THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rates - 2017 Rating List Appeal - Lotus and Delta v Culverwell (Valuation Officer) and Leicester City Council [1976] RA 141 – weighting of evidence – new lettings and rental evidence – locality – appeal allowed.

Re: Unit P1, Sheffield Airport Business Park, Europa Link, Sheffield S9 1XI

APPEAL NUMBER: CHG100073987

BETWEEN:	Excel Parking Services Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL; Mrs J Ellis
Mrs C Dodsley

CLERK: Ms R Muller

REMOTE HEARING: Tuesday 12 January 2021

APPEARENCES: Mr S Hornby of Gerald Eve acting on behalf of Excel Parking Services Ltd (Appellant)
Mr N Green acting on behalf of the Valuation Officer (Respondent)

Summary of decision

1. Appeal allowed. The subject hereditament's assessment was determined at £28,750 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 compiled Rating List appeal. Therefore, the material day was also 1 April 2017. The subject hereditament was described as offices and premises and had been assessed at £43,250 RV with effect from 1 April 2017. A check had been completed on 14 November 2018 and a Challenge submitted on 5 February 2019. The Challenge stage was completed on 2 June 2020 with no change to the RV of the subject hereditament, therefore, an appeal was received by the Tribunal on 1 October 2020.

3. Mr Hornby 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 Hornby's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Hornby 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.

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.

Issues

7. The issue before the panel concerned the price per m² to be adopted having weighted the evidence in accordance with the six propositions as set out in the Lands Tribunal (now known as the Upper Tribunal) decision of *Lotus and Delta* v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141.

Evidence and submissions

8. Mr Hornby submitted a bundle of evidence which included details of the subject hereditament, the issues in dispute, detail of a comparable property. With reference to his analysis of the comparable hereditament's rent, he proposed a revised assessment of £60/m² for the subject hereditament, which produced a revised assessment of £28,750 RV with effect from 1 April 2017.

9. Mr Hornby stated that the subject hereditament had an overall size of 407.45 m² and consisted of a two-storey office building, situated on Europa Link Business Park located approximately five and a half miles east of Sheffield City Centre and close to the M1 Motorway. The subject hereditament was approximately 15 years old and benefited from central heating and suspended ceilings. However, it did not benefit from air conditioning or raised floors. The subject hereditament was occupied by Excel Parking Services on a freehold basis and was one of four similar detached office hereditaments, known as Units P1 to P4 within Europa Link Business Park.

10. Mr Hornby stated that the current rate of £95/m², which resulted in a valuation of £43,250 RV was too high. Therefore, he was seeking a reduction to £60/m², which would result in a revised valuation of £28,750 RV, which he stated was fair and reasonable.

11. A lease had been provided by Mr Hornby for Ground Floor, Unit P4, Europa Link, which had commenced on 8 May 2015, which was very close to the AVD of 1 April 2015. He stated that the rent of £18,900 per annum, after removing the value of the car parking spaces, had analysed at a rate of £61.64/m² for this property, which support his revised assessment for the subject hereditament.

12. Mr Hornby also provided a recent Valuation Tribunal (VT) Decision dated 16 December 2020 (appeal number: CHG100070766) for Unit 2, Europa Court, Sheffield, S9 1XE, where Excel Parking Services Limited was the appellant. Both parties had agreed that this VT Decision could be included for the panel to consider, where the RV had been reduced by VT Decision.

13. Mr Hornby requested the panel to allow the appeal and confirm his revised assessment of £28,750 RV with effect from 1 April 2017.

14. Mr Green, the representative for the Valuation Officer (VO) submitted a bundle of evidence, which included comparable hereditaments within the local area in support of his decision.

15. He stated that the assessment of the subject hereditament was not unreasonable having considered the basket of evidence and informed the panel that the burden of proof was upon the appellant to demonstrate that the assessment was incorrect.

16. In support of his contention that £95/m² was reasonable, he had provided rental evidence from Europa Court and Europa Green, Sheffield Business Park, which had lease starting dates of between 17 July 2013 and 19 January 2016 and analysed between £85/ m² to £113/ m², which supported his value of £95/ m² for the subject hereditament.

17. Mr Green (VO) considered that considering the rental evidence, he had illustrated that £95 per m² was not unreasonable and asked the panel to confirm the RV £43,250 with effect 1 April 2017 and dismiss the appeal.

Decision and reasons

18. The subject 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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD).

19. The panel had regard to the Lands Tribunal judgment of Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976, as referred to by Mr Hornby. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    (1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

(3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful, but in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

20. In line with the decision in *Lotus and Delta* v *Culverwell*, the panel was aware that usually the rent on the subject hereditament should be taken as a starting point, but as the subject hereditament is owner occupied, there is no rent to consider. Therefore, the rent of comparable properties in the locality should considered.

21. The panel held that Ground Floor, Unit P4, Europa Link being of similar size, in the same Business Park, and had a new lease, which commenced in May 2015 held the most weight and fell within (iii) (iv) and (v) of the six propositions.

22. Considering the lease details for Ground Floor, Unit P4, Europa Link, which Mr Hornby had provided. The panel noted that this property was adjacent to the subject hereditament and overall, was almost half the size of the subject hereditament. However, the panel noted that the ground floor area of Unit P4, Europa Link was similar in size to the ground floor office area of the subject hereditament at 204.41 m². The lease had commenced on 6 May 2015 for a term of 5 years. The rental figure was £18,900 per annum with no rent-free period. Mr Hornby had deducted £300 per car space, which is what the space had been valued at on the current assessment for this property to arrive at a net rent for the office building of £12,600, which analysed at a rate of £61.64/ m² for this property.

23. Unit P4, Europa Link was inferior compared to the two hereditaments on Europa Court, as the hereditaments on Europa Link did not have air conditioning or raised floors. Therefore, this was why the rent was lower and analysed to a lower rate. Mr Hornby had used the rate for Unit P4 Europa Link to come to his revised rate of £60/ m² for the subject hereditament. He had added £325 for each of the 14 car parking spaces, as this is what they had been valued at on the current assessment, which produced a revised assessment of £28,750 RV.

24. Mr Hornby stated that the Ground Floor, Unit P4, Europa Link had 21 car parking spaces. However, Mr Green stated that there were not any car parking spaces allocated within the assessment of Unit P4, Europa Link's valuation assessment. Mr Hornby informed the panel that when he had inspected the subject hereditament on 28 August 2018, he had visited Unit P4, Europa Link and had countered 21 parking spaces. Mr Green stated that nowhere within the lease did it state how many car parking spaces had been allocated to the property of Unit P4, Europa Link. He also informed the panel that the lease did not confirm that the area allocated was exclusive to the tenant, who occupied the ground floor only. The panel noted that within Clause 3. Ancillary Right: 3.1.3. it stated on the lease 'the right to park private cars or motorbikes belonging to the tenant, its employees and visitors within the area edged blue on Plan 2' was detailed. Although, this clause did not specifically say the tenant had 'exclusive rights' to the parking area, it did say that the car parking area was to be used by the tenants of the ground floor at Unit P4, Europa Link.

25. The panel then considered the rents passing on the three comparable properties cited by Mr Green; Europa Court and Europa View, Europa Green. The floor size of 1st Flr, Unit 5, Europa Court was similar in size as the overall size of the subject hereditament at 378.52m² and although the rent had a start date of 19 January 2016, which was only nine months after the AVD of 1 April 2015, the property had achieved a rent of £61,854 per annum, which analysed to £133.07/m². The panel noted that 1 Europa Court was much larger in size at 608.36m² and although the rent had a start date of 1 September 2014, which was only seven months prior to the AVD of 1 April 2015, the property had achieved a rent of £65,480 per annum, which analysed to £85.05/m².

26. The panel then turned their attention to 10 Europa View, Europa Green, where the size of this comparable hereditament was similar to the subject hereditament at 363.64m². However, the rent that had been achieved at £42,000 per annum had commenced in July 2013. The rent analysed to £94.85/m² too far removed from the AVD of 1 April 2015 to be of much help when making its decision.

27. It was also noted by the panel that the passing rents for Europa Court were a lot higher. Therefore, it took into account that the hereditaments on Europa Court had been built to a higher standard, therefore would demand a higher rental figure than those on Europa Link.

28. This left the comparable hereditament provided by Mr Hornby of Ground Floor, Unit P4, Europa Link for consideration. There had been a rent set around the AVD of 1 April 2015 at £18,900. Mr Hornby had analysed the rent at £61.64/m². This rent was considered an open market rent and was adjacent to the subject hereditament.

29. Considering all the evidence provided before it, the panel considered that the rental evidence of Ground Floor, Unit P4, Europa Link supported a lower price per m² to be adopted and had been persuaded by Mr Hornby that £60 per m² was not unreasonable.

30. Therefore, the panel allow the appeal and determine RV £28,750 with effect 1 April 2017.

Order

31. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £28,750 with effect from 1 April 2017 within two weeks of the date of this order. The ratepayer is also entitled to a refund in fall of the fee paid in accordance with

regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009.

Refund of appeal fees

32. The appellant is entitled to a refund of the appeal fees in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 21 January 2021

Appeal number: CHG100073987