VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal: Local Government Finance Act 1988; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Factory and premises; main space price; appeal allowed in part

APPEAL NUMBER:	CHG101163906
RE:	JELD-WEN UK LTD, Mardale Road, Penrith, Cumbria CA11 9EH (the "appeal property")

BETWEEN:	Jeld Wen UK Limited	Appellant
	and	
	Amanda Hitchings BA (Hons) MRICS (Valuation Officer)	Respondent

SITTING:	*Remotely using Microsoft Teams*
ON:	20 December 2024 10:00
BEFORE:	Ms S Patel, Presiding Senior Member Ms C Y Jones, Senior Member
CLERK:	Mr R Gath IRRV(Hons)
APPEARANCES:	Mr C Wilkinson (Respondent's representative) Mr G Herron for Altus group (Appellant's representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal panel concluded that the main space price should be reduced to £26/m^2. The resultant rateable value (RV) was £312,500.

Introduction

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2023 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 7

December 2023. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and refused to alter the existing assessment of £342,500 RV effective from 1 April 2023. A decision notice to this effect was served on the appellant on 10 April 2024 and his representatives then appealed the VO's decision to the Tribunal on 10 July 2024, on the grounds 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.

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

Background

5. The appeal property was a factory and premises with an agreed total area of 13,533m². It was originally built in 1980. It is a steel frame construction with brick walls and asbestos sheet roofing, located close to junction 40 of the M6. It was owned by the Appellant company.

6. As Mr Herron appeared on behalf of the Appellant as both advocate and expert witness, the clerk asked 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).

7. He declared that he was instructed under a success fee arrangement in his role as advocate but in his role as expert witness, he was instructed on a fixed fee. Mr Herron confirmed 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.

8. The panel 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).

9. Mr Wilkinson confirmed that he was representing the VO as advocate and expert witness.

10. The issue in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Wilkinson sought a reduced entry of £277,500 RV to 1 April 2023 based on an unadjusted of value of £23.00/m².

11. However, Mr Wilkinson defended the VO's assessment of £342,500 RV on a tone of value of £28.50/m².

12. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties comparable assessments, skeleton arguments and a number of photographs of the appeal property. Mr Wilkinson asked for photographs of the appeal property that he had taken the week before to be allowed. Mr Herron did not object to them being included.

Discussion

13. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted. However, as the appeal property was owned by the Appellant company there was no rent.

14. The VO provided some rents for similar sized properties in Carlisle. The VO had analysed them to between £30.43/m^2 to £34.66/m^2. Based on this rental evidence, the VO had adopted values of between £32/m^2 to £35/m^2 and the resultant RV's were similar to that of the appeal property.

15. But, Mr Herron did not consider the VO's comparable properties to be reliable. He argued that the rent for 85,90, 90A Brunthill Road, Carlisle was not reliable as the appeal property was held on an open ended tenancy which could be ended by one of the parties within a month. Most business premises would be held on a fixed term of say five years. Mr Herron suggested that being held on an open tenancy the passing rent would be significantly more as there is more risk for the landlord although he provided no evidence to support this argument.

16. Furthermore, Mr Herron argued that properties in Penrith were not as valuable as those in Carlisle as Carlisle had better access to Scotland and the North East via the A69. Although the VO argued that the values for properties in the two localities were the same as they are both located on the M6 and they both had easy access via the A69 and the A66 to the North East. However, from the evidence provided, the panel was not persuaded by either parties' arguments as there was no conclusive evidence to prove either way, although it was noted that the larger units tended to be located in Carlise which could support the VO's argument that Carlisle had better road access than Penrith but there could be other reasons for this.

17. Also, Mr Herron disagreed with the appeal property had been included in scheme number 623502 as it was for properties at the Gilwilly Industrial Estate, Carlise built between 1984 and 1995. The appeal property was not located within the Gilwilly industrial estate and out of the 49 units within the scheme only one other had a RV over £100,000 which had only increased by 10% from the 2017 to the 2023 rating list which further supported his argument that there was only a small increase in passing rents over the previous six years.

18. To support his argument that the value of properties in Carlisle were higher than those in Penrith, Mr Herron had identified a number of comparable properties in Penrith which varied from £17/m^2 to £40/m^2. Two of the comparable properties, Eden Valley Mineral water and Frank Bird Poultry, Mr Herron accepted were in a more rural location and were valued at the lower end of this range. However, Mr Herron had included them to demonstrate that the RV for factory's had not changed much from the 2017 to the 2023 rating list. His other comparable properties had varied from £31.50/m^2 to £40/m^2. Mr Herron accepted that all of these units were significantly smaller than the appeal property and argued that a larger unit would benefit from a quantum allowance. He also referred to Cavaghan & Gray Ltd in Carlisle which had only increased by £1/m^2 from the 2017 rating list which further supported his argument that an increase of £6.50/m^2 from the 2017 to the 2023 rating list was excessive.

19. During questioning, Mr Herron agreed that Warehouses and Factory's had a broadly similar value as the industrial units could also be used as warehouses and vice versa. However, Mr

Wilkinson contended that the value of warehouses had substantially increased from the 2017 rating list. However, Mr Herron's calculations showed that the value of the warehouses he used as part of his comparable evidence had increased by 10% to 19.4% with factory's increasing by significantly less.

20. The panel applied some weight to Mr Herron's argument that the percentage increase in the value, from £22/m^2 in the 2017 rating list to £28.50/m^2 (34%) did seem excessive compared to others in the locality. Whilst the values after a revaluation will alter and that was the purpose of the revaluation, the panel noted that the 2017 value had been agreed between the parties and no evidence had been put to the panel from the VO to prove that rents in the locality increased by 34%. The increase therefore appeared to the panel, to be out of kilter with other units and therefore the panel concluded that the value did appear to be excessive.

21. Given the above, the panel applied limited weight to the comparable properties in Carlisle as there was little evidence to prove that the value of units that were similar in size to the appeal property were the same in Carlisle as those in Penrith. It therefore determined that the appeal property should be valued less than those located in Carlisle.

22. There was a dearth of reliable evidence for comparable units in Penrith, apart from the assessments for Eden Valley Mineral water and Frank Bird Poultry. But, the panel had noted that these units were in a rural location away from the M6 and no evidence had been put before the panel to demonstrate how much allowance was given for the rural location for these properties.

23. The panel noted that the other comparable properties provided by Mr Herron that were located in Penrith had values ranging from £31.50/m^2 to £40/m^2 but, these were all significantly smaller than the appeal property, with the largest one having an area of 3,109m^2. The panel did not consider that Mr Herron's proposed value of £23/m^2 was reasonable as there was no evidence to support this value. However, to determine the value of the appeal property, the panel considered that the starting point were the assessments for Eden Valley Mineral water and Frank Bird Poultry. They were valued at £17/m^2 and £18.59/m^2 respectively, although as mentioned above these were located in rural locations and it was accepted that the value of these units were lower to reflect the location. Similar sized units in Carlisle were valued at £31/m^2 and £32/m^2 respectively. Therefore, the panel determined that a value of £26/m^2 for the appeal property was reasonable with that value being the mid-point between the assessments for Eden Valley Mineral water and Frank Bird Poultry and the similar sized units in Carlisle.

24. The revised valuation is as follows:

Floor	Description	Area m^2	£ per m^2	Value
Ground	Factory	6152.60	23.35	143,663.21
Ground	Warehouse	2765.30	25.30	69,962.09
Ground	Pumphouse	23.80	25.30	602.14
Ground	Internal storage	20.10	25.30	508.53
Ground	Compressor room	24.90	25.30	629.97
Ground	Sub station	25.20	25.30	637.56
Ground	Canteen	69.10	28.52	1,970.73
Ground	Locker room	25.10	28.52	715.85
Ground	Canteen	94.73	28.52	2,701.70
Ground	Office	51.56	31.12	1,604.55

First	Office	49.56	31.12	1,542.31
Ground	Store	625.46	25.30	15,824.14
Ground	Boiler room	68.55	25.30	1,734.32
Ground	Store	30.30	25.30	766.59
Ground	Boiler room	5.8	25.30	146.74
Ground	Control room	7.4	30.34	224.52
Ground	Store	84.45	25.30	2,136.59
Ground	Works office	52.20	12.97	677.03
Mezzanine	Store	52.20	25.95	1,354.59
Ground	Canopy	406	3.80	1,542.80
Ground	Office	30.90	31.12	961.61
Ground	Portable building	26.50	19.45	515.43
Ground	Factory	1177.50	25.30	29,790.75
Ground	Warehouse	1101.60	25.30	27,870.48
Ground	Store	20.10	25.30	508.53
Ground	Store	25.70	31.12	799.78
First	Office	45.70	31.12	1,422.18
Ground	Staff toilets	25.70	25.95	666.92
Ground	Kitchen	25.70	25.30	650.21
Ground	Workshop	239.70	28.52	6,836.24
Ground	Workshop	180	24.00	4,320.00
			Sub total	323,288.08
Plant and Machinery				5,851.00
Surfaced open area				1,955.00
			Sub total	331,094.08
Less allowances				
5% Cramped site			-5%	16,554.70
			Total	314,539.38
				Rateable value say £312,500.00

Order

25. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £312,500 with effect from 1 April 2023.

26. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

27. As the grounds of the appeal have been made out, a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision.

Date issued to parties: 31 January 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.