VALUATION TRIBUNAL FOR ENGLAND

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

RE: Sirius Minerals PLC, Resolution House, Scarborough, YO11 3ZB

APPEAL NUMBER: CHG100101635

BETWEEN:	York Potash Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mr A Jobanputra (Senior member sitting alone)

CLERK: Mr R Gath

REMOTE HEARING:

ON: 13 November 2020

APPEARANCES: Mr P Clarkson from Lambert Smith Hampton (Appellant's representative)
Mr J Clements (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed.

Introduction

2. This appeal has been brought in respect of the following: Sirius Minerals PLC, Resolution House, Scarborough, YO11 3ZB (the 'appeal property'), which was entered in the 2017 rating list as 'offices and premises' at rateable value £292,500 effective from 2 June 2017 with a main space price of £80.72/m^2. However, following the challenge the Valuation Office Agency (VOA) subsequently conceded that the rateable value was not reasonable and reduced it to £272,500. However,

Mr Clarkson was seeking a rateable value of £210,000 with a main space price of £65/m^2.

3. The appeal property was built in 2002. It was located just off the A64 and it was the former headquarters of the Scarborough Building Society. It had an area of approximately 3450m^2. It was vacated by them in 2010 following its merger with Skipton Building Society. The appeal property was subsequently advertised for sale or let from January 2011 and remained unoccupied until the appellant company took out a lease on it in 2017. Prior to the lease commencing, it had undergone improvement works costing £1.9 million.

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, Mr Clarkson made an appeal to this Tribunal because he 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 15 May 2020 following the Valuation Officer’s Decision Notice of 20 March 2020 in respect of the appeal property (hereditament).

8. Mr Clarkson had declared that his 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), Mr Clarkson’s declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

9. I 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. I heard this appeal alone as the Tribunal’s business arrangements permit me to do so.

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

11. 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.

Issues

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

Evidence and submissions

13. Mr Clarkson had provided the Tribunal with both parties' submissions. The evidence included the following: his statement of case, a plan and photographs of the appeal property and comparable properties, a copy of the lease for the appeal property and comparable properties, marketing information for comparable properties, summary valuations for the comparable properties, a copy of the challenge proposal, the Valuation Office Agency's challenge decision notice and copies of correspondence that had passed between the parties.

14. He argued that as the appeal property has been empty for six years, there was little demand for a property such as this. To support his argument, he referred to Johnson publishing who were interested in leasing the appeal property. However, they subsequently rented other premises, Newchase Court which was smaller at 858m^2. The rent for these premises were £54,950 which analysed at an unadjusted rate of £64/m^2. He therefore argued that the appeal property should have a smaller main space price of £57.60/m^2 to reflect a quantum allowance and asked me to allow the appeal.

15. Mr Clements was representing the Valuation Officer as advocate and expert witness. The VOA had conceded that the rateable value was not reasonable and had offered to reduce the rateable value down to £272,000.

16. He contended that a substantial amount of money had been spent on refurbishing the appeal property and there was demand for such properties. However, due to the nature of the appeal property it would take a while to find a suitable tenant, but there had been some interest in it. Given all of this, in his opinion, the rateable value was correct and he asked me to dismiss the appeal.

Decision and reasons

17. The task for me 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.

18. 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.

19. 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; 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.

20. The property was leased from 1 March 2017 on a full repair and insurance (FRI), fifteen year lease, on a stepped rent basis. The rent for the first year was £100,000, then increasing each year to £200,000, £250,000 and then £435,000 from 1 March 2020. The appellants were given a three-month rent free period. The appellants subsequently purchased the appeal property in 2019. Mr Clements had analysed the rent to £279,000, which was the reason agreed to reduce the rateable value down to £272,000.

21. I applied little weight to the rental evidence as it was unreliable as it did not fit the rating hypotheses as being a year to year rent; it had been set two years after the AVD and, it was a stepped rent.

22. Mr Clarkson also suggested that the rent was not reliable and therefore argued that there was a tone of the list emerging for offices in the locality and provided the following comparable properties to support his contention:

Property	Area	Rent	Main Space Price
Resolution House, Lake View, Eastfield, Scarborough (appeal property)	3450m^2	£279,000	£75/m^2
Newlands House, Caxton Way, Scarborough	1409m^2	£85,000	£53.25/m^2
Units 10A-11A, Newchase Court, Hopper Hill Road, Scarborough	311.53m^2 and 546.89m^2	£54,950 for both units	£64/m^2

23. As Johnson Press looked at leasing the appeal property, but had taken the lease on Units 10A-11A, Newchase Court, Mr Clarkson calculated the main space price for the appeal property by taking the unadjusted main space price for these units, £64/m^2, reducing it to allow for a quantum allowance but then with an addition due to its location and quality. By doing this, he calculated an unadjusted main space price of £57.60/m^2 for the appeal property.

24. Mr Clement disagreed with Mr Clarkson's methodology for calculating the main space price. The appeal property would be more of a prestige building, it was located in landscaped gardens, and could not be compared to units in an industrial estate.

25. I agree with Mr Clements, in that the comparable properties appealed to different clients to those who may want a larger prestige building for their headquarters. The comparable properties were not 'like for like' comparable properties and therefore I treated the main space price of these with caution.

26. He also questioned that if there was no demand for this type of property, why the owners spent nearly £2 million refurbishing them. He also argued that there had been prospective tenants, such as the Johnson Press and Scarborough Council were going to lease the property, but received objections from its residents who feared that moving to these offices would have a negative effect on the economy in Scarborough. He therefore disagreed with Mr Clarkson that there was no demand for the appeal property.

27. In this respect, I also agree with Mr Clements. There was some interest in the appeal property, even though the interest did not result in a letting until some six years later. But, this may not be unusual given the type of property and its location. Furthermore, I was persuaded by the fact that nearly £2 million was spent on refurbishment.

28. Both parties accepted that the appeal property was unique in Scarborough in terms of build and size. However, whilst I accept that the appeal property was unique, it could have been helpful for both parties to have provided some comparable properties in terms of size and headquarters type buildings, even if they were further afield.

29. However, I was not convinced by any of Mr Clarkson's arguments. His comparable properties were not 'like for like' comparisons, the owners would not have refurbished the property if they did not think that it would result in any returns on their investment. Furthermore, the appeal property did have some interest and it was subsequently tenanted albeit some six years after it was first marketed which indicated that there was some demand for the appeal property.

30. Therefore, given the above, the grounds of appeal namely that the rating valuation was not reasonable, has not been made out and I dismissed the appeal.

Date: 24 November 2020

Appeal number: CHG100101635