THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rating appeal; Accuracy of Compiled list RV in 2017 Rating List; Offices & Premises; passing rent; basket of evidence; value of atrium; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141, Appeal Dismissed

Re: 1 Victory Way, Doxford International Business Park, Sunderland SR3 3XF

APPEAL NO: CHG100068170

BETWEEN:	Parseq Ltd	Appellant
	and	
	Valuation Officer	Respondent

PANEL: Mr P Hickson (Senior Member)
Miss E Blois

CLERK: Mr G Wayman

REMOTE HEARING: 30 October 2020

APPEARANCES:

Mr G Herron of Altus Group representing the appellant

The Respondent Valuation Officer was represented by Mr R Fuller.

Summary of Decision

1. The appeal is dismissed.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £272,500 from 1 April 2017, with a description of Offices and Premises. This was a compiled list appeal so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £265,000, to take into account that the reduced value of the atrium (which should be valued at 70% of the main space) and altered the rating list with effect from 1 April 2017. The appeal was made on 7 February 2020 against the Valuation Officer's (VO) Decision Notice of 7 October 2019 in respect of the appeal property (hereditament) and the RV of £265,000. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £265,000 RV was deemed as correct.

3. The panel was informed that the appeal property comprised a three storey detached office building, constructed in the region of 25-30 years ago. It is of a steel framed construction clad with brick and block walls and a curved steel clad roof. The internal office accommodation, which is largely open plan, is accessed via a single 10 person lift.

4. The appeal property is located on Doxford International Business Park which is located approximately 3 miles to the south west of Sunderland City centre and just to the east of the A19 dual carriageway at its junction with the A690. Victory Way is situated off Admiral Way, one of the principal roads on Doxford Park with the subject property situated in a site to the north of Admiral Way and east side of Victory Way.

5. 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.

6. 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.

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

8. Mr Herron in his declaration 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.

9. 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).

10. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

11. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

12. The matter before the panel was to determine the correct level of the RV for the appeal property having regard to the weight of evidence to be attached to the rental evidence in respect of the property and the levels of value placed on comparable assessments from the locality. The appellant's representative proposed a revised RV of £220,000 based on £70 per m². The VO defended the RV in the list of £265,000 with effect from 1 April 2017, based on a rate of £85 per m², and sought dismissal of the appeal.

13. All relevant factual information was not disputed by the parties.

Decision and reasons

14. 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 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

15. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

16. The appellant's representative argued that in his opinion the principal evidence was the lease agreement on the appeal property. Mr Herron informed the panel that the appeal property was occupied on a leasehold basis. The appellant took a new letting from 12 July 2014 on a 10 year term subject to a review at the 5th year with the rent passing of £164,553 pa in years 1 to 3 then rising to £329,066 per annum in years 4 and 5. In Mr Herron's opinion this rent devalued to an average £230,346 pa equating to £71.71 per m² .

17. To further support his valuation Mr Herron referred to rental evidence at 1st Floor, 1 Emperor Way, Doxford. This is a smaller property at 1262.76 m² (ITMS). The initial rent on this property was £60,000 pa from June 2010 devaluing to £47.51 per m² with the revised 2015 rent of £69,365 pa devaluing to £54.93 per m².

18. Mr Herron contended that on the basis of his rental evidence he was of the opinion that £70 per m² is fair and reasonable to apply to the appeal property.

19. The VO contended that in his opinion the passing rent on the appeal property was unreliable as the property had remained empty for 2 years prior to the appellant's occupation therefore, the Landlord was under pressure to let it. He also pointed out that the rent in year 4 suggested that his rate of £85 per m² was not unreasonable.

20. The VO stated that as the rent for the actual appeal property was unreliable in line with *Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*, he considered the basket of rental evidence from the locality.

21. The VO presented four comparable rental properties within Doxford International Business Park the rents on these properties had been agreed between September 2013 and May 2018. In his opinion when these rents are analysed, they fully support the main space of £85 per m².

22. Using the rents from Doxford International Business Park the VO has established a matrix (tone) for the different sizes of properties on the park. Properties ranging in size from 2500 m² to 6000 m² the rental evidence supported a rate of £85 per m². Out of 14 assessments on the park only one other has been challenged therefore the VO was of the opinion the matrix (tone) has been accepted by other occupiers and rating representatives.

23. The panel was aware of the guidance given by the Lands Tribunal in the case of Lotus and *Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*, which dealt with the issue of the weighting of evidence. The panel took account of both parties' conflicting analysis of the passing rent. Consequently due to the conflict the panel was of the opinion that to help it establish a value for the appeal property the whole basket of rental evidence should be considered.

24. The panel examined the rental evidence on other properties within Doxford International Business Park presented by the VO. It took into account Mr Herron's argument that two of the rents (Unit 1 Graylings Court & Solar House Unit 7 Admiral Way) were between connected parties and should be disregarded. However, after hearing both parties' arguments on this point the panel consider that there was insufficient substantive evidence before it to suggest that the rents were between connected parties and therefore, they could be considered.

25. The panel found that the various rents on the comparable properties, ranging in size from 2143.50 m² to 8760.60 m², had been analysed by the VO and produced rates ranging from £105.95 per m² to £134.73 per m². The panel was satisfied that this rental evidence supported the VO's contention that a rate of £85 per m² for properties ranging in size from 2500 m² to 6000 m² on Doxford International Business Park was reasonable. The panel also noted that currently only one other assessment has been challenged which further supports the VO's argument that the rate per m² had been accepted by other occupiers on the park.

26. Mr Herron had produced rental evidence on 1st Floor, Emperor Way to support his valuation on the appeal property. However, the panel noted that this rent was a rent review and this property is approximately a third of the size of the appeal property. Therefore the panel placed little weight on it.

27. Having considered the basket of evidence presented and taken it all into account the panel consider that it had not been demonstrated that the value adopted by the VO was excessive. This was especially supported by the rental evidence presented within Doxford International Business Park and the subsequent matrix (tone) that had been established on the park, which the panel placed most weight on.

28. Consequently, in appeals of this nature, the burden of proof rested on the appellant's representative to illustrate that the appeal property's assessment was overvalued. In relation to this appeal, Mr Herron had failed to persuade the panel that the existing basic rate was excessive.

29. The appeal is therefore dismissed.

Appeal No: CHG100068170

Dated: 23 November 2020