THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Offices and premises; assessment of comparable properties; End allowance; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed

RE: 6-8 Fountain Court, Bradley, Stoke BS32 4LA

APPEAL NUMBER: CHG100089946

BETWEEN:	Wards Solicitors LLP	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Ms C Caiquo (Senior Member)
Mr JM Imperato

CLERK: Miss K Hendry

REMOTE HEARING on Thursday 13 May 2021

APPEARANCES: Mr D Johnstone of Colliers International
Mr M Pearson for the Valuation Officer

Summary of decision

1. The appeal was dismissed and the appeal property's assessment remained unaltered at £44,500 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal made following the Valuation Officer's Challenge Case Decision Notice completed on 13 October 2020. The property had been entered in the 2017 rating list with a rateable value of £58,000 with effect from 1 April 2017 as office and premises. Following the check and challenge requests made by the appellant, the Valuation Officer revised the rateable value to £44,500.

3. Following the check and challenge requests made by the appellant, the Valuation Officer considered the current list entry to be unreasonable based on the evidence provided by the

appellant and revised the rateable value to £44,500. This was based on a reduction from £135m^2 to £100m^2. However, he disagreed with the rateable value proposed by the appellant in the challenge submission.

4. An appeal to the Valuation Tribunal for England (VTE) was received on 10 February 2021 and made on the grounds that the Rateable Value is excessive.

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. As Mr Johnstone 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. Mr Johnstone declared that he was not instructed under any conditional fee arrangement. He 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.

9. The appeal property is a large office building situated on a well-established office park, located in the Bradley Stoke area of north Bristol. It was built in 1989 and is three properties merged into one. It is situated close to the M4/M5 interchange. Fountain Court is a secondary office park.

10. 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.

Issue

11. The issue between the parties concerned whether a 20% size allowance should apply to the appeal property.

Evidence and submissions

12. The appellant’s representative, Mr Johnstone had provided the Tribunal with both parties' submissions.

13. Mr Johnstone was seeking a revised rateable value of either £29,750 based on a lower rate of £62.50m^2 with a 5% layout allowance. Or to maintain £100m^2 and the 5% size allowance but he was seeking 32.5% size allowance resulting in a revised rateable value of £30,000.

14. Mr Johnstone stated that his preferred valuation was to confirm the £100m^2 and apply a size allowance as he agreed £100m^2 was a fair and reasonable valuation.

15. In support of the appeal he referred to the following evidence;

    a) The property is subject to three separate leases, as follows;

        - Unit 6 –
          Rent from 24 June 2014 to 23 June 2016 at £8,675pa
          Rent from 24 June 2016 to 23 June 2017 at £17,350pa
          Landlord break at 23 September 2016

        - Unit 7 –
          Rent from 24 June 2014 to 23 June 2016 at £11,881.25pa
          Rent from 24 June 2016 to 23 June 2017 at £23,762.50pa
          Landlord break at 23 September 2016

        - Unit 8 –
          Rent from 24 June 2014 to 23 June 2016 at £7,062.50pa
          Rent from 24 June 2016 to 23 June 2017 at £14,125pa
          Landlord break at 23 September 2016.

    b) The rents are half for the first two years and then at full rent. The equates to a net effective rent for the whole property at £29.743.27pa from 24 June 2014 up to the landlord break. The landlord sought a break as he was considering redeveloping the site.

    c) In support of a size allowance Mr Johnstone referred to comparable property;

        - Specialist Computer Centre, at Units 9-10 Fountain Court situated next door to the appeal property.
          Took six year lease with 3 year break clause and rent review from 24 June 2014. Property has a rateable value of £20,000 against a rent of £14,333pa in the first year and £21,500 in the second and third year. It is not known is there was any rent free period agreed. The rent analyses at a net effective rent of £19,111. This equates to £128m^2.

    d) As this appeal property is three units merged into one the landlord has accepted a heavy discount to reflect this. The net effective rent of £29.743.27 equates to £59m^2. This supports that a further allowance was conceded by the landlord and supports a further size allowance than the 5% allowed for the layout. These two rents were agreed on the same date of 24 June 2014.

    e) The appeal property is 412m^2. The next biggest out of 9 assessments is 284m^2. The average size of offices on Fountain Court is 172m^2. The appeal property is 240% above the norm for the estate.

16. To support the rateable value in the 2017 list, Mr Pearson acting as advocate and expert witness relied upon the following evidence:

a) The appeal property is held on three separate leases and not one lease for a larger unit.

b) The rent had been analysed to £36,193 (taking into account the full and half rent) analysed at rate of £80.28 from 24 June 2014. Rent on 9-10 Fountain Court analysed to £126.07 and was on a lease with a 5 year term. First Floor 11 Fountain Court analysed to £109.56 from 1 March 2014, also on a 5 year term. 1st Floor 9-10 Fountain Court had a rent from 1 March 2015 which analysed to £126.07, also on a 5 year lease. This supported that the appeal property rent is out of kilter with other assessment rents because it is subject to a landlord only break clause at year two. The tenant has no firm knowledge of continuance.

c) The appeal property rent had increased from 1 June 2018 onto a 5 year lease term which analysed at £115.07, which was in line with other rents on Fountain Court.

d) Mr Pearson referred to case law;

- *R v South Staffordshire Waterworks Co (1885)*
  "A tenant from year to year is not a tenant for 1,2,3 or 4 years but he is considered as a tenant capable of enjoying the property for an indefinite time".

- *Humber Ltd v Jones (VO) (1960)*
  Shows that it would not be correct to reduce the rateable value simply because of the apparent shortness of the hypothetical tenancy. The length of the hypothetical tenancy is not the treated as for only one year but will have a similar length to that normally be expected for this type of property being valued.

e) Looking at other rental assessments on Fountain Court, all are held on a 5 year lease. The new lease renewal on the appeal property is effective from 1 June 2018 for 5 years.

f) Quantum is not applicable for an office of 412m^2. Any adjustment for the fact three leases are held for the appeal property is reflected in the 5% allowance already given for layout.

Decision and reasons

17. 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".

18. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date AVD.

19. The parties had referred to the Lands Tribunal decision in *Lotus and Delta* which provided guidance on the weight to be attached to rental and assessment evidence. The rent was considered the starting point and more weight was attached to those rents closest to the statutory criteria of rateable value and which were agreed closest to the AVD. Other rents were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. Other comparable assessments were also relevant but to a lesser degree. In light of all the evidence an opinion could be formed on the rental value of the appeal property, the weight to be attributed to the different types of evidence depending on one hand on the nature of the actual rent and, on the other hand, the degree of comparability found in other properties. In those cases where there were no rents available for comparison, a review of other assessments may be helpful, but in such circumstances it would clearly be more difficult to reject the evidence provided by the actual rent.

20. Having regard to the rent analysis, the panel concluded that £100m^2 was a reasonable and fair assessment. This was also supported by Mr Johnstone's valuation seeking for the panel to confirm £100m^2 with a large percentage reduction for quantum.

21. After carefully considering all the evidence before the panel, they were not persuaded by Mr Johnstone's argument that an end allowance for size should be granted. The appellant of the appeal property had taken the unit on three separate leases rather than the one lease. The panel also found that the rent was lower due to the fact the landlord had inserted a landlord break clause after two years to give him the option to develop the site in comparison with other lettings on Fountain Court which were on a term of 5 year lease with tenant break clauses.

22. The rent on the appeal property which increased to an analysed rate of £115.07 in June 2018 did not support Mr Johnstone's argument that the rent was lower due to the large size of the appeal property, as the rent was in line with other assessments which were smaller.

23. In light of all the evidence, the panel were not persuaded by the appellant's argument to amend the rate of £100m^2, or to apply a 32.5% end allowance for size They were satisfied that the Valuation Officer's valuation of the appeal property was reasonable.

24. Accordingly, the appeal fails and must be dismissed.

Date: 7 June 2021

Appeal number: CHG100089946