THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; advertising rights and premises; subject rent; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; appeal dismissed.

RE: Flank Wall, 60 Eden Street, London, KT1 1EE

APPEAL NUMBER: CHG100189728

BETWEEN: Spires Sports Ltd, represented by Whitestone Commercial Ltd — Appellant

and

Dawn Bunyan (Valuation Officer) — Respondent

PANEL: Mr P Hickson (Senior Member)
Mr A Asanta

CLERK: Mr J Massey

REMOTE HEARING: No. 1 on 25 November 2022

APPEARANCES: Mr C Lambert of Whitestone Commercial Ltd for the appellant
Mr D Cotterell for the respondent

Summary of decision

1. The appeal was dismissed; the panel considered that the current assessment at £20,000 Rateable Value (RV) with effect from 22 November 2019 was fair and reasonable.

Introduction

2. This appeal has been brought in respect of the following: Flank Wall, 60 Eden Street, London, KT1 1EE (the “subject right”) which was currently entered in the 2017 rating list at £20,000 RV, effective from 22 November 2019.

3. The subject right is shown in the list as ‘Advertising Right and Premises’. It comprises a digital portrait panel advertising hoarding that is positioned on the side of 60 Eden Street. It is a non-standard sheet size, digital ‘Mega 6’ board of 3m x 4.5m which is visible to traffic and pedestrians travelling on Eden Street in Kingston upon Thames town centre. The hoarding is positioned between the first and second floors of a flank wall.

4. The challenge was received by the Valuation Officer (VO) on 20 April 2020 and proposed a reduction in value of the site to £8,750 RV. The challenge decision was issued on 17 August 2021 and the VO's decision was that £20,000 RV was both fair and reasonable.

5. Mr Lambert, for the appellant, considered the VO's valuation to be unreasonable. Consequently, the challenge decision was appealed to this Tribunal. He sought a reduction in the RV to £8,750.

6. 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.

Issue

7. The issue for the panel to consider was the correct RV to be ascribed to the subject right.

Evidence and submissions

8. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the challenge process.

9. Mr Lambert 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), he declared that he was instructed on a fixed fee basis.

10. In summary, Mr Lambert considered the subject rent to be the best evidence. The rent passing at the AVD was £8,750 per annum (pa) which he considered supported a reduction to RV £8,750.

11. He outlined the history of the assessment, detailing the changes in the RV applied to the subject right since the start of the current list, which he maintained instilled little confidence in the VO's methodology in valuing advertising rights.

12. In response to a request from the respondent during the challenge, Mr Lambert had provided a copy of a digital agreement for the subject right with Daylite LED Media Ltd effective from 2 October 2016 which entitled the owner (appellant) to 70% of the net advertising revenue from the site in lieu of rent. The appellant had received an average gross annual income for the years 2017, 2018 and 2019 of £20,400, which Mr Lambert had adjusted to £9,800 to take into account the estimated running expenses of £10,600 (business rates, insurance, maintenance, electricity) which the owner was responsible for. Mr Lambert had toned this equivalent rent of £9,800 back by 10% to achieve an AVD rent of £8,800 which was very close to his proposed RV.

13. Mr Lambert did not see the relevance of the VO's comparable properties with regard to arriving at the RV of £20,000 for the subject right. He referred to the size of the subject right of 3m by 4.5m, which translated to approximately 36-sheets, whereas the VO's comparable properties were 48-sheets or more. He considered that size made a difference, as was illustrated by the difference in the RVs applied to the different sized comparable assessments.

14. He also referred to a list of agreed assessments to demonstrate the broad range of values and agreements across a similar type of hoarding in different parts of London, which he considered illustrated that the current RV of the subject right was excessive.

15. In summary, the VO's position was that the subject rent was in respect of a static advertising board. The RV had been increased to reflect the VO becoming aware as of 22 September 2019 that the advertising right was of a digital nature. He considered that the increase in RV reflected the increased earning potential of a digital board which can display multiple rolling adverts and is visible 24 hours a day.

16. He referred to the location of the subject right on one of the major shopping Streets in Kingston upon Thames town centre, on a junction where there was high vehicle and pedestrian traffic. He argued that whilst the size of a hoarding was a factor, the size of a hoarding in a particular location was often optimised to maximise visibility using the building space available.

17. He considered the entry of £20,000 RV from this date was fair based on the agreements in the locality of similar advertising rights. He also provided details of two recently agreed assessments of comparable advertising rights in North Finchley which he considered were similar in size and position to the subject right and supported its current assessment.

18. He considered that the equivalent rent calculated by Mr Lambert was of little assistance in determining the correct RV for the subject right as it was agreed some time after the AVD and required too much adjustment to conform with the definition of rateable value.

19. Mr Cotterell, for the VO, having regard to the basket of evidence, submitted that the current assessment of £20,000 RV was reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

20. In considering this appeal, the panel had regard to the term 'rateable value' as defined in paragraph 2(1), 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".

21. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, in accordance with Non-Domestic

Rating (Material Day for List Alterations) Regulations 1992, the material day was 22 November 2019.

22. In considering the weighting of the evidence, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell and Leicester City Council* [1976] which had been referred to by the parties. This case 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.’

23. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing for the subject right. It placed little weight on the rent of £8,750 pa for the subject right, which Mr Lambert stated was passing on 1 April 2015. The panel did not consider that this rent represented the rental value of the subject right as it existed on the material day for this appeal as it was satisfied that by this time the static right had been upgraded to a digital right.

24. The panel went on to consider the equivalent rental value of £8,800 pa calculated by the appellant resulting from the digital agreement dated 2 October 2016. The panel did not find this subject rent to be good evidence, as it was agreed eighteen months after the AVD and was in effect wholly a turnover rent. In the panel’s opinion, this rent required too much adjustment to conform with the rating hypothesis for it to be of any assistance.

25. The panel was aware that various factors can impact the rents paid, including but not limited to, the size, general location, and position. It found that the subject right was prominently situated on a junction, effectively providing visibility to vehicles and pedestrians travelling along Eden Street and visible from the main shopping area of Eden Walk. The panel noted

that it was a bespoke format and therefore did not fit the standard criteria for outdoor advertising hoardings, either a 'large format' (48-sheets), or a 'small format'(6-sheets).

26. Both parties had provided details of agreed assessments on advertising rights both in Kingston upon Thames and other parts of London which they considered supported their respective RVs.

27. The appellant had referred to the following assessments on digital advertising rights -

- Flank Wall, 52 Kingsgate Road, Kingston Upon Thames, KT1 6JX. Digital site (48-sheet) - Entered the list at £16,750 with effect from 13 August 2018.
- 421 New Kings Road. SW6 4RN. Digital site agreed on challenge with reduction from £20,000 to £12,000 - list altered on 09 May 2022.
- Flank Wall, 462 Bethnall Green Road, E2 0EA. Digital site agreed on challenge with reduction from £20,000 to £7,100 - list altered 07 December 2021.
- Swandon way, rear of 4-6 Morie Street. SW18 1SP. Digital site agreed on challenge with reduction from £20,000 to £12,000 - list altered 15 November 2021.
- 118 Cromwell Road. SW7 4ET. Digital site (16-sheet) agreed on challenge with reduction from £20,000 to £12,000 - list altered 06 December 2021. (much smaller 16-sheet)
- Singkit adj 182 Tower Bridge Rd. SE1 2AD. Digital site reduced from £77,000 to £19,250 then on appeal from £19,250 to £14,500.
- Side of 733 Old Kent Road, SE15 1JL. Digital site agreed on challenge with reduction from £25,000 to £11,000 - list altered 27 October 2021.

28. The panel noted that the appellant had not specified the size of all his comparable advertising rights, however it noted from the photographs provided that they were all similar in size or larger that the subject right apart from 118 Cromwell Road. The fact that 118 Cromwell Road was significantly smaller than the other rights and had been agreed at a similar value indicated to the panel that location was equally as important as size, if not more so, in determining a value.

29. Having considered the location and visibility of the appellant's comparable assessments in relation to the subject right, the panel considered that they were in inferior locations and was satisfied that the subject right would command a higher rent. It was not therefore persuaded by this evidence that the current assessment of the subject right was excessive.

30. In support of the current assessment of the subject right, the panel found the agreements for Primesite Ltd, 790 High Road, N12 9QR and Advertising Right, 981 High Road, N12 8QR provided by the respondent to be most compelling. Although in a different part of London, the panel considered that they were located in similarly prominent positions on a main shopping street and appeared to be similar in size to the subject right.

31. The RV of 790 High Road had been reduced from £32,000 to £23,000 based on a direct rent, rather than a turnover rent, of £26,620 effective from 23 July 2019. The panel found that this rent and subsequent agreement supported the current assessment of £20,000 RV for the subject right. The panel also found that, to a lesser extent, the agreed assessment of 981 High Road at £18,000 RV also supported the current assessment for the subject right.

32. In view of the foregoing, the panel found the existing RV of £20,000 to be reasonable and dismissed the appeal.

Date: 23 December 2022

Appeal number: CHG100189728

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.