THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Local Government Finance Act 1988; Statutory Assumptions; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Base Rate; Appeal dismissed.

Re: The Willows, Red Hill, Kent BR7 6DA

APPEAL NUMBER: CHG100401939

BETWEEN:	Bromley Healthcare Community Interest Company	Appellant
	And	
	Ms Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Ms Cerys Jones (Chair)
	Mr Paul Phelps
CLERK:	Mr Duncan Adamson IRRV (Hons)
REMOTE HEARING 2:	18 August 2022
PARTIES PRESENT:	Mr Stewart Carter, Altus, representing the appellant
	Mr Rajnish Das representing the Valuation Officer

Summary of decision

1. The appeal was dismissed. The rateable value (RV) of the hereditament remains at £69,000 with effect from 1 April 2017.

Introduction

2. This 2017 compiled list appeal had been brought in respect of the property at The Willows, Red Hill, Kent BR7 6DA occupied by Bromley Healthcare Community Interest Company.

3. The rateable value was £69,000 on an unadjusted rate of £240/m^2 .

4. The appellant appealed against the Valuation Officer's (VO) decision as they sought a reduction of the RV to £43,000 on a rate of £135/m^2.

5. The property was a converted residential house in a residential area in Chislehurst, Kent. It was constructed between 1919 – 1939 and was now used as a surgery.

6. There had been some discussion in respect of the correct method of valuation of the appeal property with the appellant suggesting that, due to the lack of rental evidence, the property should be valued using the contractors method. The parties eventually agreed that the use of rental evidence was the most appropriate method.

7. 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 a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

8. Mr Stewart Carter appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency 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.

9. The panel accepted this expert witness evidence 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 panel therefore considered the expert evidence and attached such weight to it as they saw fit.

Issue

10. The RV of the hereditament.

Evidence and submissions

11. The evidence bundle submitted by the respondent comprised all of the documents exchanged between the parties as part of the challenge process, the VO's challenge case decision notice and the appellant's challenge submission.

12. The appellant stated that the rental evidence in respect of the appeal property was an open lease commencing 1 April 2011 at £48,250 p.a. As the property is owned by the NHS, it is a connected rent and is also quite far removed from the AVD with no lease expiry date. For these reasons, little weight can be put on it as evidence.

13. The 23 car park spaces valued at £9,200 RV were not in dispute.

14. Initially, the appeal was for the base rate to be reduced to £135/m^2 however, after looking at the rental evidence, the appellant now proposed that £200/m^2 was more appropriate. This would equate to an RV of £52,250.

15. Generally, the appellant contended that the RV was not in line with assessments on comparable properties in the locality and that the RV should be lower.

16. The respondent stated that it was necessary to consider the whole basket of rental evidence in order to correctly value the appeal property. In his opinion, it was reasonable to consider the passing rent on the property and apply appropriate weight to it.

17. He had submitted properties that he felt were comparable to the appeal property and were in line with the statutory assumptions. The best comparable was 18 Beckenham Road as this was nearest in size to the appeal property. Other similar properties analysed at an amount higher than the appeal property and this suggested that the appeal property could be under-assessed.

Decision and reasons

18. The panel referred to the Local Government Finance Act 1988. The term 'rateable value' being defined in paragraph 2(1), Schedule 6 to the Act:

> "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;
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> 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. 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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

20. In reaching its decision, the panel had regard to the Lands Tribunal judgment of Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141. This case had established six propositions giving 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.

21. The panel found that there was limited rental evidence presented to them and this was because there was little rental evidence available. The panel was presented with the following:

Address	RV	Area m^2	Rent date	Rent	UAR $/m^2$	Analysed rent
The Willows, Red Hill	£69,000	252.34	1/4/11	£48,250	240	
5 Sevenoaks	£27,000	113.49	10/4/15	£19,000	225	£149.01
18 Beckenham Road	£44,750	240.94	30/1/15	£67,500	200	£301.99
Sunnyways	£38,250	156.18	1/9/14	£48,000	240	£309.44
31 – 32 Park Road	£19,500	97.00	1/1/14	£42,900	240	£332.00
109 Crofton Road	£57,000	308.37	31/5/14	£60,000	200	£227.14

22. The panel found that these properties and their evidence were quite mixed in their size, location and comparability in terms of the statutory assumptions. The panel noted that the first four of these comparable properties were in the same valuation scheme.

23. The properties at 31 – 32 Park Road and Sunnyways were only 40% and 60% of the size of the appeal property, had similar passing rents but with RV's perhaps reflecting their size rather than their rental value.

24. 18 Beckenham Road was the most comparable to the appeal property as it was the closest in size. However, it had a higher passing rent than the appeal property but a much lower RV. Its passing rent was close to the AVD and this provided good evidence that the tone of value for properties of this type in this locality ranged from £200/m^2 to £240/m^2. The properties are generally converted residential properties rather than purpose-built and this can create a wider variety of type and value.

25. The appeal property sits in a large plot of its own and has 23 car park spaces. The panel found that these two assets, quite different to aspects of the other comparables, would add

value. Other comparable properties were on the high street or in poorer locations than the appeal property.

26. The panel found that the rental evidence supported the appeal property's valuation but did not present a very strong case. This is perhaps because there was a dearth of available similar properties.

27. The panel found that the appellant's case had not been proven. In cases of this nature the onus is on the appellant to prove that the valuation of the appeal property was excessive and offer evidence supporting such a contention.

28. The panel found that, whilst there was some evidence, there was not enough to suggest that the appeal property was over assessed. The RV was fair and reasonable.

29. The appeal was therefore dismissed and the RV of the hereditament remains at £69,000 with effect from 1 April 2017.

Date: 24 August 2022

Appeal number: CHG100401939

Rights of appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the Upper Tribunal on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.