THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Offices and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed

RE: Unit 7, Great Cliffe Court, Great Cliffe Road, Barnsley, S75 3SP

APPEAL NUMBER: CHG100118431

BETWEEN:	Moonstead Estates Ltd	Appellant
	and	
	Mrs J Moore (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 R Cohen of Sanderson Weatherall
Mr M Dent for the Valuation Officer

Summary of decision

1. The appeal was dismissed and the appeal property's assessment remained unaltered at £30,500 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 which was issued on 14 January 2021 following a challenge submitted on 14 August 2019. The property had been entered in the 2017 rating list with a rateable value of £35,000 with effect from 1 April 2017 as Office and Premises. This was based on a rate of £126m^2.

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 by way of a Valuation Office Notice to £30,500. This was based on a revised rate of £105m^2 plus 5% uplift for air conditioning equating to £110.25m^2. However, he disagreed with the rateable value proposed by the appellant in the challenge submission.

4. The appellant was seeking a further reduction to £24,750 based on £89.25m^2. An appeal to the Valuation Tribunal for England (VTE) was received on 11 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 Cohen 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 Cohen 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 modern, two storey office which was constructed in 2006, on an out of town office park. The office comprises of two semi-detached two storey self-contained office properties with air conditioning and a disabled access lift. It comprises of 138.7m^2 on the ground floor and 139.1m^2 on the first floor. It also has onsite car parking facilities. The office is one of eight offices situated within Great Cliffe Court. Great Cliffe Court is on the outskirts of Barnsley. It benefits from excellent road access to the M1 motorway by way of the link road A628, with Junction 37 situated half a mile away. Dodworth train station is situated close by which offers good connections with Barnsley town centre.

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.

Preliminary issue

11. Mr Cohen emailed the tribunal and Mr Dent on 12 May 2021 explaining that it had come to his attention less than 24 hours before that one of the comparable properties, Unit 5 Great Cliffe Court, referenced by both himself and the Valuation Officer had been subject to a new

lease on 1 March 2021. Mr Cohen sought to include this new lease as evidence to which Mr Dent objected.

12. Mr Cohen explained to the panel that as the lease was taken out less than two months ago, this was after he had submitted his appeal to the Tribunal and it therefore did not exist at the time. He felt that as expert, it was his duty to provide this evidence to the panel. He explained that the new evidence does not alter his argument or that it would be relied on heavily. It was not a key rent and he appreciated that it fell six years from the antecedent valuation date (AVD) of 1 April 2015. He felt that the information reinforces some of the contentions made and assists in the weighting of the existing evidence.

13. Mr Dent objected on the grounds that the evidence was submitted at very short notice and he had not had the opportunity to respond to it or take it into consideration having only received it the morning before the tribunal. He explained to the panel that it is outside the spirit of check, challenge appeal. He did take on board the point made by Mr Cohen stating that the lease is six years post AVD and a rent arrived at during a different economic climate.

14. When asked by the panel, Mr Dent confirmed he had had the opportunity to read the new evidence and would not be looking to postpone the hearing if it was to be allowed by the panel. However, he reiterated that the new lease is too far removed from the AVD.

15. The panel had regard to Regulation 17A (1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269 provides that the Tribunal may only admit new evidence where –

    (a) That evidence –

    (i) Is provided by a party to the appeal;
    (ii) Relates to the ground on which the proposal was made; and
    (iii) Was not known to the party and could not reasonably have been acquired by the third party before the proposal was determined under Part 2 of the NDR Regulations; or
    (iv) All the parties to the appeal agree in writing to the party providing the new evidence.

16. The panel were satisfied that Mr Cohen could not have known about this additional evidence any sooner than he did. Whilst it was brought to Mr Dent's attention late, after hearing his response to the late evidence, the panel did not feel that he would be prejudiced if they allowed the evidence to be submitted. Therefore the panel granted permission for the additional late evidence to be included in the hearing. The panel offered Mr Dent the opportunity of a brief adjournment to consider this new evidence to which he declined.

Issue

17. The issue between the parties concerned the rateable value of the appeal property and, specifically, the rate per m^2 that should apply.

18. Mr Cohen, for the appellant, sought a reduction to £24,750 based on an unadjusted rate of £85.00m^2 plus 5% for air-conditioning equalling a total of £89.25m^2. The Valuation Officer, Mr Dent asked the panel to confirm the rateable value of £30,500 which was based on an unadjusted rate of £105m^2 plus 5% for air-conditioning equating to 110.25m^2.

Evidence and submissions

19. The appellant's representative, Mr Cohen had provided the Tribunal with both parties' submissions.

20. Mr Cohen stated that the office park was developed by Grant Doyle, and Moonstead Estates Ltd. Moonstead Estates Ltd retained a couple of the units that they've let out and they also occupy one of the units as an accountancy firm. The other developer, Grant Doyle also occupies one of the units. Just over half of the units have been sold and are held in other ownerships. Few of the units are held on unconnected terms.

21. Mr Cohen referred the panel to a previous tribunal decision in relation to the 2005 list 9440513619674/257N05). In this decision the Valuation Officer put forward comparable properties, but significant weight was attached to Norec House, Unit 1 and Capitol Close. It was the opinion of the Valuation Officer that Norec House was one of the more comparable properties in the vicinity.

22. Mr Cohen confirmed that the appellant put forward another comparable of Brook House which was considered to be the most relevant comparable in terms of age, size, quality and locality. These three properties are all within a few hundred meters of the appeal property. There are no other offices nearby, the area is primarily residential and an industrial type location.

23. The tribunal panel concluded that the appeal property, Unit 2 Great Cliffe Court should be valued in line with Norec House and Brook House. This was valued at £85m^2 plus 5% for air-conditioning.

24. Under the principles established in Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA 141, the starting point is the rent, next consideration being comparable property rents, then other assessments and then stand back and look at the weighting of the evidence. Where there are no rents available of comparable properties, taking a view on other assessments may be helpful. This is relevant as aside from the appeal property rent which is slightly removed from the AVD, the rental evidence is not straight forward. There are a number of connected parties, and others have nil increases at rent review. The majority of commercial rent review clauses are normally open market rental value with an upwards only clause. Therefore rent cannot be decreased at review and would need to be determined at being either the higher of the passing rent or the market rental value at the time. Therefore if there is a nil increase, it does not necessarily reflect market rent at the date of the review. The open market rent could be lower than the passing rent but the rent would have to stay the same as it was previously.

25. The rent on the appeal property was £28,210 p.a, a new letting from September 2018, three years after the AVD. It had with three months' rent free period and no reviews. Mr Cohen had analysed this rent to an unadjusted rate of £96.71m^2.

26. Mr Cohen referred to the rental information available for Great Cliffe Court;

Address	Total Area	Details	Net Rent	Analysis
Unit 1, Great Cliffe Court	269.10m^2	Freehold / connected parties Occupied and owned by Doyle / Arcus Technology		
Ground Floor, Unit 2, Great Cliffe Court	138.50m^2	Freehold / connected parties		

		Occupied by Reed Smith Accountants. Owned by Moonstead Estates Ltd		
First Floor, Unit 2, Great Cliffe Court	137.90m^2	Occupied by Handelsbanken for 15 year terms from 22 October 2010. 3 yearly reviews with a break at 5 and 10 years. 2013 & 2016 reviews agreed at nil increase.	£16,000	£116.03
Life Time House (unit 3) Great Cliffe Court	284.80m^2	Freehold / connected parties Occupied by Life Time Financial Management. Understood to be owned by their pension fund.		
Ground Floor, Unit 4, Great Cliffe Court	138.70m^2	Freehold / connected parties Occupied by GM Wilson Solicitors, owned by Brooke Property Developments (senior partner at GM Wilson Solicitors)		
First Floor, Unit 4, Great Cliffe Court	139.10m^2	Let to Hoyland Common Academy Trust from February 2019 for £16,000 per annum (p.a) 3 year term, with 2y year break inclusive of utilities (estimated by landlord and letting agent at £3,000 p.a)	£13,000	£93.46
Unit 5, Great Cliffe Court	277.80m^2	Let to Kinetic from October 2007 Renewed on 3 year term from 28 September 2016 Rent of £35,250 p.a same as October 2017 agreement	£35,250	£126.89
Unit 6, Great Cliffe Court	274.80m^2	Vacant – Marketed by Sanderson Weatherall since February 2018 at asking rent of £10m^2.		
Unit 7, Great Cliffe Court	277.80m^2	Let to Tarmac Trading Ltd in September 2018. 3 months rent free and no reviews	£28,210	£101.55
Unit 8, Great Cliffe Court	277.80m^2	Freehold / connected parties Occupied by Life Time Financial Management. Understood to be owned by their pension fund.		

27. He stated that First Floor Unit 2, which was let to Handelsbanken and has upward only rent reviews, was agreed at nil rent increases in 2013 and 2016. Therefore it is not reliable evidence of the market as at 2013 and 2016. First Floor Unit 4, is not a straight forward letting. It was marketed in 2018 and was let for £16,000 in February 2019. The rent is inclusive of utilities and it was estimated the cost which was £3,000.

28. Unit 5 was let to Kinetic for £35,250 p.a. It had nil increase reviews throughout 2013. There was a lease renewal in 2016 for £35,250. It is thought, but has not been confirmed that Kinetic invested money into I.T structuring a property and were receiving capital allowances on it and this is why they renewed the lease for a short three year period. When the three years was up they did vacate the property. The unit now has a new lease, the lease which was allowed to be included late as new evidence. It was relet just under two months ago for £26,000 with four months rent free. This lease supports the fact that the rent at £35,250 nil increase is not representative of market value at that time. Mr Cohen stated that he realises the rent of £26,000 is subject to different market value conditions given that we are currently in or coming towards the end of a pandemic.

29. Mr Cohen argued that Unit 6 was currently being marketed since 2018 at an asking rent of lower than what the Valuation Officer is proposing the rateable value should be. However, it is a higher figure than what he was proposing the rateable value should be. Mr Cohen stated that this is an asking price, and usually there would be incentives such as rent free period etc.

30. Mr Cohen stated there are few open market lettings available on the business estate close to the AVD. Having regard to the 2005 tribunal decision, the panel were faced with the same issues regarding the rental evidence and the decision specifically mention that the rental evidence was quite far removed from the AVD of April 2003. The 2005 decision accepted that both Brook House and Norec House were both very good comparable properties given that they are in the immediate locality, of a similar age, size and construction.

Address	Size	2005 List unadjusted rate £/m^2	2010 List unadjusted rate £/m^2	2017 List unadjusted rate £/m^2
Unit 7 Great Cliffe Court	277.80m^2	£85.00	£105.00	£120.00
Brook House	260.92m^2	£68.50	£70.00	£60.00
Norec House	290.60m^2	£85.00	£85.00	£70.00

31. The Valuation Officer has valued Great Cliffe Court considerably higher than the other two comparable properties. However, Mr Cohen contended that they should be valued at a more similar level of value. Furthermore, the superior offices at Capitol Court, which was built one year after Great Cliffe Court and is situated approximately half a mile away has been valued by the Valuation Officer at £85m^2 in the 2017 list. It was in the 2010 list at £105m^2.

32. In light of the evidence above, Mr Cohen asked the panel to confirm a reduced rateable value of £24,750 based on an unadjusted value of £85m^2 with a 5% uplift for air-conditioning.

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

34. Mr Dent confirmed that the previously level adopted of £126m^2 was considered too high and was revised to £105m^2.

35. The rent on the appeal property is from September 2018 and is somewhat removed from the AVD. However, £101.55 in a market which has seen little, if any rental increases over the

last few years does not support a reduced rate of £85m², and £105m² is more in line with this.

36. Mr Dent provided the following rental evidence;

Address	Size	Effective date of rent	Rent	Adjusted Rent	Analysed Rent
Unit 8, Great Cliffe Court	277.80m²	19 September 2013	£40,000	£36,000	£123.41
Unit 5, Great Cliffe Court	277.80m²	14 September 2013	£35,250	£32,253	£110.57
Unit 7, Great Cliffe Court	277.80m²	4 April 2013	£36,000	£32,940	£112.92
Life Time House, Great Cliffe Court	284.80m²	1 September 2015	£35,767	£33,085	£112.40

37. Unit 8 is a connected party rent however it has been declared as an open market rent and is not out of step of the basket of rents. Whilst you should not place much weight on connected party rents, it is still a useful indicator of levels. Unit 5 analyses to £110.57 in 2014. This is an unconnected 10 year lease review. Although it is some time from the AVD, it is pre and not post AVD, so should hold some weight to determine an AVD figure. The appellant has provided further information on Unit 5 and has analysed it to a higher figure of £126.89. Life Time House was not known to Mr Dent to be between connected parties. It had been recorded as open ended rent, which analyses to a higher figure than the £105m² adopted.

38. There is no evidence that has been provided to show that from 2013 to 2018 the rental level at Great Cliffe Court was as low as £85m². The rents on the First Floor, Unit 2 from October 2016 analyses to £116m² and Unit 5 from September 2016 to £127m².

39. The appeal property has been reduced from £126m² in line with the 2010 list rate of £105m² with reflects the Valuation Officer's opinion that there is not enough evidence to support an increase between the lists.

40. Mr Dent stated that the use of Norec House as a comparable in the 2005 tribunal decision was due to the fact that the appeal property area did not have any AVD rent at that time due to the buildings not being built until 2006. There was no rents to consider for Great Cliffe Court. In the 2017 list, this is no longer the case, there is rental evidence available around the AVD, despite it being limited. This eliminates the need to look further afield than Great Cliffe Court itself. Therefore the 2005 decision considering the best comparable properties to be Norec House and Brook House should be given less weight.

41. Furthermore, Brook House is located in a majority residential area and although it is an office, Mr Dent stated he would not consider to be comparable due to it not being on an office park location. Norec House, is in a more industrial area and does not have the exclusivity of the offices on Great Cliffe Court. Capitol Park is a multi-let building which lacks the exclusivity of the offices at Great Cliffe Court. It is a greater distance away from the train station and lacks on street parking in the vicinity. There has been no AVD rental evidence for those three comparable properties put forward to show where they are at.

42. There is no evidence to support that the appeal property should be reduced in line with a tribunal decision from 2005.

43. Mr Dent asked the panel to confirm the rateable value of £30,500 with effect from 1 April 2017.

Decision and reasons

44. 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”.

45. 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 AVD.

46. 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.

47. The rent in respect of the appeal property was a new letting from September 2018 at £28,210 p.a. Mr Cohen had analysed this rent to an unadjusted rate of £96.71, and Mr Dent had analysed it to £112.92. Whilst the panel placed caution on this rent as it was three years post AVD, it did not support a revised valuation of £85m^2.

48. The panel considered the new lease on Unit 5 and placed very little weight on this evidence as stated by Mr Cohen, the lease was let in 2021 during different market value conditions given that we are currently in or coming towards the end of a pandemic.

49. The best evidence the panel found was the rent of that on Great Cliffe Court. Whilst they appreciated it was very limited due to the number of connected parties which Mr Cohen had not put forward any rental evidence for, the rental evidence put forward analysed at a rate above £105m^2.

50. The panel placed little weight on the rental evidence of First Floor, Unit 4 as this rent was inclusive of utility bills which had a value estimated by the landlord and letting agent.

51. Whilst First Floor, Unit 1 Great Cliffe Court had rent reviews at a nil increase there was no evidence to show that this was due to the rent being higher than the market value. This rent was analysed at £110.50. The 2010 rent of £16,000 and the nil rent review in 2013 and 2016 supported Mr Dent's contention that there had been no increase in value between the 2010 list and the 2017 list. The appeal property had been valued in the 2010 list at £105m^2 which had been accepted by the appellant as a fair value.

52. The Valuation Officer had supplied rental evidence for Unit 8 and Life Time House which whilst they were not open market rents, they did appear in line with the basket of rents for the office estate. Unit 8 had been analysed at £123.41 and Life Time House had analysed at £112.40. However, the panel were cautious of this evidence.

53. Whilst the 2005 tribunal decision considered Brook House and Norec House to be comparable, the panel were aware that this decision was not binding upon them. The panel were aware that these properties were given regard to due to the lack of rental evidence due to Great Cliffe Court only being built in 2006 and the lack of rental evidence at AVD.

54. The panel held that Brook House was not comparable as it was more in a residential area and not on an office park location. Norec House was a single storey building and of lesser quality than the appeal property, its location was also more industrial and the panel agreed it did not have the exclusivity as at Great Cliffe Court. Capital Park was not considered to be comparable as it was a large multi-let building and situated further away from the train station.

55. In light of all the evidence, the panel were not persuaded by the appellant's argument to reduce the price to £85m^2 and were satisfied that the Valuation Officer's valuation of the appeal property was reasonable.

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

Date: 2 June 2021

Appeal number: CHG100118431