THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; car park and premises; compiled list entry; price per parking space; assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal dismissed.

Re: Car Park, Putney Exchange Shopping Centre, Putney High Street, London SW15 1TW

APPEAL NUMBER: CHG100056689

BETWEEN:	Blackrock	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Dr J Johnson (Senior Member)
Mr M Collery

CLERK: Mrs H Beresford

APPEARANCES: Mr P Emerick of Altus Group (advocate and expert witness on behalf of the appellant)
Mr S Walters of Altus Group (expert witness on behalf of the appellant)
Mrs N Johnson on behalf of the Valuation Officer

REMOTE HEARING 15 January 2021

Summary of decision

1. The appeal was dismissed.

Introduction

2. This appeal has been brought in respect of the following: Car Park, Putney Exchange Shopping Centre, Putney High Street, London SW15 1TW which was entered in the 2017 rating list as “car park and premises” at rateable value £229,000 effective from 1 April 2017.

3. The appellant’s challenge proposal to the Valuation Officer was made on 7 November 2018, the Valuation Officer’s challenge decision was given on 5 June 2020. The appellant’s appeal to the Valuation Tribunal for England (VTE) was made on 5 September 2020.

4. The appellant’s representatives, when appearing as expert witness, stated that they were on a conditional fee arrangement. However, they also stated that they understood and accepted that their first duty was to the VTE in giving evidence, whether or not the evidence supported their client’s case.

5. The panel has 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

6. It was therefore appropriate for the panel hearing the evidence to consider the ‘expert’ evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

7. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with the Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

8. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

9. The subject property is a shopping centre car park situated on the roof of Putney Exchange Shopping Centre in Putney, London and has 255 parking spaces. The Centre was built in 1990 and is owned by Blackrock. Putney Exchange features 44 shops, with the anchor tenant being a Waitrose supermarket. The shopping centre was refurbished in 2016.

10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary issue

11. The appellant’s representative, Mr Emerick, had included various pieces of evidence and case law in his appeal bundle which had not been disclosed or referred to at the challenge stage; this evidence had been objected to by the Valuation Officer’s representative, Mrs Johnson.

12. After hearing representations from both parties the panel concluded that under regulation 17A of Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended) and in accordance with the Consolidated Practice Statement (VTE/PS2) new evidence could only be admitted if it could not reasonably have been acquired by the party before the challenge was determined. As this did not appear to have been the case the new evidence was not admitted, however, all case law was allowed.

Issue

13. The issue to be determined was the correct rateable value to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

14. The appellant's representative, Mr Emerick, had provided the Tribunal with both parties' submissions. He had referred to the following case law which he believed supported his contention that as there was very little rental evidence, the subject property should be valued by the revenues and expenditure method rather than using a percentage of fair maintainable trade (FMT):

    - *Intu Properties PLC v Dunlevey (VO) (Valuation Tribunal)* (2014)
    - *K Shoe Shops Ltd v Hardy (VO) & Westminster City Council (Lands Tribunal)* (1980) RA 333 at 353 *(Court of Appeal)* (1983) RA 26
    - *Lotus and Delta v Culverwell (VO)* [1976] RA 141
    - *Oldschool & Oldschool v Coll (VO)* (1995) RA/312/1994
    - *BPP Holdings Ltd v Revenue and Customs Commissioners* [2016]
    - *Wishart v Hulse (VO)* [2018] UKUT 224 (LC) –879
    - *Facciolo v Costantin (VO)* [2020] UKUT 123 (LC)
    - *Garton v Hunter (VO*) [1969] 2QB 37
    - *Hughes (VO) v Exeter City Council* [2020] UKUT 7 (LC)
    - *Railway Assessment Authority v Southern Railway Co. House of Lords* (1936)
    - *Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee* [1938]
    - *Rozel Motor Co Ltd v Clark* (1983) RA 70
    - *Telereal Trillium v K Hewitt* (VO) [2018] EWCA Civ 26

15. Mr Emerick explained that the rateable value (RV) applied to the subject property had been increased from £114,000 in the 2010 List to £229,000 in the 2017 list and that the spaces had been increased from a price of £450 per space to £900 per space. He contended that this is well in excess of all other similar car parks in the locality and that a valuation on a revenues and expenditure basis corroborated a value of £450 per space for the 2017 list.

16. He also argued that the rental values in Putney Exchange shopping centre had fallen between 2008 and 2015 which he stated was evidenced by a 20% fall in value applied by the Valuation Office to the retail units within the centre and, as a consequence of the falling values and rising vacancy levels, the car park had become under-utilised.

17. Mr Emerick expressed his concern that in reaching the percentage of FMT to be applied the Valuation Officer had relied on only 23 settlements across the country.

18. Mr Walters had inspected the subject property and gave a description of the location and a brief history. He explained that in recent years there had been a decline in footfall and the shopping centre had been adversely affect by the opening of other shopping outlets.

19. On behalf of the Valuation Officer, Mrs Johnson defended the challenge decision not to make any amendment to the subject property's entry in the 2017 rating list. In particular, she referred to the Valuation Office guidance manual and a Valuation Tribunal decision *Multi-*

Storey Car Park, The Square, High Street, Newcastle, Staffs, ST5 1PT appeal number CHG100035710.

20. Mrs Johnson argued that as recommended in the Valuation Office guidance manual and confirmed in the aforementioned Valuation Tribunal decision, where there was a lack of rental evidence, car parks should be valued by adopting a percentage of the gross receipts of the car park. This is done with reference to the level of income leading up to the antecedent valuation date (AVD). The percentage adopted is based upon a number of factors such as location, age of the car park and the area and attractions it serves.

21. Mrs Johnson also argued that car parks were valued on a national scheme and it was for this reason that in looking at the percentage of the FMT to be adopted for this car park she had referred to settlements which had been reached on other multi storey car parks around the country. She believed that the evidence which she had presented supported a percentage of FMT at 40% of £611,000 which equated to £900 per parking space.

22. Finally, Mrs Johnson explained that the RV of multi storey car parks is not derived from retail rents achieved within the shopping centre. Even if the rental values and footfall within the centre had fallen it did not follow that the value of the car park should also fall by a similar amount. Instead, the percentage of FMT valuation should be based on accounts for the car park which had been submitted by the appellant for the years ending 2011, 2012, 2016, 2017 and 2018. As some of the accounts were missing Mrs Johnson explained that she had interpolated the figures provided on a straight-line basis during the missing years trade. She had established that if the decline in total income occurred on an even basis, year on year, total income for the year ending 2015 (AVD) would have been £611,073. Mrs Johnson asked the panel to dismiss the appeal.

Decision and reasons

23. 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. The common date was used to ensure that every property was treated in a consistent way.

24. The term ‘rateable value’ is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
>
> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
>
> c) the third assumption is that the tenant undertakes to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if

any) necessary to maintain the hereditament in a state to command the rent mentioned above.

25. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell* (VO) [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

26. The panel had regard to the evidence and arguments put forward by the parties. Whilst it was not bound by the previous Tribunal decision on the same matter (*Multi-Storey Car Park, The Square, High Street, Newcastle, Staffs, ST5 1PT* appeal number CHG100035710) it was aware that it should give good reason for erring from it. In this case the panel was not persuaded by Mr Emerick's argument that the revenues and expenditure method should be adopted and determined that the correct method a valuation for a car park where no rental evidence was available was a percentage of FMT.

27. The panel found that the percentage of FMT method took into account factors such as location, age of the car park and the area/location it stood in as well as receipts. It did not consider the revenues and expenditure method to be a suitable method of assessing car parks, particularly those occupied by local authorities because these were not provided in order to make a profit. Whilst it had been argued by the appellant's representative that the income of the car park was declining and that, as a consequence of this the revenues and expenditure would better reflect this, the panel determined that any decline would also be translated into a reduction in gross receipts. The panel also noted that this car park was marketed as being available for the use of visitors to Putney itself and not just the shopping centre.

> "*This is a shopping centre car park and operates in line with the Putney Exchange Shopping Centre opening hours. This includes early opening and late close to accommodate Energie Fitness members. It's also worth taking advantage of our competitive all day parking rate for £12 which gives you the opportunity to take your time shopping, meet friends for a bite to eat, visit Putney and the riverfront, or attend one of the many cultural events in the city without worrying about your parking ticket expiring."*

28. The panel noted that the price per parking space had increased from £450 to £900 between the 2010 and 2017 rating lists. However, it was aware that the two lists were separate entities and could not be compared. It was also aware that two of the appellant's representative's comparable properties, whilst appearing to be considerably lower in value per space than the subject, had also seen similar increases in the 2017 list: Buckland Road Car Park, with a value of £550 per space, had an increase of 111% between lists; and Mapleton Road, with a value of £550 per space, had an increase of 93% between lists. The panel also held that the subject car park was situated in a nicer area than the appellant's comparable properties and would therefore have attracted a higher income.

29. The panel turned to the percentage rate adopted by the Valuation Officer in valuing this property. The appellant's representative had argued that 40% was high and the method of obtaining the percentage was flawed because they had been derived from rental analysis of rented car parks throughout the country. The panel accepted that there was a paucity of

rental evidence for car parks and that, consequently, car parks were valued on a national scheme based on rental evidence from across the country.

30. Furthermore, the panel found the Valuation Officer's evidence of comparable properties supported the use of a percentage of 40%. In particular, John Lewis car park on King William Street in Exeter a 1960/70s multi storey car park located close to the central shopping area of Exeter. This car park had been refurbished and rebranded as the John Lewis car park in 2012 and an agreement had been reached to adopt 42.5% of FMT. As well as this Hounds Hill Shopping Centre in Blackpool, a 1980s car park on the roof of the shopping centre and well located for central Blackpool, had been agreed at 43% of FMT, to reflect good location and that it serves the shopping centre and other central attractions.

31. In conclusion, the panel determined that the appeal property should be valued on the basis of a percentage of the FMT as there was insufficient evidence to persuade it to adopt the receipts and expenditure method. Therefore, a value of 40% of FMT of £611,000 which equates to £900 per space and a RV of £229,500 was accepted.

32. Accordingly, the panel found that the current assessment was not unreasonable, and the appeal was dismissed.

Date: 1 February 2021

Appeal number: CHG100056689