VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeall: Local Government Finance Act 1988; shared access over hereditament; should an allowance be applied due to shared access; comparable hereditaments with allowances; appeal allowed.

APPEAL NUMBER: CHG101087205

RE: K E KENT STORAGE LAND AT CORNER OF EAST MAYNE, CRANES FARM ROAD, BASILDON, SS14 3DE
(the "subject property")

BETWEEN: K.E. Kents Limited — Appellant

and

(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 31/10/2024 10:00

BEFORE: Mr M Aslam (Presiding Senior Member)
Mr A Hussain (Senior Member)

CLERK: Mr A Jolly

APPEARANCES: Mr M Clayton of Altus Group representing the appellant
Mr L Stevens representing the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed. The rateable value (RV) is confirmed at £139,000 with effect from 13 March 2018.

Introduction

2. This appeal has been brought in respect of the following: an appeal was lodged by the Altus Group on behalf of the occupier K E Kents Ltd on 30 May 2024 against the Valuation Officer's Decision of 28 March 2024.

3. Mr Clayton 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 Clayton's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

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

8. Mr Stevens representing the respondent appeared in a dual role.

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

Preliminary Issue

10. In the Valuation Officer's Challenge Decision Notice it was considered the issue of the allowance for shared access was new evidence and was not part of the proposal therefore should not be omitted. The author of the notice contended that an allowance of 15% would reflect the shared access but he was not able to apply on the current proposal but the appellant's representative could, at the time of service of the challenge decision, submit a proposal. At the hearing the respondent's representative confirmed he was happy that the issue before the panel concerned whether an allowance should be applied but he was of the opinion that no allowance should be granted.

Issue

11. The issue before the panel concerned whether an allowance should be applied due to a right of access over the subject property to access another hereditament.

12. The subject property was hard surface land used for storage measuring 7923.13 m². It was situated on the busy A12 road with both entrance and exit onto that road. The location provided access to the motorway.

13. The appellant's representative sought a 15% allowance for shared access over the subject property seeking an RV of £139,000. The respondent considered that as the shared access may have been of the occupiers making together with other reasons he did not consider an allowance was required.

Decision and reasons

14. Mr Clayton stated that the assessment arose following the original hereditament being split into two hereditaments and therefore each hereditament was subsequently split. He stated that there was no access to the rear site from the road and that the only access was over the subject property. He considered the shared access was a significant disadvantage as the site was not in exclusive control and there were issues with loading/unloading and general congestion.

15. In support of his contention that an allowance should be applied Mr Clayton referred to other hereditaments within the Basildon and Wickford area that were similar to the subject property but where allowances had been granted for access issues ranging from 5% to 32.50%. He accepted that the allowance 32.50% allowance for Adjacent Marsh House, Brickfield Road was due to access over a railway level crossing and down a single track road. The ones where a 5% allowance had been applied were due to narrow access. He considered that 15% would adequately reflect the disadvantage.

16. Whilst he accepted that it was the appellant who had been in occupation of the whole site and had split the hereditament it must be considered that the property was vacant and to let.

17. Mr Stevens accepted that his colleague had contended that 15% allowance would reflect the disadvantage, but this was a new caseworker and having considered the matter and inspected externally he considered that no allowance should be applied.

18. Mr Stevens considered that as the appellant had sublet the land to Beaver 84 they had created the access issue. He stated that when he inspected the property externally he noted a security gate, and whilst unsure of how access was arranged between the two hereditament, he considered that the appellant still had paramount control over the site.

19. Mr Stevens considered that the comparable hereditaments cited by Mr Clayton. He accepted the reasoning given by Mr Clayton for the 32.50% allowance that it was due to access over a level crossing and down a narrow road. However, the other comparable hereditaments where 5% had been applied was due to narrow entrances making difficulties accessing and egressing the hereditaments. Also, he had been unable to locate an assessment for land at 4 Nevendon Road and therefore was unsure the reason for any allowance.

20. The panel noted in the challenge decision notice that the Valuation Officer had contended that 15% would reflect the disadvantage but noted the Mr Stevens's reasons in relation to why he considered an allowance was not necessary.

21. The panel had to consider the property vacant and to let and not have regards to the occupier at the material or date at proposal. The panel therefore considered that fact that the shared access over the subject property may have been of the appellant's own making it had to consider whether it would have an effect on a rent of the property.

22. The panel noted the comparable hereditaments cited by the appellant. It considered that the disadvantages for adj Marsh House, Brickfield Road were considerably greater than that of the subject property and the disadvantages were not truly comparable. It then considered the remaining comparable hereditaments, save 4 Nevendon Road. Allowances of 5% had been applied due to narrow entrances to the hereditaments which caused issued for access.

23. The panel considered the disadvantages of loading and unloading vehicles, congestion whilst the shared access was in use and possible security issues would reduce any rental bid for the subject property. It also considered that the disadvantages were greater than the 5% given to the comparable hereditaments.

24. The panel noted that the appellant sought a 15% allowance and also noted that this was the level of allowance mentioned by the Valuation Officer in his decision notice. The panel had been persuaded that 15% was reasonable and would reflect the disadvantage suffered at the subject property.

25. In considering the evidence presented the panel was persuaded that RV £164,000 was unreasonable and that a 15% allowance was reasonable for the disadvantaged experienced at the subject property. The panel therefore allow the appeal and confirm RV £139,000 with effect from 13 March 2018.

Valuation

Floor	Description	Area M²	Price per m²	Value
Ground	hard surface fenced land	7923.13	£ 20.00	£ 158,462.60
	portable building	84.5	£ 30.00	£ 2,535.00
	portable building	8	£ 30.00	£ 240.00
	storage container	1	£ 300.00	£ 300.00
				£ -
	car parking	29	£ 100.00	2900
			Sub total	£ 164,437.60
	end allowance		15%	£ 24,665.00
			Total	£ 139,772.60
			RV	£ 139,000.00

Order

26. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £139,000 with effect from 13 March 2018 within two weeks of the date of this order.

Refund of appeal fee

27. 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: 27 November 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.