VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; builders merchants and premises; preliminary issues; correct main space rate to be applied; end allowance sought; appeal allowed in part.

APPEAL NUMBER:	CHG101069894
RE:	Unit C, Helston Business Park, Helston, Cornwall TR13 8FZ (the “subject property”)

BETWEEN:	Bradford & Sons	Appellant
	and	
	(Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	Thursday 30 January 2025
BEFORE:	Mr CM Taylor, Presiding Senior Member Mrs PA Crowther-Newman, Senior Member
CLERK:	Mr R Patel
APPEARANCES:	Mrs E Foster of Knight Frank (the appellant’s representative) Mr M Ingram (the respondent’s representative) Mr D Johns (expert witness for the respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined the appeal property’s existing assessment of £93,500 Rateable Value (RV) was unreasonable and reduced it to £75,000 RV, with effect from 2 March 2020.

Introduction

3. This appeal had been brought in respect of the following: Unit C, Helston Business Park, Helston, TR13 8FZ, which was entered in the 2017 Rating List as Builders Merchants and Premises at £99,000 Rateable Value (RV), with effect from 2 March 2020.

4. The appellant's challenge to the Valuation Officer (VO) was made on 5 June 2023. The appeal to this Tribunal was made on 22 August 2024, following the VO's decision notice of 25 April 2024, in respect of the subject property. The VO's decision notice reduced the assessment from £99,000 to £93,500 Rateable Value, with effect from 2 March 2020. The material day in this appeal is 2 March 2020.

5. The appeal property is located on Helston Business Park, a development stated to be readily accessible off the Helston bypass. Helston was stated to be a popular and growing market town in close proximity to the South coast, with a population of about 11,500 in what is otherwise a rural area.

6. The subject property is a detached industrial building of streel frame construction with an ancillary surfaced yard and parking, used as a builders merchants. The property is stated to be part of the first phase of the Helston Business Park, with phase two under construction. Internally, the building provides a trade counter and warehouse area on the ground floor, with additional mezzanine storage.

7. Mrs Foster was appearing on behalf of the appellant as 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 her 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). She confirmed that she was not representing the appellant at the hearing on a contingency fee basis, also declaring that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body regardless of whether or not the evidence supported her client's case.

8. The panel have accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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.

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

Preliminary issue

10. On 14 January 2025, which was after the challenge decision had been issued, the VO inspected the appeal property. The VO stated that during the inspection, several areas were identified that were not declared at the check stage, with the VO stating that there were component parts which had not been assessed and which would inadvertently result in an increase in the RV.

11. The VO informed the appellant's representative about these unassessed parts, who in turn replied to the VO about what she referred to as 'inaccuracies.' Emails were exchanged between the parties about what had or had not been included in assessing the valuation of the subject property. The VO had requested the email thread between the parties following the inspection to be included as part of its evidence, as well as photographs of the subject property taken during the inspection. The appellant's representative had objected to this request, stating that the VO was advised of the additions and alterations made to the subject property that were present at the material date, adding that the majority of the alterations were not present and their inclusion at the hearing would unnecessarily complicate matters which are, in effect, a 2023 List issue.

12. At this stage, the clerk referred the panel and the parties to regulation 38(5) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269), which stated:

> '(5) Subject to paragraph (7), where it is decided that a disputed rateable value should be an amount greater than—
> (a) the amount shown in the list at the date of the proposal; and
> (b) the amount proposed by the appellant,
>
> the VTE must order the VO to alter the list with effect from the day on which the VTE Panel made the decision.'

13. The clerk advised that should the panel find that the appeal property was undervalued, in accordance with regulation 38(5) above, the assessment could only be increased from the date of decision. Therefore, as the 2017 Rating List was now closed, the panel was unable to increase the existing assessment in that list.

14. When questioned, the VO could not confirm that the physical state of the appeal property was the same on the material date as it was when he had inspected in January 2025. Mrs Foster informed the panel that at that point in time no alterations had taken place to the appeal property since it was newly entered into the rating list on 2 March 2020. Any physical alterations would have taken place after this date.

15. Both parties were in agreement that the material date in this appeal was 2 March 2020. With the VO accepting the legal position, referred to in paragraphs 12 and 13 above, although the VO's additional evidence from the January 2025 inspection would be of little relevance to this appeal, as it served only to demonstrate the physical state of the appeal property after the material date in question, the respondent still wished to proceed on the basis that the panel had regard to his additional evidence and the factual information obtained from the inspection in January 2025.

16. The panel considered the matter in light of the Upper Tribunal's judgment in Simpsons Mall Ltd etc v Jones (VO) UKUT [2017] having regard to Denton v TH White Ltd [2014] as follows:
    - Stage 1: Does the panel conclude that the breach is not serious or significant. If so, relief from sanctions should usually be granted.
    - Stage 2: The panel needs to consider why the failure or default occurred. The burden is on the defaulting party to persuade the Tribunal to grant relief from sanctions. The defaulting party must explain what happened and why.
    - Stage 3: The panel must consider all the circumstances of the case, including:
      a. The need for litigation to be conducted efficiently & at a proportionate cost
      b. The failure to grant a sanction may leave an inaccuracy being uncorrected

c. The need to enforce compliance with rules, directions and orders. Such matters, however, are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice

17. The panel concluded, in light of the above, it was fair and just to consider the substantive issues, taking into account this evidence, which both parties had sight of before the hearing. Neither party had been prejudiced, with the panel determining that it would be in the interests of justice to include the email thread relating to the property inspection, as well as photographs of the subject property. The panel would then be able to decide this appeal based upon all of the available evidence in conjunction with the relevant law.

18. Moreover, the panel noted that the £65,500 RV sought by the appellant had been arrived at using two different calculations. Whilst both arrived at the same figure, the more recent calculation was based on a document referred to by the appellant as “Agreed Facts with Mr David Johns” exchanged between the parties and sent to the Tribunal the day before the hearing, which included an end allowance at 2.5%. Given this was a new request, as no end allowance was sought prior to this, and that no evidence was provided to support the award of an allowance, the panel disregarded this request, with no consideration given to it.

Background

19. The appellant sought a reduction in the RV of the subject property to £65,500, on the basis that the unadjusted rate (UAR) of £65.00/m^2 was excessive and that it should be reduced to £42.50/m^2. The appellant stated this to be the only outstanding dispute in this appeal.

20. At challenge stage the appellant submitted that the RV was excessive also because the area of land is excessive and cannot be supported. In her evidence, Mrs Foster had confirmed that the addition for unsurfaced, fenced land has been reduced to take account of the site coverage, so this was no longer in dispute.

Relevant Law

21. The appeal hereditament must be 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 (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 2 March 2020 for this appeal.

Discussion

22. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD, 1 April 2015. This date was used in respect of 2017 Rating List appeals to ensure that every property was treated in a consistent way.

23. In arriving at its decision, with regard to determining whether the current UAR applied to the appeal property’s assessment was unreasonable, the panel noted that Mrs Foster sought a reduced UAR of £42.50/m^2 after having regard to the assessments placed on her comparable properties. Mr Ingram supported the existing UAR of £65.00/m^2.

24. The panel was aware that the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the rent on the subject property, where available, was considered to be the correct starting point and consideration to how that rent compared to the statutory definition of rateable value. The rents on similar properties were also considered and assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

25. In considering whether the current RV was reasonable, the panel turned to the rent passing on the subject property. The property entered the 2017 Rating List on 1 April 2017, with the panel noting that the current rent was based on a 20 year lease with a passing rent of £110,000 per annum effective from 23 January 2020.

26. Referring to *Lotus and Delta v Culverwell (VO) and Leicester City Council* the respondent stated that actual rent is the starting point where a property is let, when considering rateable value. The respondent stated that the most useful rents generally were ones that were close to 1 April 2015. Whilst the rent on the subject property was agreed approximately four and a half years after the AVD, the respondent stated that based on its analysis, the adopted UAR of £65.00/m^2 was fair and not unreasonable. In addition, the respondent argued this was supported on the basis that the rent of comparable properties, indicated that there had been little movement in the market between 2013 and 2017.

27. The panel considered the rents of comparable properties referred to by the parties. Both parties had cited Tinhay Building Supplies Ltd. Newport Industrial Estate, Launceston, and Builder Center, Branwell Lane, Eastern Green, Penzance, in support of their cases. Two rent amounts were provided in respect of both properties. The rents provided for Tinhay Building Supplies Ltd were at £55,000 per annum effective from 1 August 2013, less than two years before the AVD and a later rent of £60,000 per annum effective from November 2017, two and a half years after the AVD. The rents provided for the Builder Center were at £50,400 effective from 17 June 2013, less than two years before the AVD and a later one at £51,600 effective from June 2016.

28. Rents submitted in respect of other ‘Builders Merchants and Premises’ were for Keyline Builders Merchants, at £74,000 from June 2017 and Jewson Ltd at £85,000 from 1 February 2017.

29. The appellant, whilst having provided rental evidence, stated that the rent on the subject property was too far removed from the AVD to have any significant relevance. She argued that the most pertinent rents were the pre AVD rents at Tinhay Building Supplies Ltd and the Builders Centre, adding that the evidence did not support the respondent’s contention that there had been little movement in the rental market between 2013 and 2017. The appellant’s representative had referred to an increase in the rental analysis calculations for Tinhay Building Supplies Ltd, which suggested an increase above 65%. During the hearing the respondent advised one of the figures was a typographical error, with the rental analysis showing an actual increase akin to 20%.

30. The panel was informed that the subject property is valued using the Valuation Scheme “BUILDERS MERCHANTS CORNWALL & IOS” which is stated to be applicable to all builders’ merchants situated throughout Cornwall and the isles of Scilly, excluding smaller premises in standard industrial units and locations with average land areas and minimal

adaptations for use. The subject property sat at the top of the range of values of £20.00/m^2 to £65.00/m^2, adopted within this scheme. Builders Merchants were a large, distinct category of property which the VO stated had data captured separately from general industrial properties for the first time for the 2010 Revaluation, with the recognition that many Builders Merchants should be ringfenced from general industrials, primarily as the rental evidence suggests there is a premium attached to such properties. There was also a sub-classification as BLD2, 'Builders' Merchants on good industrial estates, in non-prominent main road or easily accessible non main road positions, with retail element'. There was no dispute between the parties about the classification of the subject property as a BLD2. Taking this into account, the panel also considered the assessment evidence of comparable properties within the same valuation scheme.

31. Both the aforementioned Tinhay Building Supplies Ltd and Builder Center were in the same Valuation Scheme as the subject property, with the UAR's adopted at £32.50/m^2 for the first of these properties in respect of the August 2013 and November 2017 rents. The UAR's for the Builder Center adopted were at £45.00/m^2 for both the June 2013 and June 2016 rents.

32. Keyline Builders Merchants was stated to be slightly larger in size to the subject property, having a smaller area of land. The UAR adopted for this property was £45.00/m^2. The UAR of £35.00/m^2 in relation to Jewson Ltd was adopted on the basis that this property was also larger than the subject property with a smaller area of land, with a larger unit expected to be valued lower than the subject, based on quantum. This adopted figure was also stated to have factored in the substantially lower rent in comparison to that of the subject property.

33. The appellant's representative stated that her strongest comparable property, with an adopted UAR of £42.50/m^2, was another property occupied by the appellant, Bradfords Building Supplies, in Redruth approximately ten miles away from the subject property. Mrs Foster stated that Redruth had a slightly larger population of 14,000 than the 11,500 of Helston, adding that the property in Redruth was more established, in a better location with better transport links. Mr Ingram stated that the Redruth property built in 2004 was sixteen years older than the subject property, with approximately only half of the land. On this basis he stated that he would expect the subject property, as a more modern and newer build property to be more attractive, which would be reflected in its rental value. The panel noted that whilst in the same scheme as the subject property, the VO held no rental information on the Redruth property as it was understood that the occupiers were also the freehold owners.

34. The panel was aware of the significance that rental evidence held. In this appeal the panel found that not only was the subject property's rent remote from the AVD, it was also considerably different from the rents of the comparable properties, resulting in the panel turning to assessment evidence of comparable properties in preference to reliance on rental evidence. Having been informed about the specific classification of builders merchants, the panel deemed it important that the valuation took into account the Valuation Scheme in which the subject property was placed, along with valuations of comparable properties in the scheme grouped as "BUILDERS MERCHANTS CORNWALL & IOS." The assessment for Bradfords Building Supplies in Redruth was a good fit, however in recognising this as an older and less modern property, albeit in a more desirable location in an established catchment area, it was not appropriate that the UAR for the subject property to be reduced to £42.50/m^2, as requested. Having given regard to the submissions and evidence presented by both parties and taking into account the size, age, and location of the subject property together with the UAR's of the aforementioned comparable properties, the panel decided that the UAR for the subject property should be £50/m^2. The panel concluded that this was more appropriate and more fairly reflected the subject property's attributes.

Disposal

35. In view of the above findings and conclusions, the panel was satisfied that the current assessment was unreasonable. The panel determined that an assessment of £75,000 RV more accurately reflected the appeal property, and the panel calculated a revised valuation, as shown below:

Floor	Description	Area m^2	£/m^2	Relativity	Value (£)
Ground	Retail Area/Offices	354.46	50.00	1.2	21,268
Ground	Warehouses	617.33	50.00	1.00	30,867
Ground	Stores Under Supported Floor	88.71	50.00	0.75	3,327
Mezzanine	Stores	264.54	50.00	0.5	6,614
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION					
	Hard Surfaced, Fenced Land	2529.72	5.25		13,281
				Valuation Total	**75,357**
	Say £75,000 Rateable Value, with effect from 2 March 2020				

Order

36. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £75,000 RV, with effect from 2 March 2020, within two weeks of the date of this Order.

37. 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 issued to parties: 28 February 2025

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.
