VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; method of valuation for bus stop advertising site; uplift for digital advertising; appeal allowed.

APPEAL NUMBER:	CHG100893554
RE:	Advertising Site 0404 0354 Bus Shelter opposite 22 Atlas Way, Brightside Lane, Sheffield S9 2SR (the “subject hereditament”)

BETWEEN:	Alight Bus Shelter Media Limited	Appellant
	and	
	Joanne Moore IRRV (Hons) (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	21 May 2024
BEFORE:	Mr MH Smith, Presiding Senior Member Miss Z Hundley, Senior Member
CLERK:	Mrs A Sloan IRRV(Hons)
APPEARANCES:	Mr R Wackett (from Montagu Evans for the appellant company) Mr J Griffin (Advocate for the Valuation Officer) Mr C Royle (Expert Witness for the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The panel was satisfied that the Rateable Value (RV) in the 2017 Rating List was unreasonable and ordered a reduction to £850 RV with effect from 1 October 2020.

Introduction

3. At the commencement of the hearing, the clerk invited the panel to correct the name of the appellant to the appeals. On registration with the Tribunal, the appeal had been incorrectly

recorded as being brought by James Baker in his personal capacity. Although Mr Baker is an officer of the company, the company is the appellant as shown on the written submissions from both parties. Neither party had any objection to the correction of the record and the panel was satisfied that there was no prejudice to either party in doing so.

4. Accordingly, pursuant to Regulation 11(1)(a) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 ("the Tribunal Procedure Regulations"), the panel formally directed that Alight Bus Shelter Media Limited was substituted as the appellant in this appeal.

5. 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 9 January 2023. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and a decision notice to that effect was served on the appellant on 9 June 2023. That decision was appealed to the Tribunal on 14 July 2023, on the grounds that the current valuation for the hereditament was not reasonable.

6. Mr Griffin was appearing as advocate for the VO and Mr Royle as expert witness. Mr Wackett was appearing in a dual role 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 confirmed that he was not appearing on a success related fee and was not incentivised by the appellant company. He declared that he was providing objective expert witness testimony regardless of whether the evidence supported his clients' case.

7. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Issue and Relevant Law

8. The issue before the panel was the correct valuation for the subject hereditament. The entry in the 2017 Rating List was a Rateable Value (RV) of £4,800 with effect from 1 October 2020. The material day for the panel to consider the hereditament was 1 October 2020 and the value must be considered at the antecedent valuation date (AVD) of 1 April 2015.

9. The subject property is a six-sheet advertising display located at a bus stop. While the facts of the site were agreed, the parties could not agree on the correct value for the assessment. Mr Griffin defended the existing entry in the list at £4,800 RV and Mr Wackett sought a reduction to £850 RV with effect from 1 October 2020.

10. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 (the "1988 Act") as amended by the Rating (Valuation) Act 1999, which provides that:

> *"2 (1) 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."

11. Section 64(2) of the 1988 Act confirms that an advertising right is rateable:

"(2) In addition, a right is a hereditament if it is a right to use any land for the purpose of exhibiting advertisements and—

(a) the right is let out or reserved to any person other than the occupier of the land, or

(b) where the land is not occupied for any other purpose, the right is let out or reserved to any person other than the owner of the land."

12. Section 64(11) further clarifies the definition of 'land' in respect of advertising rights:

"(11) In subsection (2) above "land" includes a wall or other part of a building and a sign, hoarding, frame, post or other structure erected or to be erected on land."

Discussion

13. The subject hereditament comprises of two faces, each with a six-sheet display, housed in a bus shelter which incorporated a digital display. The panel was aware of the Lands Tribunal judgment in *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976*, listed amongst the case law in the appellant's evidence. This case gave clear guidance to be followed when assessing rateable value, with the starting point being any rent passing on the subject hereditament.

14. Mr Wackett submitted that the subject hereditament was occupied from 1 October 2020 on a leasehold basis at a rent of £1,035. Under questioning from Mr Griffin as to how this figure had been arrived at, he explained that it was the appellant's interpretation of the value per site. The figure had been estimated by dividing the total rent paid for the contract by the number of sites held by the appellant under that contract. He stated that there is an agreement between the appellant company and the transit authority which permits an unlimited number of sites and part of that contract is that the appellant company builds and maintains the bus stops and shelters along with the associated advertising sites. The contract required construction of a certain number of bus stops, with and without advertising.

15. There was a considerable amount of discussion and questioning from Mr Griffin on the subject of the contract and how Mr Wackett had arrived at his estimate of rental value. Mr Wackett explained that he was required to provide a rental value to make the appeal and he had chosen to use the annual amount payable by the appellant and divide it by the number of sites to arrive at a figure. However, the panel noted that the contract was not in evidence before it and therefore it could place little weight on it. It was established that the contract

was available to the appellant at the time of the proposal being made and, while Mr Griffin contended the Valuation Officer (VO) was not aware of the contract at the time, the panel had no evidence that a request had been made during challenge discussions for evidence of any rental agreement. Mr Wackett did not dispute the information Mr Griffin had obtained online about the contract and confirmed that the portfolio was a mixture of static and digital advertising sites. He had not put forward the contract as part of his evidence and it was not available for the panel's consideration. Therefore, the panel found that there was no accurate evidence of the rental value on this specific advertising right.

16. No evidence had been put forward by either party of rents passing on other similar hereditaments, so the panel decided that rental evidence was not available to support either party's valuation.

17. Mr Wackett's evidence contained an extract from the VO scheme for bus shelter roadside displays (6 sheets) and demonstrated that in major towns the unit price was £425. As the subject hereditament had two faces, he contended that the valuation should therefore be £425 x 2, resulting in an RV of £850. The basic unit price was not disputed by the VO, but Mr Griffin contended that, for digital sites, the rate should be uplifted by six times and the existing valuation of £4,800 RV was based on a unit price of £2,400.

18. Mr Royle, as expert witness for the VO, addressed the panel on the subject of the VO's scheme for this type of assessment. He stated that he specialises in dealing with the advertising industry and submitted that the scheme had been agreed after historic discussions with leaders in the advertising field, who had advised that a digital site had six times the earning power of a static, paper and paste, site. He highlighted that the scheme for small format bus stop advertising had been in place since the 1995 Rating List and was well established, with there being scarce rental evidence available for this type of assessment. The panel acknowledged that the contracts often include a requirement to provide the bus shelters as part of the agreement and this would have associated costs which would need analysis.

19. The panel was aware that the value of an advertising right can often be affected by size and location, with large prominently placed sites commanding high values. However, in this case, the advertising right was one of many similar sites in the locality and no evidence had been presented that it was any more valuable than other sites on the same bus route. Mr Wackett submitted that the advertising contractor had decided to install a certain number of digital sites as a "matter of portfolio mix and 'balance'." Mr Royle submitted that on the material day, one must assume the digital site was already in place and that when negotiating the rent the hypothetical landlord and tenant would take the digitisation into account.

20. Mr Wackett's evidence included a copy of a VTE decision from 2018 (appeal number 135528967647/537N10) where the panel in that case allowed the appeal and found that a digital advertising right in a prime location outside a supermarket should be valued as a static site. Although not bound by this decision, the panel found it persuasive and noted that, although the VO was critical of that panel's findings in that case, the decision had not been appealed. It considered that although a digital site clearly has the capacity to display multiple adverts and therefore provide advertising space for more than one customer, each advert would be displayed for a variable amount of time and not continuously which could affect the potential revenue. Although Mr Royle had referred to discussions with the advertising industry, no evidence of this was presented, nor were the relevant extracts from the scheme on which the VO relied in uplifting the value for a digital site.

21. The panel was aware that the hereditament to be valued in this type of assessment is the right to advertise, not the structure upon which the advert is placed or the earning potential of the advertising. There was some discussion at the hearing around plant and machinery and whether the mechanism for the digital display was rateable. Mr Royle submitted that even if it does not add value, it reflects the nature of occupation and should not be ignored when valuing such sites. As no evidence had been presented by either party on the revenue generated from either static or digital sites on similar bus stop displays in the locality, the panel found there was little conclusive evidence to support there being a significant difference in the likely rental value at the AVD for the different types of display.

22. After considering the evidence available, the panel found that there was insufficient rental evidence on which to base the valuation. Therefore, the default position was to consider the established scheme for bus shelter roadside displays, which supported a unit price of £425. No evidence from the scheme was provided by the VO to support an uplift and only oral evidence was presented in support of there being an agreed position that digital sites generated a significantly higher revenue and therefore attract a higher rental value. The panel noted that the location of the subject hereditament was on a main road so would be visible to passing traffic, but it did not appear to be a particularly prominent or valuable location. On balance, the panel found that there was insufficient evidence to support that a digital advertising site was significantly more valuable than a static display in the same location and therefore the assessment should be valued on a unit price of £425 in line with the extract of the scheme available in evidence.

Disposal

23. In view of the above findings and conclusions, the panel is satisfied that the entry in the list at £4,800 RV is not reasonable.

24. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry in the 2017 Rating List to a rateable value of £850 with effect from 1 October 2020. The Valuation Officer must comply with this Order within two weeks of its making.

Refund of appeal fees

25. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Date issued to parties: 17 June 2024

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.
