THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; advertising right; rental evidence; the assessments of the comparable properties showed the existing rateable value to be unreasonable; appeal allowed in part.

Re: Clear Channel No. 02036672 01-03 on Apollo Theatre, 1 Stockport Road, Manchester, M12 6AP

APPEAL NO: CHG100126630

BETWEEN	Vivid Outdoor Media Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE: Mrs M J Cole (Senior Member) and Prof. I Solanke

REMOTE HEARING 2: Thursday 15 April 2021

APPEARANCES: Mr M O'Donoghue of Colliers on behalf of the appellant as advocate and expert witness
Mr A Whitham on behalf of the respondent as advocate and expert witness

CLERK: Mrs A Keohane

Summary of decision

1. The appeal was allowed in part. The assessment was reduced to £13,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The President of the Valuation Tribunal for England (VT E) 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.

3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of the 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.

4. This is a 2017 rating list appeal brought in respect of Clear Channel No. 02036672 01-03 on Apollo Theatre, 1 Stockport Road, Manchester, M12 6AP, (the ‘appeal property’), entered into the 2017 rating list as ‘Advertising Right’ at £17,500 RV with effect from 1 April 2017.

5. The appellant submitted a challenge proposal that was received by the Valuation Officer on 10 September 2019. The proposal sought a reduction in the appeal property’s RV on the grounds that the assessment was wrong and should be reduced to £6,800 RV. Upon consideration of the proposal, the Valuation Officer decided that it was not well-founded and issued a challenge case decision notice to that effect on 10 September 2020. As the assessment had not been altered in the way requested in the proposal, an appeal was made to the Valuation Tribunal on 8 January 2021 on the grounds that the valuation for the hereditament was not reasonable.

6. The subject property is an advertising right located adjacent to a roundabout at the junction of three major arterial routes approximately one mile south east of Manchester city centre. The site overlooks a traffic controlled pedestrian crossing and the O_2 Apollo car park. The property comprises two paper and paste wooden 48 sheet display boards and one 96 sheet lightbox.

7. Mr O’Donoghue 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 O’Donoghue confirmed that he was instructed on a fixed fee basis. He 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.

8. The expert witness evidence was accepted 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). The ‘expert‘ evidence was considered, and appropriate weight attached.

9. This decision document is not intended to be a verbatim report of the proceedings. The absence in this decision text of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

10. The issue in dispute was the correct value to be applied in the appeal property's rating assessment.

Evidence and submissions

11. A bundle of evidence was provided in this appeal, which comprised the reasons for the challenge to the appeal property's rating assessment and subsequent appeal. It also included the information exchanged between the parties during the challenge stage of the process; rental evidence; assessment evidence; details of comparable properties; reference to *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RAA 141 and the definition of rateable value.

12. In the challenge document the appellant sought a revised assessment of £6,800 RV, based roughly on £4,200 for the 96 sheet lightbox and £1,400 for each of the two 48 sheet displays. Mr O'Donoghue had re-considered the available evidence and was contending for an assessment of £13,000 RV. This was based on £2,000 for each of the two 48 sheet paper and paste wooden display boards, which were considered to be inferior, and £8,500 for the 96 sheet lightbox, in effect the same as that applied by the Valuation Officer, plus £620 for the structure.

13. In a statement which accompanied the challenge, together with his oral presentation at the hearing, Mr O'Donoghue gave several reasons for his belief that the 2017 rating assessment was incorrect, which included:

   i. The appeal property comprised three poster sites; namely, two paper and paste wooden 48 sheet boards and one 96 sheet lightbox. Its rent had been set two years post the antecedent valuation date (AVD) and had been paid by the appellant, a small company, as a basis to enter a highly competitive market. The rent reflected the need to establish a business and did not necessarily reflect the true rental potential of the site at the AVD.

   ii. Having regard to the Valuation Officer's rental evidence, he noted that the Mills and Allen Site Former M/cr Hippodrome, Ardwick Green. Manchester, M12 6ZZ had a rent of £41,000. It appeared that following the submission of appellant's proposal the assessment of this comparable property (£11,000 RV), had been reviewed and substantially increased. He did not consider this increase established a tone in the appeal property's area, given there was time for this assessment to be challenged. The rent of Maiden 2227 Junc Brunswick Street, Ardwick Green South, Manchester, M13 9XE was not considered to be useful as it reflected a rent set in 2004 in respect of a long lease and this rent had not increased over the years; the site had since been removed.

   iii. Nine comparable properties had been provided in the original challenge document. He considered four of these situated in the M12 6 postcode area were particularly relevant. These comparable properties were all in close proximity to the appeal property and had been valued at no more than £2,000 per 48 sheet display.

14. In summary, Mr O'Donoghue accepted that the remainder of the appellant's comparable properties were further from the appeal property and therefore less persuasive. In the case of the subject property, as the 96 sheet lightbox was in a prominent position close to the road and more visible, essentially, he had applied the same level of value as the Valuation Officer. However, the two paper and paste wooden 48 sheet display sites were inferior, less visible and the weight of the evidence of the comparable properties suggested that a value of £2,000 each would not be unreasonable. Accordingly, he asked the panel to allow his revised assessment of £13,000 RV with effect from 1 April 2017.

15. In the Valuation Officer's challenge case decision notice, it was stated that having considered the issues raised in the challenge, there was no evidence to show that the appeal property's assessment was excessive. Furthermore, in oral presentation at the hearing and within the decision notice, it was also explained that:

    i. The appeal property's rent had been set at £18,000 per annum (pa) with effect from 20 March 2017. Although this had been set two years after the AVD, it was still considered to be the primary evidence.

    ii. Within the M12 and M13 postcode areas, sites had been analysed in terms of 48 sheet displays. Once the number of 48 sheet displays had been established within a site, a price for each was adopted. In these areas, this ranged from between £1,150 to £4,250 per 48 sheet display. A separate amount was also included for plant and machinery (the structure). The appeal property's valuation of £17,500 RV was based on four, 48 sheets at £4,250 per sheet, giving £17,000 plus £620 for the structure. The valuation had been rounded down to £17,500 RV.

    iii. Two other pieces of rental evidence were provided. The Mills and Allen Site Former M/cr Hippodrome, Ardwick Green, Manchester, M12 6ZZ was located directly opposite the subject property and had a rent of £41,000 pa with effect from 1 February 2016. It had nine, 48 sheet displays valued at £1,150 per 48 sheet display. The site had originally been assessed at £11,000 RV. However, in light of the rental evidence the assessment had been reviewed. Maiden No 2227 Junc Brunswick Street, Ardwick Green South, Manchester, M13 9XE had been situated 40m from the subject site junction, adjacent to a pedestrian crossing and was also a lightbox. Its rent had been £4,300 pa with effect from 1 November 2004 and it had been valued at £4,250 per 48 sheet display for the 2017 rating list. This hoarding had been removed in February 2020, but whilst in existence the assessment had not been challenged.

16. To summarise, Mr Witham did not consider the appeal property's assessment to be excessive when having regard to its rental evidence. He therefore sought dismissal of the appeal.

Decision and reasons

17. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

18. Within the evidence the Lands Tribunal judgment of *Lotus & Delta*, was referred to. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    ‘(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

    (2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

    (3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

    (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

    (5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

    (6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.’

19. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property. The rent of £18,000 pa had been set by way of a lease that commenced on 20 March 2017, no further details had been provided. The Valuation Officer had analysed the rent to £3,600 per 48 sheet display and adopted a value of £4,250 per 48 sheet display in the appeal property’s assessment. However, as the rent

was set two years post the AVD, the panel did not consider it appropriate to view this evidence in isolation.

20. Attention was paid to the remaining rental evidence. The panel did not consider the rental details of Maiden No 2227 Junc Brunswick Street, Ardwick Green South, Manchester to be persuasive having initially been set in November 2004 and not increased prior to the hoarding being taken down in 2020. Regard was also had to the rent on Mills and Allen Site Former M/cr Hippodrome, Ardwick Green, Manchester set in February 2016. The panel did not find this compelling evidence; given it was reflective of a larger site which it considered to be more valuable and of greater prominence, being close to the junction with the benefit of more dwell time and visibility from all directions.

21. To assist in determining this appeal, and in accordance with the fourth proposition as set out in *Lotus & Delta*, the panel had regard to the details of the comparable properties. In consideration of these, the panel was convinced that the current assessment of the appeal property was excessive and that proposed by Mr O'Donoghue was more reasonable, reflected the nature of the site, its locality, footfall and visibility. In reaching this decision, the panel had regard to the following:

    i. Media Co Ad Right 1040/01 Apollo Theatre, Stockport Road, M12 6AP. This site was approximately 150m from the appeal property and the lightbox was valued at £2,000 per 48 sheet display. This was visible from only one direction when travelling by road. However, the panel considered that the value applied to this lightbox supported a lower value for the more traditional paper and paste 48 sheet display boards at the appeal property that were presently valued at £4,250 each. It was also noted that this comparable property was close to a car park, which would place it in a prominent viewing position and subject to the same footfall emanating from the car park as the appeal property.

    ii. Mills and Allen No 0095 97 99, Junc Fair field Street, Chancellor Lane, Manchester, M12 6ZZ. This was situated 660m from the appeal property and partially located on two traffic controlled junctions, spread out between the two. Whilst accepting this could be a disadvantage, the panel still considered it to be a reasonable location. It was valued at £1,400 per 48 sheet display, lower than the figure proposed by the appellant, which in the panel's view reflected the difference in locations.

    iii. Signways, Junc Midland Street, Ashton Old Road, Manchester, M12 6ZZ. This property was approximately 760m from the appeal property. Whilst it was on a traffic controlled junction, it was accepted that it was an inferior location due to the relative size of the junction and traffic flow. Its assessment was based on £1,400 per 48 sheet display, lower than that proposed by the appellant for the appeal property, which again reflected its poorer location

    iv. Arthur Maiden No 1159 Gable 127-129 Fairfield Street, Manchester, M12 6EL. This site was approximately 630m from the appeal property and did not have the benefit of being situated on a traffic junction. The panel accepted that this was an inferior location with less visibility and dwell time; however, its assessment was based on £1,400 per 48 sheet display, lower than that proposed by the appellant for the appeal property.

22. On balance, the panel considered that Mr O'Donoghue had shown that the price adopted for the paper and paste 48 sheet display boards in the appeal property's current assessment was not reasonable. It therefore determined his revised assessment of £13,000 RV, based upon the following:

48 Sheet Display	£ 2,000
48 Sheet Display	£ 2,000
96 Sheet Display Lightbox	£ 8,500
Structure	£ 620
Total	£13,120

Say £13,000 RV with effect from 1 April 2017

Order

23. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show Clear Channel No. 02036672 01-03 on Apollo Theatre, 1 Stockport Road, Manchester, M12 6AP, at an assessment of £13,000 RV with effect from 1 April 2017.

24. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Appeal Number CHG100126630

Date 11 May 2021