THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Factory and premises; main space price; appeal dismissed.*

RE: Unit 6, Parkway Rise, Sheffield, S9 4WQ

APPEAL NUMBER: CHG100090813

BETWEEN:	Arkote Limited	Appellant
	and	
	Miss J Moore (Valuation Officer)	Respondent

BEFORE: Miss M Dowrick (Senior Member)
Ms S Eze

CLERK: Mr R Gath

REMOTE HEARING 3 on 15 January 2021

APPEARANCES: Miss E Saunders from Altus (Appellant's representative)
Mr N Moran (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed.

Introduction

2. This appeal has been brought in respect of the following: Unit 6, Parkway Rise, Sheffield, S9 4WQ (the 'appeal property'), which was entered in the 2017 rating list as 'Factory and premises' at rateable value £112,000 effective from 1 April 2017. It has an unadjusted value of £50/m^2. However, Miss Saunders was seeking a rateable value of £78,400 with an unadjusted main space price of £34.75/m^2, but on reflection accepted that a rateable value of £105,000 with an unadjusted main space price of £46.50/m^2 was more appropriate.

3. The appeal property was a steel portal framed unit built in 2008 with ten parking spaces. It was located in an area of similar units, just off The Parkway, which is a main road into Sheffield from the M1. It had an area of approximately 2121m^2. The appeal property was held on a 15 year lease effective from February 2009 at a rent of £120,750. The lease contains provisions for a five yearly rent review, however, the rent did not increase in 2014 but it increased in 2019 to £131,250.

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, Miss Saunders made an appeal to this Tribunal because she 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 26 October 2020 following the Valuation Officer’s Decision Notice of 14 October 2020 in respect of the appeal property (hereditament).

8. Miss Saunders had declared that her firm is on a contingency fee basis. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Miss Saunders’ declaration of truth included a statement that she understood and accepted that her duty is to the Tribunal in giving her evidence and she will comply with this as well as the requirements of her professional body regardless of whether or not the evidence supports her client’s case.

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

10. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as it being overlooked.

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

Issues

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

Evidence and submissions

12. Miss Saunders had provided the Tribunal with both parties' submissions. The evidence included the following: her statement of case, a location plan, a photograph of the appeal property, a copy of the lease for Unit 2, Parkway Business Centre, Parkway Drive, Sheffield, effective from 23 September 2014, rental summaries for her comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice and copies of correspondence that had passed between the parties.

13. She argued that as the rent did not increase in 2014, the appeal property was over rented and was therefore not reliable to determine the rateable value. She argued that rental evidence from properties within the locality supported her argument and asked the panel to allow the appeal.

14. Mr Moran was representing the Valuation Officer as advocate and expert witness.

15. He contended that the rateable value was within the grounds of a reasonable valuation, that the evidence supported this and he asked the panel to dismiss the appeal.

Decision and reasons

16. 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.

17. There was another important date for rating appeals and that was known as the 'material day.' This was the date on which the physical factors had to be taken into account. In this appeal, the material day was 1 April 2017.

18. 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 –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> 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; and

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. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted

19. Miss Saunders suggested that the rent was not reliable as it had not increased between the commencement of the lease and the AVD. However, to support her argument for the main space price of £34.75/m^2 and that the resultant rateable value was incorrect, she provided the following comparable properties:

Property	Rent	Total significant Area	Main Space Price
Unit 2, Parkway Business Centre	£76,500. 3 years rent free. First years rent £57,000.	1497m^2	£47.00/m^2
Unit 1, Parkway Business Centre	£131,000. 1 year rent free.	2697m^2	£50.00/m^2
Parkway House, 11-13 Parkway Rise	£54,000. 4 Months' rent free.	908m^2	£52.00/m^2
Unit 3, Parkway Rise	£31,262. Stepped rent. £20,600 for the first 18 months and 6 months' rent free.	579m^2	£59.00/m^2
Unit 1, Parkway Close	£35,000 on a 10 year lease.	962m^2	£36.25/m^2
Greenham Trading, Parkway Close	£92,500. £46,250 for the first 22 months.	2,248m^2	£31.75/m^2

20. Miss Saunders accepted that Unit 3 Parkway Rise was smaller, although it was in the same VOA scheme. She had analysed the rent to £43.70/m^2 which was broadly similar to the unadjusted rate of £46.50/m^2 for the appeal property which she was seeking. She also acknowledged that Unit 1, Parkway Close was older than the appeal property having been built in 1974, and it was half the size of the appeal property. However, the 2016 rent analysed to £36.25/m^2.

21. Greenham Trading was a similar size to the appeal property and had a main space price of £31.75/m^2. This property was older, having been built in 1978. Miss Saunders acknowledged the lease was three and a half years beyond the AVD, however, between 2015 and 2018 she confirmed that rental values in the locality had not fallen.

22. Mr Moran contended that the rateable value was reasonable. He argued that Miss Saunders' comparable properties were not 'like for like' comparisons, with them being either approximately 30 years older than the appeal property or substantially smaller.

23. He also explained that the rents were not reliable as they needed a significant amount of adjustment, with some having a number of years rent free. For example:

    a) Unit 1 Parkway Close was in a different VO scheme and the rent was only a shell rent;
    b) Unit 3 Parkway Rise, the lease commenced 17 months prior to the AVD. It was also given a significant period for fitting out works; and
    c) Greenham Trading, the lease was over three years after the AVD and it was older than the appeal property.

24. Mr Moran also had doubts about the reliability of the rent for Unit 5, Parkway Business Centre that Miss Saunders had relied upon as the information on the VOA forms of returns differed from the rents quoted by her.

25. The panel considered the evidence presented to it. The panel applied little weight to most of Miss Saunders' comparable properties, for the reasons advanced by Mr Moran. Greenham Trading was older, Parkway House, Unit 3 Parkway Rise and Unit 1 Parkway Close were all significantly smaller. Even though there were arguments about the reliability of the rent, it was clear to the panel even by looking at the rents that the units were not 'like for like' comparable properties as the rents were somewhat less than the rent for the appeal property.

26. Furthermore, some of these units were older and the panel would expect them to be valued lower due to the age, lack of modern facilities and would not reflect modern ways of working.

27. After applying little weight to those hereditaments, to support her case, Miss Saunders also relied on the evidence for Units 1 and 2 Parkway Business Centre. Unit 1 was similar in size to the appeal property, but it had a rateable value of £138,00 which was greater than the rateable value of the appeal property. It also had a main space price of £50.00/m^2. This did not appear to support Miss Saunders' argument that the rateable value was incorrect.

28. Both parties also relied on Unit 2 Parkway Business Centre to support their respective arguments. It was approximately 1/3 smaller than the appeal property, and had a rateable value of £80,000. Neither party had argued that this hereditament differed from the appeal property in anything apart from size. If the panel was to allow the appeal in full, then it would not be correct that a larger property would have a lower rateable value. However, at £80,000, the rateable value for Unit 2 was approximately 1/3 smaller than the appeal property, and therefore supported Mr Moran's contention that the rateable value was correct.

29. Mr Moran contended that he considered the whole basket of evidence to support his case that the rateable value was correct. To support his opinion he referred to Unit 5 Parkway Business Centre. The total significant area, which Miss Saunders suggested was the most reliable way to compare the properties was 2177m^2 and was therefore very similar in size to the appeal property. The rent in 2013 as

quoted by CVS on a proposal made against the 2010 rating list was £168,000, £48,000 more than the rent for the appeal property. There was arguments about the leases for this unit but, ultimately, the rateable value was £123,000 higher than the appeal property. This unit and Unit 2 Parkway Business Centre both had an unadjusted rate of £50/m^2. This indicated to the panel that this was an emerging tone of value for units of this size.

30. No evidence was presented to the panel to show that Unit 2 and Unit 5 Parkway Business Centre were significantly better than the appeal property. If they were, it may have helped to persuade the panel why an unadjusted rate of £50/m^2 should not also be applicable to the appeal property.

31. Given the totality of evidence presented to the panel, it appeared to it that the rateable value for the appeal property was correct. Although Miss Saunders had provided some comparable properties, they were smaller and therefore not 'like for like' and those that were a similar size had larger rateable values. The panel therefore concluded that the grounds of appeal namely that the rating valuation was not reasonable, had not been made out and the panel dismissed the appeal.

Date: 10 February 2021

Appeal number: CHG100090813