THE 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: Unit 7600-7650, Daresbury Park, Warrington, WA4 4BS

APPEAL NUMBER: CHG100162288

BETWEEN:	Sentinel Performance Solutions	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE: Ms B Knight (Senior Member)
Mr D Gardner

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 4 on 11 June 2021

APPEARANCES: Mr P Roberts from Roberts Vain Wilshaw Chartered Surveyors (Appellant's representative)
Mr D Hetherington (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed. The panel made no change to the rateable value.

Introduction

2. This appeal has been brought in respect of the following: Unit 7600-7650, Daresbury Park, Warrington, WA4 4BS (the 'appeal property'), which was entered in the 2017 rating list as 'Offices and premises' at rateable value £101,000 effective from 1 April 2017, based on an unadjusted main space price of £105/m^2, with an uplift of 2.5% for raised flooring. The appellant was seeking a rateable value of £77,000 based on an unadjusted main space price of £82/m^2.

3. The appeal property was originally two, two storey, brick built offices but now occupied as one office with entrances via the adjourning walls on both floors, but

held under two leases. It is located in Daresbury Park, close to junction 11 of the M56.

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 position.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Roberts 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 17 March 2021 following the Valuation Officer’s Decision Notice of 29 January 2021 in respect of the appeal property (hereditament).

8. Mr Roberts had declared that his firm is on a set fee basis. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Roberts’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. 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 the panel by the parties should not be construed as it being overlooked.

Issues

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

Evidence and submissions

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

12. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, a plan of the building, photographs of the appeal property, and details of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, copies of correspondence that had passed between the parties and extracts of a number of judgments including *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA

13. The appeal property was held on two leases which commenced on 2 April 2014 for £96,000 per year for unit 7600 and £68,000 per year for unit 7650. However, on 9 August 2017, the leases were revised at rents of £48,000 and £34,000 respectively, for the first year then £96,000 and £68,000 thereafter. Furthermore, a premium, which was a tenant's incentive, totalling £490,000 was received in 2014 and 2015. The lease devalued to £70,441 over six years and five months and analysed to £74.73/m^2.

14. Based on this analysis of the rent, Mr Roberts suggested that the rateable value should be £77,000 based on a main space price of £80/m^2.

15. To further support his argument that the rateable value was incorrect, Mr Roberts had provided the following comparable properties:

Property	Area	Rent	Rateable value
Unit 7600-7650 Daresbury Park (appeal property)	966.16m^2	£164,000	£101,000
6300 Daresbury Park	602.22m^2	£106,225	£69,000
Unit 7450 Daresbury Park	585.60m^2	£54,000	£70,000
Unit 7400 Daresbury Park	570.34m^2	£86,842	£70,500
Virgincare, Unit 6600 Daresbury Park	662.27m^2	£119,680	£81,500

16. The VO had doubted the reliability of the rental evidence of most of these comparable properties, however, Mr Roberts' contended that for Unit 7450, whilst the rent was between connected parties, it was still reliable as it was a market rent, but that Unit 7400 was also a rent between connected parties but accepted, in this case that it was not reliable. He also suggested that the tenant for Unit 6600 had taken on the lease without any regard for the rent, suggesting that the rent was too high. He explained that this was due to Virgincare recently taking on contracts on behalf of the NHS and needing office space.

17. Given his analysis of the rent for the appeal property, he contended that the rateable value was too high and asked the panel to allow the appeal.

18. Mr Hetherington was representing the VO as advocate and expert witness. He contended that Mr Roberts' analysis of the rent was only for the revised rent effective from 9 August 2017 and ignored the earlier rents at the AVD.

19. He also contended that little weight should be applied to the rent for the appeal property due to the number of adjustments and it was not clear for what the premium was paid.

20. With the basket of rents provided by Mr Roberts, he contended that the rent for units 7450 and 7400 were unreliable as they were between connected parties and that little weight should be given to the rent for Unit 6600 as it appeared to be not reflective of an open market rent.

21. Given all of the above, Mr Hetherington contended that the only reliable rental evidence was for Unit 6300, but given that the unit was smaller it was not sufficient to prove that the rateable value for the appeal property was incorrect and he asked the panel to dismiss the appeal.

Decision and reasons

22. 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) of1 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.

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

24. 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;
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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 panel firstly considered the rent of the appeal property, this being the starting point in the weighting of evidence as stated in the judgment of *Lotus and Delta v Culverwell (VO).*

20. As at the AVD, the rent for the appeal property was £164,000. It was a new lease which commenced on 2 April 2014 which was one year prior to the AVD, and it fitted with the rating hypothesis as a new tenant coming 'fresh to the scene'. However, a reverse premium of £490,000 had been agreed and was paid in 2014 and 2015.

21. Taking this reverse premium into account, Mr Roberts' had analysed the rent to £70,441 p.a. Mr Hetherington had suggested that the rent required too many adjustments to be reliable. The panel therefore tested this rent against the comparable properties.

22. Mr Roberts' had suggested that Virgincare had taken on the lease for Unit 6600 quickly and without any regard for the rent passing but provided no evidence of this position. Further, the rent being similar to Unit 6300 did not suggest that it was excessive.

23. Given that Units 6600 and 6300 were smaller than the appeal property, and the rents for these units were £106,225 and £119,680 respectively, the panel found these rents to be most persuasive and concluded that Mr Roberts' analysed rent of £70,441 for the appeal property appeared to be too low given that it was larger than these two units. This supported Mr Hetherington's contention that the rent for the appeal property was unreliable. It also applied little weight to the rents for Units 7400 and 7500 as they were between connected parties.

24. The panel, having concluded that the best evidence to determine the rateable value, were the rents for Units 6600 and 6300, noted that the rateable value for the appeal property was similar to the rents for these units. It was also aware that the rateable values of these two units were £69,000 and £81,500 respectively but the units were 2/3rds of the size.

25. The panel therefore concludes that based on the rents and the current rateable value for Units 6600 and 6300, the rateable value of £101,000 for the appeal property was not unreasonable compared with these two units, and, in the absence of any substantial evidence to prove otherwise, concluded that the rateable value was not excessive and dismissed the appeal.

Date: 9 July 2021

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