THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; car parking spaces; whether spaces should be reduced by those occupied under lease arrangement; paramount control; appeal allowed in part.

APPEAL NUMBER: CHG100705594

BETWEEN:	J Pullan & Sons Limited	Appellant
and	Joanne Moore (Valuation Officer)	Respondent

RE: Car Park at Josephs Well, Hanover Walk, Leeds LS3 1AB

PANEL: Ms C Edwards (Senior Member)
Ms F Rahman-Cook

CLERK: Ms J Routledge IRRV tech

SITTING ON: 9 February 2024 (remote hearing no.2)

APPEARANCES: Mr R Flockton (for the appellant company)
Ms S D'arcy (Valuation Officer's representative)

Summary of decision

1. Appeal allowed in part. The panel made no change to the number of spaces to be included in the assessment but reduced the price per space to £400 to reflect the rights given to the tenants of the offices reducing the rateable value from £225,000 to £120,000 from 1 April 2017.

Introduction

2. The appellant had made a challenge against the accuracy of the assessment in the 2017 Rating List, by way of a proposal served on the Valuation Officer (VO) on 30 June 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and refused to alter the existing assessment. A decision notice to that

effect was served on the appellant on 21 December 2022 and this decision was appealed to the tribunal on 23 March 2023, on the grounds that the current entry in the list is inaccurate and not reasonable.

3. The assessment under appeal was that of Car Park at Josephs Well which contained three hundred spaces and was operated as a contract car park. The one hundred and fifty spaces in dispute had been allocated to tenants of the nearby offices which was in the same ownership as the car park. All spaces were valued at £750 per space rateable value (RV) from 1 April 2017.

4. The appellant's proposal sought a reduction in the number of car spaces in the assessment to one hundred and fifty and a reduction in the assessed value per space. The appellant sought a per space value of £300 for the remaining spaces with an RV of £45,000 with effect from 1 April 2017.

5. Ms D'arcy for the VO advised that following an agreement on one of the comparable car parks used, the VO had proposed a reduction in the per space value to £400 which would reduce the RV to £120,000 on the basis of the three hundred spaces. This had not been agreed with the appellant.

6. This document is not intended as a verbatim report of the proceedings.

Issue

7. The issue in dispute before the panel was whether the VO had correctly maintained the entry of three hundred car spaces and the correct value per space.

Evidence and submissions

8. The evidence bundle before the panel comprised the evidence disclosed and exchanged during the challenge stage of the appeal process, including location maps, photographs, emails exchanged, comparable assessments, and the Valuation Tribunal Decision in Agora Shopping Centre Fund v Richie Roberts 234515463386/125N05 & 234518389066/125N05.

Decision and reasons

9. The material date on which to consider the hereditament was 1 April 2017, the effective date from the appellant's proposal. The value must be considered as at the antecedent valuation date (AVD) of 1 April 2015.

10. By their very nature, car parking spaces are designated spaces available for parking a vehicle and so remain in a constant state of change between occupied and unoccupied. Therefore, rateable occupation must be established by determining who has paramount control of the space. Both parties confirmed that it was not in dispute that the appellant was in paramount control.

11. The issue was whether the parking spaces burdened by the rights of tenants in the office complex had any value. Mr Flockton argued that the value of the spaces had been reflected in the office assessments and therefore the spaces had been double counted. He quoted the maxim "as you value so must you devalue". Therefore the value of the car park spaces included in the office assessments should be removed from the appellant's assessment as the office assessments were increased by the value of the car parking. There were emails between the agent and a valuation office caseworker which supported his contention that the car spaces had been included in the office assessments. He also advised that Ms D'arcy had commented that the office assessments appeared high if the spaces were not included.

12. Ms D'arcy advised that following the decision in *Woolway v Mazars* new legislation had been introduced which was The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (PICO Act). This made alterations to the Local Government Finance Act 1988 in respect of properties in common occupation. The assessments on the office spaces she believed had been altered following this legislation being introduced and the spaces were no longer included within the office assessment. If they had not then it would be for the offices to question their assessments rather than this assessment being altered. The list was still open for another six weeks and this issue could be looked at once the outcome of this appeal was known.

13. The panel was aware that it must consider the details of the subject of this appeal and determine the correct decision based on the facts and legislation pertaining to it, and could not consider whether there was an error in another assessment. This was in accordance with the judgment in *Ladies Hosiery v West Middlesex Assessment Committee* [1932]. In his judgment Scrutton L.J. at p.p. 686-688 stressed the "vital principle" of rating law that "*each hereditament should be independently assessed*" .

14. Mr Flockton cited the decision in the Agora Shopping Centre Fund case (para 45)

    "Rights exercised by others over land should also be taken into account when determining whether in the first instance a hereditament exists and secondly the value of a hereditament ……….where rights over land are not so extensive as to exhaust its value and a hereditament exists, it is still nevertheless necessary to take account of the effect on value of such rights".

    He accepted that the car parking rights are not exhausted, however only half the car park was available for the appellant to let commercially the remainder having to be reserved for tenants of the offices whether occupied or not and this reduced the value. The car park therefore fell to be assessed taking into account the ability to only let half of it to customers other than the office tenant. He provided an extract from a lease agreement between one of the occupiers of the offices which granted:

"the right during ordinary business hour to park one (1) motor car on such part or parts of the car park areas at the Building as the Landlord shall from time to time designate to the tenant."

He argued that this provided the office tenants rights over the spaces and therefore the spaces would be valueless. A hypothetical tenant having done due diligence would negotiate a lower price due to these restrictions.

15. Ms D'arcy argued that the tenants' car parking was assessed at £750 per space which was below the actual rent charged. The Hypothetical Tenant would take this into account as he had a guaranteed potential income from half of the car park.

16. During questioning Mr Flockton could not provide the details of how many car spaces were subject to lease by the offices at the AVD. He could not confirm whether the spaces were made available to contract parking between office lets but he believed this may be the case. He confirmed that the offices' tenants pay for the spaces within their rents and that they can negotiate extra spaces. Some provide free parking for their clients but this would be at their own cost.

17. Ms D'arcy questioned whether the lease gave each tenant rights over the spaces as she believed the wording was too vague. She also advised that it would be common to value car parks using the receipts and expenditure method, however the appellant had not provided this information despite requests for this. The VO provided comparable assessments that were mostly pay and display car parks which generally have a lower value than contract parking. She explained that there was a distinct difference in value between those car parks within the inner ring road and those outside. The further out the lower the value as most of the offices were situated within the inner ring road and workers wished to park near to their offices. The car park at West Triangle was in a similar position to the subject premises and had been valued on a receipts and expenditure basis, it had originally been valued at £700 per space which was challenged and had recently been settled by agreement at £400 per space.

18. The panel was satisfied that the leases did provide the tenants with the right to park in the subject premises. However it was also clear that the offices lease gave the right to park only during "ordinary business hours" and therefore the appellant could lease the spaces outside of these hours and could also rent the spaces reserved for office tenants during periods when the offices were unoccupied as the appellant was the owner of the offices as well as the car park. Therefore the spaces were not valueless and should be included in the assessment.

19. The comparable assessments submitted by the VO were for smaller car parks in better locations ranging between £700 (subsequently reduced on agreement to £400) and £930 with the Blenheim House car park included within the office assessment at £1175 for 25 spaces.

20. The comparable premises submitted by the appellant were smaller and were outside the inner ring road and an increasing distance away from the subject property. The prices ranged between £200 for the furthest away to £350 per space for the closest demonstrating that the value reduced the further from the inner ring road the properties were.

21. In accordance with *Lotus and Delta* the panel found that as there was no evidence submitted of rent it had regard to the assessments of similar properties. The panel found the closest comparable was Car Park at West Triangle with 223 spaces in a similar location to the subject premises just outside the Inner Ring Road which had recently been agreed at £400 per space. This was a pay and display car park and the agreement was based on the receipts and expenditure. The panel considered this reflected the value of car parks in that area that were subject to the fluctuations experienced in such car parks with occupancy not being predictable. The 150 spaces given over to the tenants of the offices at the subject property may suffer similar fluctuations of income.

22. The burden of proof in appeals of this nature lies with the appellant to persuade the panel that the appeal should be allowed. After considering all the evidence presented, both documentary and oral, the panel did not find that the number of spaces should be reduced from 300 to 150 as the appellant had paramount control and all the spaces retained a value.

23. The panel did accept that the restrictions that were caused by the lease arrangements with the offices on the 150 spaces would have an effect on the overall value of the spaces and that the current RV of £750 was excessive. It considered a reduction to £400 per space was appropriate having placed weight on the best comparable, the Car park at West Triangle as this was the closest in terms of locality and size.

24. Accordingly, the rateable value is calculated as follows: 300 spaces at £400 per space provides an RV of £120,000.

25. The appeal was therefore allowed in part.

Date: 1 March 2024

Appeal number: CHG100705594

Order

26. 26Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list to £120,000 from 1 April 2017.

27. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

28. A refund of the paid fees will now be arranged provided there are no reviews of the Tribunal's decision.

Right of further 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.