THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Racing stables and premises; Appeal allowed in part.

RE: Lower Barn at the Beeches, Deverill Road, Sutton Veny, Wiltshire, BA12 7BY

APPEAL NUMBER: CHG100170863

BETWEEN:	Mr Simon Earle	Appellant
	and	
	The Valuation Officer	Respondent

BEFORE: Mr M Smith (Senior Member sitting alone)

CLERK: Mr A Johnson Tech IRRV

ON: 11 January 2022

APPEARANCES: Mr C Marriott of Marriott of Marriott Brown Ltd (for the Appellant)
Mr S Lewis (for the Respondent)

REMOTE HEARING

Summary of decision

1. This appeal was allowed in part. I determined that the rateable value of Lower Barn at the Beeches, Deverill Road, Sutton Veny, Wiltshire, BA12 7BY (hereinafter referred to as ‘Lower Barn’) was, at £14,500 and effective from 30 October 2018, unreasonable. I determined that a revised rateable value of £13,750 was reasonable.

Introduction

2. This is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that all of the evidence presented was fully considered by me before coming to a decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. Prior to the hearing my fellow Panel member became unavailable and was unable to consider this appeal with me. In accordance with the tribunal's business arrangements I, as a Senior Member, was authorised to consider and determine this appeal alone.

   Hearings where a member is unable to sit

   Where a panel member is unable to sit for any reason or fails to attend, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing.

4. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant challenged the Valuation Officer's decision that a rateable value for Lower Barn of £14,500, effective from 30 October 2018, was reasonable.

5. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the appeal property on the Valuation Officer's notice (then £17,000 RV from 30 October 2018) should be reduced to £11,500. In the appeal, this was changed to £11,750 RV from 30 October 2018.

6. Mr Marriott 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 Marriott advised that he was not receiving any conditional fee from the appellant. I accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

7. It was therefore appropriate that I consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before me.

Remote hearings

8. 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.

9. 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. I was satisfied that the parties present at the remote hearing were able to fully participate in the proceedings and that it was just and equitable for a remote hearing to be held.

Issue

10. The issue in dispute was whether the valuation for Lower Barn was reasonable or whether it should be reduced. The parties had provided their valuations and the main area of disagreement was the unit price to be applied to an indoor loosebox. The Valuation Officer had adopted £630.00 per unit and the appellant has used £500.00 per unit.

Evidence and submissions

11. I considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process.

12. I followed the VTE's model procedure and Mr Marriott presented the appellant's case first.

13. Mr Marriott was seeking a revised rateable value of £11,750, proposing that each indoor loosebox should be valued at £500.00 each with the outdoor looseboxes being valued at £250.00 each (i.e. 50% of the indoor looseboxes). Whilst there was agreement between the parties that the outdoor looseboxes should be valued at 50% of the indoor looseboxes, it was Mr Lewis's contention that £630.00 and £315.00 was reasonable.

14. During the proceedings it was suggested that Mr Marriott's valuation of Lower Barn had been engineered to produce a rateable value below £12,000 in order to take advantage of Small Business Rate Relief and ensure that no rates were payable. Whist I noted Mr Marriott's assurance that this was not the case I considered it necessary to make it absolutely clear that, in reaching my decision, I was mindful of my obligation to establish what I considered to be a reasonable rateable value for Lower Barn irrespective of its financial implications.

Decision and reasons

15. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the rateable value of a non-domestic property, 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 property might reasonably be expected to let from year to year based upon three assumptions. These assumptions are:

    (a) that the tenancy begins on the day by reference to which the determination is to be made;

    (b) that immediately before the tenancy begins the property is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

    (c) 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 property in a state to command the rent mentioned above.

16. 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.

17. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the appeal property is 30 October 2018.

18. I was also guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case set out the six propositions to have regard to when considering the weighting of evidence and expert opinion. These are:

    1. Where the property 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 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 differing types of evidence depending on the one hand 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. Having regard to *Lotus & Delta*, I considered the rental evidence in respect of Lower Barn as my starting point. In doing so, I noted that it commenced on 30 October 2008 and that it was a stepped rent of £22,500 for the first year and £25,000 for each of the following four years. I considered the rental analyses from both parties, and I found them to be problematic. Both parties had made different and significant adjustments to the rent and having regard to its remoteness from the AVD, I did not find this to be reliable when determining the rateable value of Lower Barn.

20. I then had regard to the rental evidence of similar properties which had been provided by the parties and, again, I found the rental evidence to be problematic. With regard to Conkwell Lodge, there were large adjustments in the analysis, Wilsford Farm was stated to include residential property, and in respect of The Beeches, the Valuation Officer was not certain what the rent included. The Valuation Officer had thought that the rent for Church Farm Racing Stables was a clean rent on full, repairing and insuring terms, but the appellant's representative stated it was for a shell building and 19 looseboxes had been built at the tenant's expense. As there was a complete lack of consensus between the parties over this evidence, I decided to give it little weight.

21. Moving on to consider the unit price for the comparable stables, I noted that the Valuation officer had generally assessed indoor looseboxes at £675.00. However, I found the most persuasive evidence to be the agreement reached on Jackdaws, which had been reduced to £630.00.

22. I recognise, from Mr Marriott, that there were differences between Little Barn and Jackdaws in terms of scale, quality and locality and I agree that the evidence is far from perfect, but I have placed reliance on this settled appeal. I have also had regard to the concession already made by the Valuation Officer in the rating of Little Barn after the initial proposal by Mr Marriott, reducing the assessment from £675.00 per indoor loosebox to £630.00.

23. Unfortunately, neither party provided me with any photographs of the comparable properties which has partially hindered my decision making but, having regard to the differences which have been discussed, I decided that £600 per indoor loosebox was reasonable for the appeal property. This results in the following revised valuation:

Floor	**Description**	**Area m^2/unit**	**£ per m^2**	**Value (£)**
Ground	Indoor Stables	18.00	£600.00	£10,800
Ground	Stables Used As Stores	2.00	£600.00	£1,200
Ground	Outdoor Loosebox	4.00	£300.00	£1,200
	Indoor Horse Walker	8.00	£50.00	£400
	Office	12.90	£0.00	£0
	Open Fronted (Wood)	47.80	£0.00	£0
	Tack Room	12.90	£0.00	£0
	Lunge Ring	78.50	£4.00	£314
				£13,914
			RV say:	£13,750

Order

24. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Valuation Officer to alter the valuation list within two weeks of the date of this order to show the entry in the rating list for the appeal hereditament to £13,750 rateable value with effect from 30 October 2018.

Refund of appeal fees

25. The appellant is entitled to a refund of the appeal fees in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 7 February 2022

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