VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; Office and Premises; accuracy of rateable value; rent passing on subject property and comparable property; analysis of rent on comparable property; Mr S Barker v Sykes (VO) [2018] VT; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

RE: Coble Landing Roundabouts, Coble Landing, The Beach, Filey YO14 9LF

APPEAL NUMBER: CHG100074141

BETWEEN:	Mr S Barker	Appellant
	And	
	Ms J Moore (Valuation Officer)	Respondent

PANEL: Mrs J Ellis (Senior Member)
Mrs A Taylor

CLERK: Miss F Willson

REMOTE HEARING ON: 10 November 2020

APPEARANCES: Mr S Barker (the Appellant)
Mr M Hammerton (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed in part. The entry is reduced to £12,500 with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant on 13 February 2019, in his capacity as the liable party in respect of Coble Landing Roundabouts, Coble Landing, The Beach, Filey YO14 9LF (the appeal property). The challenge was in respect of the entry in the rating list at £14,500 rateable value (RV) effective from 1 April 2017. The appellant sought a revised assessment of £7,500 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that it was not well founded and a decision notice to this effect was issued on 13 February 2020. The appellant made an appeal to this tribunal which was received on 21 September 2020.

3. 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.

4. 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.

5. The appeal property is described as a children’s ride and premises on the beach front in Filey. The roundabouts are for children under ten years of age with some roundabouts dating back to the 1950’s. Mr Barker purchased the roundabouts and took a lease for the site from Scarborough Borough Council. Under the terms of the lease the site can only be occupied for eight months of the year. The roundabouts have to be removed from the site from 1 November to 28 February. The council can use the land during that period rent free.

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 their decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

7. The issue between the parties is the RV of the appeal property.

Evidence and submissions

8. Mr Barker submitted a bundle of evidence which included details of the subject property, the issues in dispute, details of comparable properties and extracts from relevant case law.

9. With reference to his analysis of the rent on the appeal property and the comparable properties, Mr Barker asked the panel to confirm a revised rateable value of £12,500 based upon a 12% reduction from the rent passing.

10. Mr Hammerton referred the panel to the challenge application and decision.

11. In consideration of the passing rent Mr Hammerton asked the tribunal to confirm the RV of £14,500 with effect from 1 April 2017.

Decision and reasons

12. 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). 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. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in paragraph 2(7) of Schedule 6 to the Act, in relation to both the physical nature of the property and its mode or category of use.

13. Where rental evidence is available, the weight to be attached should be considered in light of the propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

- Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

- 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 section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements are now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

- 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.

- 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 be properly be referred to as giving an indication of that opinion.

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

- In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

14. Mr Barker explained that he had taken the lease on the site from 22 June 2012. The rent was £14,250 pa until it was reviewed in May 2015 and then the rent was increased to £15,250. The passing rent at the AVD was therefore £14,250. Mr Barker submitted that the rent used should have been £14,250 as that was what he was paying on the AVD. The valuation office had used the rent from May 2015 of £15,250 and had entered the appeal property into the 2017 list at £14,500.

15. In the 2010 rating list Mr Barker had successfully appealed his RV in the case *Mr S Barker v Sykes (VO)*. He had used two other roundabout sites in the locality being at Scarborough and Whitby. The details of the comparable properties in the 2017 list:

- Site for children's rides, Foreshore Road Scarborough. The rent passing at the AVD is £25,000 and the RV is £22,000 from 1 April 2017.

- AG & C Franklin, Battery Parade, Whitby. The passing rent at the AVD was £9,000 and the RV is £7,500 from 1 April 2020.

16. Mr Barker submitted that the RV of both these comparable properties were lower than the rent passing but in the case of the appeal property the RV was higher. He stated that Scarborough was a prime seaside location and the rides were not just for young children. Therefore, the rent was higher due to the increased level of trade. Filey was, in his opinion a 'sleepy Yorkshire coastal town', had a much lower level of trade.

17. In the case of Whitby, Mr Barker submitted that this was a busier location than the appeal property. It was on the pier and so the tenant did not have to carry out any repairs on the site. It was also open throughout the year and had no specified time when it could not operate. He drew the panel's attention to the much lower rent which he believed was not in line with the other two sites.

18. The panel noted the similarity in the mode and category of occupation of the comparable properties and their locality to the appeal property and put weight on them. They did note, however, that the rent on the Whitby site was not in line with the other two sites and so the panel could not attach much weight to the evidence of the Whitby site. The panel found that the evidence did however support that Scarborough was a more valuable location than Filey.

19. Mr Barker argued that *Lotus & Delta v Culverwell (VO) and Leicester City Council* demonstrated that the rent passing on the appeal property is the starting point but that other 'differing types of evidence' should be taken into account. He outlined to the panel that amusement arcades in Scarborough, Whitby and Filey have the same base rate in the 2017 list as they had in the 2010 list. This he argued demonstrated that the base rate for a similar property type had not changed between the two lists and yet the appeal property's RV increased from £7,500 in the 2010 list to £14,500 in the 2017 list.

20. He further argued that the base rate for the properties in Scarborough, Whitby and Filey were different with Scarborough having a much higher base rate to Whitby and then Filey. The base rate used for amusement arcades were £680 per m^2, £400 per m^2 and £120 per m^2 respectively. The RV for the sites for the roundabouts in the three towns however were £22,000, £7,250 and £14,500 which did not follow the same differential.

21. The panel was aware that in order to be a ‘like for like’ comparison the properties needed to be of the same mode and category of occupation as the appeal property. They therefore put little weight on that evidence. They did however note the relative values for properties in the three towns.

22. Mr Barker referred the panel to the case *Mr S Barker v Sykes* which involved the same appeal property but was an appeal against the 2010 list value. The panel in that case had taken into account the same comparable properties as in this case and had determined that the Scarborough site and the appeal property should be treated as comparable properties.

23. Mr Hammerton submitted that the case *Mr S Barker v Sykes* only related to the 2010 list and should not impact on the RV set for the appeal property in the 2017 list.

24. The panel, although aware that the decision of another Valuation Tribunal panel was not binding on this panel, did find that the decision in that case was relevant to the present case. They gave the case weight and held that the RV in a previous list is still relevant. The RV should be looked at afresh not anew when a new list is compiled.

25. Mr Hammerton submitted that the RV on the appeal property had been established based on the passing rent of £15,250 which commenced in May 2015 one month after the AVD. An allowance had then been deducted for the insurance which in the case of the appeal property was paid for by the landlord not the tenant. In the valuation assumptions the tenant is held to be responsible for the repairs and insurance of the property. This left a clear rent of £14,716 rounded down to an RV of £14,500.

26. In connection with the Scarborough site Mr Hammerton explained that the rent was £25,000 but was a stepped rent. In order to accord with the hypothetical tenancy used in rating the valuer had taken account of that and subsequently an RV of £22,000 was entered into the list.

27. Having considered both parties’ evidence the panel determined that the Scarborough site provided the best comparable property to the appeal property. The tone shown in the base rates on the amusement arcades demonstrated that Scarborough was a more valuable location than Filey. The rent on the Filey site therefore appeared to the panel to be high compared with that of the Scarborough site.

28. In connection with the case *Mr Barker v Mr Sykes (VO)* the panel in that case concluded that the site at Scarborough was the closest comparable property to the Filey site. They ordered that the RV on the Filey site should be the same as the RV on the Scarborough site.

29. The panel in this case found that the rent on the AVD of £14,250 was high when compared to the rent at Scarborough which was a much busier site. It also adjusted the rental figure to take into account the insurance being paid by the landlord. The difference between the RV in the 2010 list and that in the 2017 list was excessive. The panel therefore found an RV of £12,500 was fair and reasonable taking into account all the above factors.

30. In the appeal before it, the panel held that it had been provided with sufficient evidence to demonstrate that the rateable value was excessive. It therefore set the RV at £12,500 with effect from 1 April 2017.

31. The appeal is therefore allowed in part.

Order

32. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £12,500 with effect from 1 April 2017 within two weeks of the date of this order. The ratepayer is also entitled to a refund in full of the appeal fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Date: 4 December 2020

Appeal number: CHG100074141