE:	Sites South-East And North-East, Cardinal Point, Heathrow, TW6 2SN (the "subject property")

BETWEEN:	Balasuresh B	Appellant
	and	
	Lucy Dyer MRICS (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	Tuesday 20 August 2024 at 2pm
BEFORE:	Mr S C Kamalan (Presiding Senior Member) Mrs A E Fielder (Senior Member)
CLERK:	Mr A Jolly
APPEARANCES:	Mr M Hawkins of Colliers International representing the appellant Mr K Chumba representing the respondent

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part. The panel confirmed ratable value (RV) £60,000 with effect from 11 January 2021.

Introduction

2. This appeal has been brought in respect of the following: An appeal was lodged by Colliers International on behalf of the occupier on 20 December 2023 against the Valuation Officer's Challenge Decision Notice of 24 August 2023.

3. Mr Hawkins 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 Hawkins declaration of truth included a statement that he was instructed under any conditional fee arrangement.

4. Mr Hawkins 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.

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).

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

7. Mr Chumba, representing the valuation officer, stated that he was acting in the dual role of advocate and expert witness.

8. The appeal had been listed to a hearing on Monday 20 May 2024 at which time the appellant's representative produced new evidence late on Friday 17 May 2024 concerning a Valuation Officer's challenge decision in relation to one of his comparable hereditaments. Whilst the respondent at that time objected to the new information the panel considered that it was relevant. However, as the information was not provided in accordance with the consolidated practice statement i.e. at least four weeks before the hearing, the panel at the previous hearing had to consider the three-stage test set out in *Denton* v *TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. The previous panel having considered the test admitted the evidence as the challenge decision document related to one of the appellant's comparable hereditaments and that the challenge decision document had been issued on 14 May 2020 and therefore was not able to be provided at an earlier stage. The panel adjourned the hearing to allow time for the respondent to consider the new information and to comment if he wished. During this hearing the appellant's representative stated that as there was now an appeal against the challenge decision notice he would not be referring to the hereditament to a great extent.

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

10. As part of their induction training, a new member of the tribunal was observing proceedings. It was explained to the parties that it was the panel's intention to invite their colleague to accompany it to the retiring room. The parties were assured that the new member would not participate in the decision-making exercise but would simply observe as part of their training. Neither party had any issues or objections to this.

Issues

11. The issue before the panel concerned whether the land at the subject property should be classified as all hard surface or part hard surface and part rough surface and also the price per m² to be adopted.

12. The subject property was land used for storage of buses. It was located close to Heathrow Airport on a road adjacent to the Northern Perimeter Road of the Airport. The subject property was held on a five-year lease commencing 18 May 2022 at a headline rent of £295,000 per annum but the lease was an internal lease. There was a restriction on use of the subject property which excluded the use of land for airport parking and limits the use for non-airport lorry parking and the land cannot be used for repairing or maintenance of vehicles.

13. The subject property was entered in the 2017 Rating List at RV £155,000 with effect from 11 January 2021 based on all the land being hard surface at a value of £32 per m². The respondent sought for the appeal to be dismissed.

14. The appellant’s representative sought for a reduction in the RV to £55,000 based on a price per m² of £15 for hard surface land and £10 for rough surface.

Decision and reasons

15. Mr Chumba considered the rent, whilst an internal agreement and remote from the AVD supported the price per m² adopted. Mr Hawkins considered the rent passing not to be of assistance as it was not an open market transaction.

16. The panel noted that the lease commenced in May 2022 which the panel considered too far removed from the antecedent valuation date of 1 April 2015 to be of assistance. It also noted that the lease was an internal agreement and therefore was not an open market transaction. Due to this the panel gave lesser weight to the 2022 lease.

17. Mr Hawkins stated that there were restrictions to the use of the land as it was not to be used for airport parking or repair and maintenance of vehicles which he considered had an impact on value. Mr Chumba stated that no evidence had been presented to support Mr Hawkins contention.

18. The panel whilst considered that whilst the restrictions may have had an impact on the rental value no supporting evidence of the impact had been provided and therefore the panel gave this information minimal weight.

19. Mr Hawkins explained the difference between hard surface and rough surface. He provided photographs showing the subject property. The land towards the rear of the subject property was not tarmacked and, in his opinion, should be treated as rough surface and at a lower value to the hard surface. He stated that whilst an appointment was to be arranged to jointly inspect the hereditament, the former caseworker of the VO had externally inspected the premises on his own. Mr Chumba stated that he considered that all the land should be considered as hard surface as there was disrepair as noted by the caseworker’s inspection. He was unable to confirm whether the caseworker had access to the whole site during the inspection.

20. The panel had not been provided with full details of the inspection and whether during the inspection the caseworker had full access. The panel considered the photographs illustrated that the rear of the site was not tarmacked and appeared to be of a rough surface. The panel therefore considered that the assessment should include both hard surface and rough surface and valued accordingly.

21. Mr Hawkins stated that the subject property had been placed in a scheme relating to properties located on the airport whereas the subject property was adjacent to the airport and therefore he considered the respondent's comparable hereditaments not to be comparable. In support of his contention that a price per m² of £15 for hard surface and £10 for rough surface he provided similar properties in the Heathrow market although slightly further afield where values ranged from £15 per m² and £20 per m² with rough surface ranging from £10 per m² and £16 per m², which was between 20% and 33% of the hard surface value. Mr Chumba accepted that the subject property was not located on the airport but was located on the boundary and therefore his comparable hereditaments, whilst on the airport, were still comparable, and were within the same valuation scheme as the subject property and supported his contention that £32 per was reasonable.

22. The panel noted that both parties accept that the subject property was not located on the airport but adjacent to the boundary. The panel considered this have a bearing on values and therefore could not be compared with hereditaments that were located on the airport. The panel therefore gave minimal weight to the respondent's comparable hereditaments. The panel considered the appellant's representative to be more persuasive and in particular BM Coaches and Rental Ltd, Watersplash Road, Hounslow which was a similar hereditament and had been valued at £16.50 per m². The panel therefore considered that £16.50 per m² for hard surface land to be reasonable.

23. The panel noted from the appellant's representative's comparable hereditaments the price per m² difference between hard and rough surface was 20% for one hereditament and 33% for two hereditaments and therefore the panel considered 33% should be applied to the hard surface to obtain a value per m² for the rough surface giving a price of £11.05 per m².

24. The panel having considered the evidence presented and having weighted that evidence consider that RV £155,000 based on a price of £32 per m² was unreasonable. The panel considered a price of £16.50 per m² for hard surface land and a price of £11.05 per m² for rough surface land was reasonable. The panel therefore allows the appeal in part and confirms RV £60,000 with effect from 11 January 2021.

Valuation

description	**area/m²**	**£/m²**	**Value**
Rough surface fenced land	3612.2	£ 11.05	£ 39,914.81
Hard surfaced fenced land	975.75	£ 16.50	£ 16,099.88
			£ 56,014.69
portable building	22.4	£ 40.00	£ 896.00
portable building	12.5	£ 40.00	£ 500.00
office	59.5	£ 50.00	£ 2,975.00
total			£ 60,385.69
say RV			£ 60,000.00

Order

25. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £60,000 with effect from 11 January 2011 within two weeks of the date of this order.

Refund of appeal fee

26. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date issued to parties: 11 September 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.
