

THE VALUATION TRIBUNAL FOR ENGLAND



Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Fitness club and premises; main space price; appeal dismissed.

RE: 37 Fore Street, Hexham, Northumberland NE46 1LU

APPEAL NUMBER: CHG100819511

BETWEEN: No Limits Health and Fitness Appellant

and

Ms A Hitchings Respondent
(Valuation Officer)

PANEL: Mr S Chappell (Presiding Senior Member)
 Dr T Webb (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING on 22 January 2024

APPEARANCES: Mr L Worthington from Business Rates Hub Ltd (Appellant's representative)
 Mr A Baird (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The panel concluded that the main space price of £85/m² and the rateable value (RV) of £18,500 was correct.

Introduction

2. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 20 June 2022. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to that effect was served on the appellant on 25 April 2023 and his representatives then appealed the VO's decision to the Tribunal on 4 July 2023 on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A

of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. The appeal property was valued as a Fitness club and premises. It had an agreed area of 363.10m². It was located above a shop.
4. Mr Worthington appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a success fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Worthington'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.
5. 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).
6. Mr Baird confirmed that he was representing the VO as advocate and expert witness.
7. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

8. The issue in dispute before the panel was the correct value to be applied to the appeal property. Mr Worthington had sought a reduced entry of £9,500 RV based on an unadjusted rate of £45/m². Mr Baird defended the VO's existing assessment of £18,500 based on an unadjusted rate of £85/m².

Evidence and submissions

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties' comparable properties, photographs of appeal property and the appellant's comparable properties and their skeleton arguments.

Decision and reasons

10. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

11. Although the appeal property was being used as a Fitness club, the VO had valued the appeal property in line with offices in the location. Mr Worthington argued that the appeal property had to be valued as it stood which he considered to be a fitness club in line with other fitness clubs and gyms in the locality.
12. The Latin expression for applying this principle of reality was known in rating circles as “*rebus sic stantibus*”. There were two strands to this. The first rule being that the physical state of the property had to be regarded as at the material day of 1 April 2017. The only alterations permitted were minor alterations of a non-structural character. The second rule being that the appeal property had to be valued vacant and to let, having regard to its mode or category of use as at the material date and it was the value of that use to the occupier that had to be determined. The leading authority was *Scottish & Newcastle Retails v Williams (VO)* [2001] EWCA Civ 185.
13. It was agreed that as at the material date, 1 April 2017 the appeal property was being used as a fitness club. Although the VO had changed the mode and category to a Fitness club and premises, no evidence had been presented to the panel to demonstrate that there had been any physical changes to the appeal property and Mr Baird contended that the appeal property would still attract the value of an office. In his opinion, it could still be let as an office and therefore it should still be valued in accordance with the tone of value for offices within the locality.
14. The panel was aware that the appeal property had to be valued ‘vacant and to let’ and that it had to be valued having regard to its mode or category of use. However, it would not result in a change in value if the appeal property could still be let as an office.
15. Mr Worthington had not provided any evidence, such as internal photographs of the appeal property to show that there had been any alterations to the appeal property, or, if there had been any alterations that they were more than just minor alterations. The panel was more persuaded by Mr Baird’s contention that the appeal property could still be let as an office as that was the use of the majority of similar assessments in the locality and therefore the panel concluded that the appeal property should be valued as offices.
16. Turning to the value of the appeal property, as the rent commenced in 2006 both parties agreed that the rent for the appeal property was too far from the antecedent valuation date (AVD) to be reliable.
17. The VO had provided some rental evidence. Most of the comparable rental evidence was for properties that were substantially smaller than the appeal property, however, the panel noted that 1st Floor, 5 Cattle Market, and Ground Floor, 14 Gilesgate, had total areas of just under half the size of the appeal property and West Orchard House, Allendale Road, was similar in size to the appeal property. They had rents of £9,500, £14,000 and £25,610, commencing 1 April 2014, 1 July 2016 and 1 May 2014 respectively. These rents analysed at £63.39/m², £97.28/m² and £105.34/m² respectively which supported the VO’s adopted value of £85/m² for the locality and demonstrated that the value was not excessive.

18. The panel found that Mr Worthington's comparable properties did not assist it to determine the value of the appeal property as the majority of them were not in the same locality. The only property that was within the locality, ET Fitness, had been valued as a warehouse/industrial unit and therefore it was not in the same mode or category of use. Although it was currently used as a gym, vacant and to let, Mr Baird contended that the appeal property could be let as a workshop and no evidence had been presented to the panel to prove otherwise. Furthermore, Mr Baird did suggest that it was in a poorer condition to the appeal property although he provided no evidence to support this.
19. As the panel applied less weight to Mr Worthington's comparable properties, the panel was more reliant on the VO's comparable properties.
20. In the absence of any substantial evidence to prove otherwise, the panel concluded that the value of £85/m² and the resultant rateable value of £18,500 was not excessive. The panel dismissed the appeal.

Date: 19 February 2024

Appeal number: CHG100819511

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.