THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Multi storey car park; Price per parking space; No rental evidence; Appeal allowed in part.

RE: Multi Storey Car Park, Horsefair Shopping Centre, Wisbech PE13 1AR

APPEAL NUMBER: CHG100101282

BETWEEN: New River Retail Wisbech Ltd (represented by Dunlop Heywood) — Appellant

And

Jo Moore (Valuation Officer) — Respondent

PANEL: Ms N E Talbot-Hadley (Senior Member)

CLERK: Ms S Hodgson

ON: 15 April 2021

APPEARANCES: Mr Michael Rowbottom of Dunlop Heywood for the appellant
Mr Mark Williams of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal allowed in part. The price per car parking space is reduced to £80 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £42,750 with effect from 1 April 2017. The RV was reduced to £37,500 with effect 1 April 2017, following the challenge which was completed on 1 December 2020. The appellant sought a further reduction to £21,000 based on £60 per car parking space.

3. The appeal hereditament was a two storey car parking building located in Wisbech. It was built in 1987 and was next to the Horsefair Shopping Centre in the town centre. At the time of the challenge there were 325 car parking spaces and 27 disabled and parent and child car parking spaces.

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. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two Members of the Tribunal, including at least one Senior Member. However, the Arrangements also provide that a Senior Member may sit alone to avoid a postponement of the hearing where a second Member of the Tribunal is unable to sit.

7. In respect of this hearing, another Member of the Tribunal was unable to sit. I am therefore satisfied that, in order to avoid a postponement of the hearing, I am authorised by the Tribunal Business Arrangements to hear and determine this appeal sitting alone.

8. 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

9. The issue I had to consider was the correct RV to be ascribed to the subject hereditament.

Evidence and submissions

10. Mr Rowbottom 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 Rowbottom declared that he was not instructed under any conditional fee arrangement. Mr Rowbottom 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.

11. Mr Williams appeared on behalf of the respondent as both Advocate and expert witness. Mr Williams was not instructed under any conditional fee arrangement.

12. 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).

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

14. Mr Rowbottom advised me that the appeal hereditament was owned freehold, and that the appellant owned the multi storey car park as well as the Horsefair Shopping Centre. He explained that the other car parks in Wisbech are owned by the council and the appellant had to be competitive with pricing due to the council's free parking scheme. This meant that between 2012 and 2015 the income of the car park had reduced by £13,000 per year.

15. Mr Williams explained that there was little comparable evidence for car parks in the locality. He stated, and it was agreed by Mr Rowbottom, that Wisbech was not a destination shopping town and was serviced by a local rural population. The subject property could therefore not be compared to other multi storey car parks in larger towns such as Peterborough as this was a 45-mile round trip from Wisbech.

16. Both parties referred to the other car parks in the town, Somers Road Car Park, St Peter's Car Park, and Chapel Road Car Park as comparable assessment evidence. Mr Williams asked me to confirm the RV at £37,500 with effect from 1 April 2017, and Mr Rowbottom asked me to reduce the RV to £21,000 with effect from 1 April 2017.

Decision and reasons

17. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> *2(1) 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 an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No.2841).

19. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

20. The parties advised me that there was no rental evidence for any of the car parks in Wisbech as they were all owned freehold. The subject hereditament was the only car park in the area not owned by the council.

21. Mr Rowbottom provided an extract from the VOA rating manual and I heard that the usual way to value car parks is to first look at the rental evidence and, where there is none, the receipts of the property are considered. It was suggested that as a guide the RV would be calculated at 30-50% of the agreed receipts.

22. Mr Williams contended that as the subject hereditament had started offering free parking for two hours in response to the council's scheme, the receipts for the site were skewed. Therefore, the value in the 2017 rating list was based on what had been agreed in the 2010 rating list. Mr Williams stated that it was difficult to ignore the drop in receipts and that is why the price per car park space was reduced from £120 to £105 at the challenge stage.

23. The evidence provided showed that the tone in Wisbech for car parks was between £60 per space and £145 per space and that this was the case in the 2010 list also. I found Mr Rowbottom's argument persuasive that it was hard to establish a tone in the area when there were no other privately owned car parks.

24. Mr Rowbottom believed that the best comparable car park was Chapel Road which was priced at £60 per space. It was my opinion that Chapel Road Car Park was located across the river from the subject hereditament and the other comparable car parks, Somers Road and St Peter's. Chapel Road was not in the town centre and did not have the benefit of being part of a shopping centre. For this reason, I found that the subject car park should be valued higher than Chapel Road Car Park.

25. I reviewed the receipts which covered the years from 2012 to 2015. Mr Rowbottom had estimated the fair maintainable trade (FMT) to be £12,000 at the AVD of 1 April 2015. I noted that the valuation provided by Mr Rowbottom did not equate to 30-50% of the FMT as stated in the VOA guidelines. 50% of the FMT would have resulted in an RV of £6,000 and yet Mr Rowbottom had requested an RV of £21,000.

26. I was advised that while the receipts were lower than the requested RV, as a valuer, Mr Rowbottom had to acknowledge that the free parking offered to customers affected the income. However, as the owner of the car park also owned the shopping centre, there was value in reducing the car park income in order to bring customers into the shopping centre.

27. I found the comparable assessment evidence of Somer's Road Car Park and St Peter's Car Park, valued at £145 per parking space, less helpful. As council owned car parks, I heard that it was common for assessments not to be challenged as the income from the non-domestic rates is paid back into the council and is therefore circular income.

28. Based on the evidence before me, I am of the view that a reduction in the RV to £28,500 is warranted for the subject hereditament. There was a significant decrease in income leading up to the AVD and while the free parking scheme accounted for this, I was not persuaded that the comparable assessment evidence supported a value of £105 per parking space for the subject hereditament. This resulted in the following revised calculation:

Floor	**Description**	**Number of spaces**	**Price per space**	**Value**
Ground	Parking spaces	136	80.00	£10,880
First	Parking spaces	189	80.00	£15,120
Ground	Disabled bays	27	96.00	£2,592
Total		352		£28,592
			RV say	£28,500
			Effective from	1 April 2017

29. Therefore, the appeal is allowed in part.

Order

30. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of Multi Storey Car Park, Horsefair Shopping Centre, Wisbech within two weeks, to £28,500 after rounding with effect from 1 April 2017.

31. If the appeal was successful (either in part or full) a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 11 May 2021

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