THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Shop, Post Office and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Allowed in part.

Re: Newlands Park Post Office, 40 Newlands Park Drive, Scarborough, YO12 6DJ

APPEAL NUMBER: CHG100065320

BETWEEN:	Kay and Shi Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mrs AE Fielder (Senior Member)
Mrs LM Stuart

CLERK: Miss K Hendry IRRV (Tech)

REMOTE HEARING on Monday 8 March 2021

APPEARANCES: Mr M Kay the appellant
Mr M Rudge for the Valuation Officer

Summary of decision

1. The appeal was allowed in part to the extent of confirming the reduced rateable value proposed by the Valuation Officer of £18,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Newlands Park Post Office, 40 Newlands Park Drive, Scarborough, YO12 6DJ which was entered in the 2017 rating list as "shop, post office and premises" at rateable value £21,000 effective from 1 April 2017.

3. The appellant's challenge proposal to the Valuation Officer was made on 31 December 2018. The Valuation Officer issued a challenge decision on 11 May 2020 which stated that the rating list entry was considered to be reasonable, and therefore there would be no amendment made. The appellant's appeal to the Valuation Tribunal for England (VTE) was

received on 17 September 2020 and made on the grounds that the Rateable Value is excessive.

4. 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.

5. 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.

6. 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

7. On 16th November 2020, Mr Rudge objected to 18 additional new documents submitted by Mr Kay. There was a further objection on 8 February 2021 with regard to a further three documents submitted which was considered to be new evidence.

8. Mr Rudge expressed that the Valuation Office Agency are being consistent and reviewed late submission of evidence in accordance with the regulations. The evidence could have reasonably been known at the time of the proposal.

9. Mr Kay stated that he is not familiar with the disclosure process and had submitted the information as soon as it came to his attention. Mr Kay stated that the new evidence he submitted on 8 February 2021 are the three documents that really give a different view of the appeal. The lease, submitted in November 2020 shows that there is a connection between the old lease and the new lease. It shows that the Valuation Officer's evidence is not accurate. This evidence had already been previously submitted as part of the challenge. The emails submitted in February 2021 contained new evidence.

10. Mr Rudge confirmed that the majority was resubmitting of evidence but the emails in February 2021 were new evidence. Mr Kay confirmed to the panel that he was aware of the evidence, and in receipt of the emails in June 2020 but did not submitted this evidence.

11. The parties confirmed to the panel that the date the appeal was submitted on the 17 September 2020.

12. In considering whether the appellant's late evidence could be accepted, the panel had regard to Regulation 17A (1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269 which provides that the Tribunal may only admit new evidence where –

    (a) that evidence—

(i) is provided by a party to the appeal;

(ii) relates to the ground on which the proposal was made; and

(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence.

13. The panel determined that all evidence could be admitted except the evidence which was submitted on 8 February 2021. Mr Kay had confirmed that he knew about this evidence but did not submit it in a timely manner.

Issue

14. The issue for the panel to determine was the correct rateable value to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

15. The appellant, Mr Kay, had provided the Tribunal with both parties' submissions.

16. Mr Kay was seeking a revised rateable value of £13,500 and relied on the following evidence:

a) Mr Kay stated that he took over 40 Newlands Park Drive on 1 November 2014. The amount of rent being paid is £13,640 per year with the overall lease being £22,000 per year. The rest is allocated for 40a Newlands Park Drive which is private accommodation above the shop. Even if the rateable value was based on the total lease less an adjustment for the domestic element, then the zone A rate for the shop would be £300/m^2 and not £350/m^2. This would result in a revised rateable value from £21,000 to £18,000 RV.

b) Mr Kay confirmed that he purchased the busines with the lease in place on the same terms, therefore the rent was not negotiated and is not open market rental value.

c) A surveyor with local knowledge of the area expressed that the achievable rent would have been around £12,000.

d) Looking at the local new lettings there is very little evidence to show any shops recently from 2012 to 2013 have been let over £15,000. Generally the market value for the area is around £10,000 for a new commercial let in Scarborough.

e) In April 2015 there were four properties available on a lease on Newlands Park Drive, numbers 36, 40, 52 and 54. Most of the shops on this street are in the same scheme, except the next door property which is a larger unit. Mr Kay stated that although this property was available to let at a lower rent than 40 Newlands Park Drive, he was not able to let this unit as he took over a business.

f) Mr Kay stated that in April 2015, he believes the rent on 36 Newlands Park Drive to be £18,000 but has not been able to confirm this. In 2017 they are paying the same rent. In April 2015 the shop was available to let. It was on the market for £9,000per annum which is below the market value for the area.

g) 52 Newlands Park Drive was a new let in 2010 with a rent of £14,250. It was a rent review to March 2015 and still to date there has been no change to the passing rent.

h) The rent on 54 Newlands Park Drive in 2015 was £36,000. There is no explanation as to why it is significantly higher than the other properties as it is the same size, it only has a little outside space. However looking at the lease details, the rent has been fixed by the retail pricing index every three years. The Valuation Office manual states that rent regarding retail indexing should be ignored.

i) General tone of the area is set at £200/m^2 whilst Newlands Park Drive has been set at £350/m^2. The Valuation Office want to reduce the price back to £300/m^2 as it was in the the 2010 rating list.

17. To support the revised rateable value in the 2017 of £18,000, the Valuation Officer relied upon the following evidence:

a) Mr Kay considers the lease is not a reflection of open market rent as he purchased the business and was not able to negotiate. However, the circumstances surrounding occupation of the property are irrelevant to determine rateable value. This is because legislation requires a hypothetical scenario and that a property is considered to be vacant and to let.

b) Mr Kay has attached significant weight to comparing the current rateable value with previous lists. However, in the case of *Lotus and Delta* v *Culverwell (VO) & Leicester City Council* [1976] RA 141, the Lands Tribunal set out six propositions to be followed when weighting evidence. The actual rent passing on the property is to be taken as the starting point for valuation. More weight should be attached to rent the more closely it is agreed both as to time, subject matter and the definition of rateable value. However, the next stage is to consider rental evidence in respect of other similar properties in the locality. The appropriate level of value is determined having regard to all the rent evidence available, ‘a basket of evidence’.

c) Guidance was also given by the Lands Tribunal in *Lamb v Minards (VO)* [1974] RA 153 and *Barnard & Barnard v Walker (VO)* [1975] RA 383 regarding an approach to be taken when comparing value between rating lists.

d) 36 Newlands Park Drive is a new letting agreed at £18,000 with effect from 1 December 2016, which the rent analyses to £334.01/m^2, taking into account the domestic element for this property.

e) Mr Rudge agreed with the appellant that the rent on 54 Newlands Park Drive should be disregarded due to the pricing index.

f) Newlands Park Drive is a parade of eight shops which are all well established. It has off-street parking and is in close proximity to two schools. It is a superior location compared to the other shops in the locality which have been valued at £200/m^2. Newland Park Drive commands a higher rent.

Decision and reasons

18. After due consideration of all of the evidence submitted by the parties, the panel determined that the appeal should be allowed in part.

19. In deciding this appeal the panel was governed by rating legislation laid down by Parliament which defines Rateable Value: Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, defined that the Rateable Value of a non-domestic property shall be taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

    i. The first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

    ii. 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;

    iii. The third assumption is that the tenant undertakes to pay all the 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

20. For the 2017 rating list the 'day by reference to which the determination is to be made' is the AVD of 1 April 2015. Economic factors must be assumed to be as they were at that date for the purposes of estimating Rateable Value. Apart from the statutory assumptions as to reasonable repair, matters affecting the physical state of the hereditament, and the physical state of its locality, are taken to be as they actually were at the "material day". In determining any appeal under the above hypothesis, it is necessary to have regard to matters referred to in Paragraph 2 (7) of Schedule 6 to the Act, those being, broadly, the physical nature of the property and its locality, as they stood at the 'material day'. This date is determined in accordance with the grounds of the proposal giving rise to the appeal. The material day for the purposes of this appeal is 1 April 2017.

21. In order to determine the correctness or otherwise of the assessment of the appeal property, the panel looked at the evidence available.

22. The panel found authoritative guidance in the Lands Tribunal's judgment of *Lotus and Delta Ltd*, regarding the weighting of evidence. In all cases, the passing rent on the appeal property should be used as the starting point in its consideration of the rateable value. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it.

23. The panel held that the rent on the appeal property had to be treated with caution as it reflected a domestic element and therefore the amount attributable to the latter was open to dispute.

24. Having regard to all the evidence presented by the parties, the panel considered the best evidence to be the rent set on 36 Newlands Park Drive. This rent analysed at £334/m^2 zone

A which supported the rate of £300/m^2 zone A which supported a reduced rateable value of £18,000.

25. Whilst the panel placed caution on the appeal rent, it was aware that this had analysed at £300/m^2, which also supported the revised rateable value put forward by the Valuation Officer of £18,000.

26. The rent at 36 Newlands Park Drive reflected that the rent for this parade of shops was higher than others in the locality which were valued at £200/m^2 zone A. The panel was not persuaded by the appellant's evidence that the rateable value should be reduced any lower than £18,000.

27. Accordingly, the appeal has been allowed in part to the extent of the offer by the Valuation Officer.

Order

28. 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 alter the appeal property's entry in the 2017 Rating List to £18,000 RV with effect from 1 April 2017.

29. 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

30. 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. The refund will take around six weeks to process.

Date: 22 March 2021

Appeal number: CHG100065320