THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal - Lotus and Delta v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141- Price per m² to be adopted – Weighting of Rental Evidence – connected parties – car parking – appeal allowed.

Re: Unit 4, Pocketts Yard, Maidenhead, SL6 9SL

APPEAL NUMBER: CHG100081855

BETWEEN:	Employment Law in Action	Appellant
	and	
	Valuation Officer	Respondent

BEFORE: Mr G D Coombes (Senior Member)

CLERK: Mr A Jolly

REMOTE HEARING: Wednesday 11 November 2020

Appearances: Mr P Symonds of Brown and Merry Commercial representing Employment Law in Action (appellant)

Ms C Ly representing the Valuation Officer (respondent)

Summary of decision

1. Appeal Allowed. RV £11750 determine with effect 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: A Notice of Appeal following the Valuation Officer's Challenge Case Decision Notice of 5 June 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. Due to the unavailability of a second member I sat alone as Chairman as provided for under paragraph 11 of the Valuation Tribunal for England's Tribunal Business Arrangements:-

   HEARINGS WHERE A MEMBER IS UNABLE TO SIT

   Where a panel member is unable to sit for any reason or fails to attend they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing.

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 me 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.

7. As Mr Symonds 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).

8. It was established that Mr Symond's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision.

9. However, Mr Symonds declared that he understood and accepted that his duty was to the Tribunal in giving her/his evidence and that he would comply with this as well as the requirements of her/his professional body regardless of whether or not the evidence supported the client's case.

10. I 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).

11. I therefore considered the "expert" evidence and attached such weight to it as it saw fit.

Issues

12. The issue before me concerned the correct RV to be applied to the appeal hereditament and the weighting of the evidence in accordance with the *Lotus and Delta* v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141.

13. In their Initial Response to the appellant's challenge the Valuation Officer had increased the RV of the appeal property from £15,500 to £17,750 with effect from 15 March 2019. The appellant was seeking RV £11,750 based on the rent for the hereditament and the Valuation Officer was defending £17,750.

Evidence and submissions

14. The appeal property was a traditional 1997 semi-detached brick and tiled purpose built office of average quality with a total area of 105.02 m² in terms of main space. It was located to the rear of shops via an archway in Cookham. The property benefitted from off street car parking.

15. Mr Symonds stated that the appeal hereditament had been marketed by two experienced valuers from July 2013 with an asking rent of £101.10 per m² with incentives available and including car parking from the local area. He stated that it failed to secure a tenant. In July 2015 his clients were prepared to purchase the property and the sale required an independent valuation to be carried out for the benefit of the bank. He stated that the valuation was completed by a local experienced surveyor on 6 July 2015, only three months after the antecedent valuation date giving a rental value, including car parking, of £11,750 per annum. The report refers to Cookham being a limited, secondary office location and highlights business parks in Bourne End being of better quality.

16. Mr Symonds stated that the property was partly owned by the tenant's SIPP (pension fund) (75%) and partly by two directors of the company (25%). The pension fund charges a rent from the company formalised by a 20 year lease of £11,750 per annum from 27 August 2015 on a full repairing/insuring basis with five yearly reviews. Whilst he accepted that the lease was between connected parties it nevertheless confirmed the appropriate rental level was £11,750 per annum and confirmed that the operations of the SIPP have to be based on market rental levels.

17. Mr Symonds stated that as a result of the Check process the valuation was increased by the Valuation Office from RV £15,500 to RV £17,750 with effect from 15 March 2019 giving a tone price of £160 per m², the highest in the range for the scheme the property had been entered into. He considered the increase was unwarranted in view of the rental evidence available on the appeal hereditament and also on other offices in Bourne End which was £138.95 per m² and High Street, Ascot at £120 per m². He considered these locations to be superior for office accommodation.. In support of his contention that Bourne End was a more valuable office location he cited Unit 5 Eghams Court which was let in November 2015 at £15.27 per ft² whereas the appeal property was let at £9.95.

18. Mr Symonds stated that he was seeking RV £11,750 which could be reached by two different valuations. The first was by adopting a price per m² of £112.50 or adopt a price of £125 per m² and to give a 10% allowance for the lack of presence on the High Street. Also he informed me that parking was not assessed separately in Bourne End but included within

the price per m² adopted which was not the case of the appeal property and therefore he had not added a separate value for the car parking but included it in the price per m².

19. Ms Ly stated that Cookham was a village on the River Thames and the premises were a two minute drive or 12 minute walk to the station. There was free on street car parking for two hours and a long stay car park close by.

20. She informed me that the burden of proof was on the appellant and that I must determine whether or not the appellant had proven his case.

21. She referred to the Lands Tribunal (now Upper Tribunal) decision of *Lotus and Delta* v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141 and the principles of the case. Whilst there was a rent on the appeal property it was between connected parties and therefore was not an arms-length open market agreement and also it occurred after the antecedent valuation date. For these reasons she considered that the rent could not be relied upon

22. In support of her contention that £160 per m² was correct she provided rental evidence and weighted that evidence in accordance with the principals of *Lotus and Delta* v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141.

23. Unit 3B Westacott Business Centre, Maidenhead where a lease of £14,196 per annum commenced on 1 April 2014 which analysed to £165.91 per m². She considered this to be the best evidence as it was a new lease prior to the antecedent valuation date and required little adjustment. She placed less weight on rental evidence at Egham Court, Bourne End, Leworth Place, Windsor; Grove Park Industrial Estate, White Waltham and Russell Street, Windsor as they were either different aged buildings or leases after the antecedent valuation date.

24. She referred to Mr Symonds, comparable properties stating that 32 High Street, Ascot had been assessed at between £165 per m² and £175 per m² and not £120 as had been stated in the appellant's representative's submission. Also whilst 1 Eghams Court had been assessed at £138.95 per m² it was an older property, within a different Billing Authority area and a different valuation scheme. She considered little weight should be placed on this property.

25. Ms Ly stated that whilst she accepted that the appeal hereditament did not have a presence on the High Street it was an office and therefore in her opinion would not be value significant and considered no allowance should be given. She also stated that the appeal property had secure parking and as there was only restricted free parking in the locality there was a value to the car parking spaces provided with the property. She also considered that they may be more amenities within Cookham than at Bourne End.

26. Ms Ly requested the appeal be dismissed as she was of the opinion that Mr Symonds had failed to prove that the RV was incorrect.

Decision and reasons

27. The appeal property was located in an area where there were no other offices to compare with. It stood alone and therefore I consider that the rental evidence for this property must be considered and then weighted accordingly.

28. Whilst I accept that the rent had been agreed after the antecedent valuation date Mr Symonds had provided evidence that it was being marketed since 2013 at the same level of rent that it eventually was leased for in August 2015. I therefore consider that the lease did provide some assistance as it was supported by the marketing details and the independent valuation carried out in July 2015.

29. I then had to consider the fact that the lease was between connected parties and therefore not an open market transaction. The lease was an agreement as part of a pension fund and therefore must reflect market levels. I therefore considered that whilst not an open market transaction it was nevertheless of assistance and this is supported by the fact that, prior to the lease, the property was marketed on the rental market for the same value as the lease and there had been an independent valuation carried out. I therefore consider that £11,750 was the market rental level for the appeal hereditament.

30. I considered the comparable rental evidence presented by the parties. The appeal property was the only office in the locality and therefore there was no directly comparable rental evidence. I was provided rental evidence from Business Parks outside of Cookham and other local towns of Windsor and Ascot.

31. I consider that the comparable properties were all situated in superior locations within greater office communities and not stand alone as was the appeal property. I accept that there may be more amenities within Cookham itself but consider that there must be sufficient amenities close to Bourne End to accommodate such a complex. As rents in Bourne End ranged from £138 per m² to £165 per m² I was of the opinion that the rental level of the appeal hereditament would be lower due to the difference in locality as supported by both the marketing details, valuation and the rent, albeit agreed four months after the antecedent valuation date.

32. I then considered the issues relating to car parking and also the lack of presence of the appeal property due to being located off the High Street. I consider that the marketing details and lease included the parking within the price per m² and therefore car parking should not be valued as a separate item within the valuation but included in the price per m². The fact that the property was located off the High Street and lacked a presence would be reflected in the marketed price per m² and within the lease agreed price and therefore I do not consider an allowance within the rating assessment was required to reflect this disadvantage.

33. I have been persuaded by the appellant that the RV adopted by the Valuation Officer was incorrect. In the absence of suitable office rental evidence within Cookham I consider the lease agreed at £11,750 was the best evidence, albeit it was agreed a few months after the antecedent valuation date but it had been supported by the market evidence and an independent valuation. I therefore allow the appeal and determine RV £11,750 with effect from 1 April 2017.

Order

34. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £11,750 with effect from 1 April 2017 within two weeks of the date of this order. The ratepayer is also entitled to a refund in full of the fee paid in accordance with

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

Date: Monday 30 November 2020

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