THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Williams (VO) v *Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd [1993] RA 480; Car Park and Public Conveniences; Appeal allowed.*

RE: BARNSDALE CAR PARK, RUTLAND WATER, EXTON, OAKHAM, LE15 8AB

APPEAL NUMBER: CHG100073717

BETWEEN:	Anglian Water Services	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE:	Ms S Bello (Senior Member) Dr P Thomson
CLERK:	Mr R Gath
REMOTE HEARING 3 ON:	4 December 2020
APPEARANCES:	Mr M Peacock (Appellant's representative) Mrs J Frettsome (Valuation Office's representative)

Summary of Decision

1. Appeal allowed. The rateable value is reduced to £11,750 effective from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Barnsdale Car Park, Rutland Water, Exton, Oakham, LE15 8AB (the 'appeal property'), which was entered in the 2017 rating list as 'Car Park and Public Conveniences' at rateable value £132,000 effective from 1 April 2017. However, following the challenge the Valuation Office Agency (VOA) subsequently conceded that the rateable value was too high and reduced it to £37,750. Mrs Frettsome understood that the rating list had already been amended to the new rateable value. On his challenge proposal, Mr Peacock was seeking a rateable value of £11,250, although in his submission he was seeking

a rateable value of £12,000 and accepted that this was a more realistic rateable value.

3. The appeal property was an unsurfaced car park, with a mix of gravel, rough ground and grassed areas located at Rutland Water. The Valuation Office Agency, (VOA) suggested that it had approximately 700 car parking spaces although there was no basis for this number of spaces. Rutland Water has four car parks with varying facilities. The other three car parks are barrier controlled and used all year round. The appeal property is not barrier controlled, but rather there is a steel barrier that is put across the car park during the winter months to prevent its use.

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. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Peacock made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 17 September 2020 following the Valuation Officer's Decision Notice of 8 July 2020 in respect of the appeal property (hereditament).

8. As Mr Peacock 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).

9. Mr Peacock declared that he was not instructed under any conditional fee arrangement, but a fixed fee. Mr Peacock 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.

10. The panel had 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

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

11. The panel hearing the evidence will thus consider the "expert" evidence and assess what weight, if any, it shall give to it in the context of the matters in issue before it.

12. 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 it being overlooked by the panel.

Issues

13. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

14. The appellant had provided the Tribunal with both parties' submissions. The evidence included the following: his statement of case, a copy of the challenge proposal, the Valuation Office Agency's decision notice, copies of correspondence that had passed between the parties, an aerial photograph of the appeal property and details of Mr Peacock's comparable car parks.

15. Mr Peacock argued that even with the revised rateable value, a value of £66 per space for the appeal property was too high compared with the other car parks in the locality. He had based his rateable value on the actual income of the car park which reflected the lack of facilities rather than using income based on other car parks within the locality.

16. Mrs Frettsome was representing the Valuation Officer as an advocate. She contended that based on its own scheme, the rateable value for the appeal property was now correct. The VOA had already conceded that the rateable value was too high and had reduced the value to £66 per space with a 30% allowance to reflect the lack of facilities. This resulted in a value of £46 per space, with an addition of £5,663 for the public conveniences.

17. In her opinion, no further evidence had been presented to prove that the value of the car parking spaces was incorrect and she asked the panel to dismiss the appeal.

Decision and reasons

18. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

19. 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;

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"

19. Anglian Water Services have a duty to provide car parks at Rutland Water and has four car parks in that locality: Barnsdale; Whitwell; Sykes Lane and Normanton. Barnsdale car park has public conveniences, a play area and café. All the other car parks have additional facilities such as visitor centres, a bug zoo, play areas, cycling and fishing and were therefore busier than the appeal property.

20. Both parties were in agreement with the value of the Public Conveniences at £5,663 and were agreed on a rate of 40% of the receipts. However, the parties disagreed on the income used to calculate the rateable value. Mr Peacock argued that the actual receipts of Barnsdale Car Park should be used. However, Mrs Frettsome found the income of the car park to be unreliable and used the income from Sykes Lane car park, being the next lowest in terms of receipts and used that to calculate the rateable value. She then granted a 30% allowance to reflect the lack of facilities and because the car park was closed in the winter.

21. Mr Peacock set out the 2014/2015 parking income from all four car parks and the equivalent rateable value using the 40% rate:

	Annual parking income	Equivalent Rateable value
Barnsdale car park	£15,762	£6,304.86
Whitwell car park	£149,172	£59,668.80
Sykes Lane car park	£115,895	£46,358.00
Normanton car park	£118,174	£47,250.00

22. Mr Peacock explained that unlike the other three car parks, Barnsdale car park relied on the trust of the users to pay the parking fee. He accepted that the income was low, but he argued that this was because there were less facilities at the car park and therefore, there was less visitors using it and it was closed during the winter. A steel barrier is placed across the entrance to the car park during the winter to prevent it being used. Whereas the other three car parks, which were surfaced, were used in the winter with the tariff being charged all year.

23. During questioning, he explained that Anglian Water had carried out a feasibility study but, due to the remoteness of the car park and the other infrastructure required to prevent the barriers being circumvented, it would cost £100,000 to make it suitable for barrier controlled parking. Anglian Water had also dismissed using other methods of enforcement such as a parking warden as they had deemed it to be not value for money.

24. He also argued that by not using the actual income figures this offended the "*Rebus Sic Stantibus*" principle. In effect, the appeal property had to be valued as it stood, a gravel car park, not a gravel park with barrier controlled parking. The Latin expression for applying this principle of reality was known in rating circles as *rebus sic stantibus.* There were two strands to this. The appeal property had to be valued vacant and to let, having regard to its mode or category of use and it was the value of that use to the occupier that had to be determined. The leading authority was *Williams (VO) v Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd* [1993] RA 480.

25. Mrs Frettsome contended that she had based the rateable value on the second lowest car park income, Sykes Lane. She argued that a new tenant coming fresh to the scene would want to maximise their income by installing barrier controlled parking. Furthermore she contended that it would not offend the "*Rebus Sic Stantibus"* principle as she considered that installing the barrier controls would be considered to be tenants improvements.

26. Turning to the seasonal nature of the car park, Mrs Frettsome also contended that a new tenant coming fresh to the scene would open the car park all year, and by installing barrier controls and opening the car park, she contended that the income would be nearer that of the other three car parks. This was the reason the VOA chose to base the rateable value on the fair maintainable trade of the Sykes Lane car park rather than the actual income of the car park.

27. The clerk referred the panel to the judgments of *Southend on Sea* v *White* and *Gage* v *Wren* as these cases were about seasonal opening and that the properties were held to be in rateable occupation even though they were closed during the winter. The panel invited comments from the parties. Mr Peacock argued that these cases did not apply in this appeal as they were concerning rateable occupation. There was no dispute that Anglian Water were the rateable occupier. Mrs Frettsome was familiar with the judgements but did not comment on them.

28. All the panel had to decide was whether to use the actual receipts for the appeal property, on the basis of how the property stood, or, assumed receipts from a car park within the locality. It therefore considered the *Rebus Sic Stantibus* principle.

29. The cost of the barrier installation was nearly as much as a year's income for the Sykes Lane car park. A tenant coming fresh to the scene would also want some return on their investment. The rateable value for the Sykes Lane car park was £63,500 and the rateable value should reflect rent.

30. The panel considered these issues and concluded the following: If a potential tenant was to receive an income of £115,895, the rent would be approximately £63,500, based on the rateable value and would result in a return of approximately £50,000, excluding all other expenditure. Achieving this level of return would require an investment of £100,000 for the barrier installation and therefore, given the above, it would take a number of years to recoup this investment, in addition to

providing some profit to the tenant over those years. This supported the appellants' conclusion that it was not cost effective to install the barriers.

31. Furthermore, this income was based on a car park that had more facilities than the appeal property and therefore the income would be likely to be lower, taking even longer to recoup the cost of the installation.

32. Given the above, the panel therefore concluded that the barrier installation would be more than just tenants improvements. It therefore agreed with Mr Peacock's argument that the appeal property should be valued as it stood, i.e. a gravel car park reliant on the visitors trust for payment and the rateable value should therefore be based on the actual income for the appeal property, rather than the VOA's assumed income.

33. The revised valuation is:

Description			Value
Car Park	£15,762.16 x 40%		£6,305.00
Public conveniences			£5,633.00
		Total	£11,938.00
		Rateable value say	£11,750.00

34. The panel noted that Mr Peacock rounded his valuation up to £12,000, however, it determined that the rateable value should be rounded down, in accordance with the VOA rounding policy.

Order:

35. 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 amend the entry in the rating list as follows:

    To rateable value £11,750 with effect from 1 April 2017.

36. 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

37. The appellant is entitled to a refund of the appeal fees paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 31 December 2020

Appeal number: CHG100073717