



VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Car parking space and premises; domestic or non-domestic; appeal dismissed.

APPEAL NUMBER: CHG101112729 and CHG10110664

RE: Parking Space, 7 Union Place, Portsmouth PO1 1QZ and
Parking Space, 10 Wimpole Court, Portsmouth PO1 1QT
(the "appeal properties")

BETWEEN: Portsmouth City Council Appellant

and

Lucy Dyer MRICS Respondent
(Valuation Officer)

SITTING: *remotely using Microsoft Teams*

ON: Friday 13 September 2024

BEFORE: Mr PJ Ward (Presiding Senior Member)
Ms R Sharma (Senior Member)

CLERK: Miss K Hendry IRRV(Tech)

APPEARANCES: Mr J Lewin on behalf of Wilks Head and Eve LLP (Appellant's Representative)
Ms D Thorne (Respondent's Representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.
2. The panel determined that the appeal properties did not satisfy the conditions for them to be treated as domestic and therefore could not be deleted from the valuation list.

Introduction

3. These were 2017 rating list appeals which had been entered into the 2017 rating list as 'Car parking space and premises' at a rateable value (RV) of £500 with effect from 1 April 2017.
4. The challenge proposals were submitted by Wilks Head and Eve LLP on behalf of Portsmouth City Council which sought a deletion of the assessment from the rating list.
 - Parking Space 7, Union Place - The challenge was submitted on 17 August 2023 and a decision notice was issued by the Valuation Office (VO) on 4 January 2024.
 - Parking Space 10, Wimpole Court - The challenge was submitted on 14 August 2023 and a decision notice was issued by the VO on 29 December 2023.
5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal been made on the grounds that the valuation for the hereditament should be deleted. The appeal was lodged behalf of the appellant and received by the Tribunal on 29 April 2024.
6. Mr Lewin 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), his declaration of truth included a statement that he was instructed under a contingency fee arrangement. 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.
7. 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 it saw fit.
8. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Relevant Law

Primary legislation

9. Part III of the Local Government Finance Act 1988 (the 1988 Act) makes provision for the establishment of the local non-domestic rate payable in respect of non-domestic hereditaments.
10. The statutory definition of "hereditament" in section 115(1) of the General Rate Act 1967 states that it is "such a unit of ... property which is, or would fall to be, shown as a separate item in the valuation list."
11. Section 66 of the 1988 Act provides the definition of domestic property as follows:

66 Domestic property

(1) [Subject to subsections (2), (2B)[, (2BB)] and (2E) below,] property is domestic if—

- (a) it is used wholly for the purposes of living accommodation,
- (b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,
- (c) it is a private garage [which either has a floor area of 25 square metres or less or is] used wholly or mainly for the accommodation of a private motor vehicle, or
- (d) it is private storage premises used wholly or mainly for the storage of articles of domestic use.

[(1A) Property in England is also domestic if—

- (a) it is used wholly or mainly for the activity mentioned in subsection (1B), and
- (b) it is situated in or on property which is—
 - (i) used wholly for the purposes of living accommodation, or
 - (ii) a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation.

12. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

13. The parties referred the panel to the following judgments:

- Laing v Kingswood Assessment Committee (1949) 1 KB 344 CA
- Garton v Hunter (1969) 1 All ER 451
- Lotus and Delta Limited v Culverwell (VO) (1976) RA 141
- Reeves v Tobias RA/2/2010
- Coxhead v Brentwood UDC 1972
- Porter VO v Gray Son & Cook and Cambridge Corporation 1952 R&IT 28
- Woolway v Mazars [2015] UKSC 53
- Cardtronics and Others v Sykes and Others (VOs) [2020] UKSC 21
- LB Southwark v Ludgate House Ltd [2020] EWCA Civ 1637

Discussion

14. Mr Lewin sought for two assessments to be deleted from the rating list on the grounds that they were not non-domestic hereditaments. He stated that the parking spaces were residential in nature and formed part of the domestic curtilage of the surrounding block of flats. He referred to an extract of the Valuation Office Agency rating manual which set out:

‘1.1 This guidance applies to car parks.

For Rating purposes there are three types of Car Parks that can be rateable;

- a) car parks open for use by the general public and forming a separate hereditament for rating purposes:

These will include both open sites and covered areas (i.e. surface underground and multi-storey).

.....

- b) car parks, not open to the general public and forming a separate hereditament for rating purposes:
 - c) car parks occupied and forming part of another hereditament for rating purposes. These are dealt with in the Rating Manual under the individual class of the principal use.
15. He argued that the appeal properties did not confirm to any of the above identified. It was not open to the public and did not form a separate hereditament for rating purposes nor did it form part of another hereditament for rating purposes. The parking spaces were leased by the council to residents and the area is overwhelmingly residential.
16. Mr Lewin informed the panel that previously when apartment blocks were constructed, each parking space was attached to a corresponding flat, however this was discontinued as not every resident required a parking space and it was unfair to include the cost of a space within a rent for those without a vehicle. He argued that common law states that the curtilage of a house or dwelling is the land immediately surrounding it, including any closely associated buildings or structures. This should apply to the parking spaces on the same basis of a parking space outside of a house.
17. The spaces were let out to the following
- a) 'local residents' which was defined as a licensee who lived within a fifteen minute walk of the parking space. The vast majority tend to live in the corresponding flats to the parking space.
 - b) 'non-local residents' was defined as a licensee that lived outside of the fifteen minute walk.
18. There were also a large number of void spaces which Mr Lewin argued were due to the locations and lack of commercial viability. He argued that since the AVD there had been a clear trend that the number of bays let to local residents in comparison to non-local residents had been steadily climbing.
19. The fees charged by Portsmouth City Council are very low and are only in place to cover the administrative costs encountered by the council in the management of the space. Fees are available to be paid on a weekly basis to assist those on low income or unemployed with the financial cost. Mr Lewin provided a copy of the license agreement and the conditions contained within. The agreement allowed the licensee three options, 'PCC Tenant', 'Leaseholder' and 'Private' depending on the licensee's living arrangements. Private related to someone who does not lease their property from the council and is not in council subsidised accommodation. He stated that the language used within the agreements supported that the car parking space was domestic, such as 'consider your neighbours and all other users of the site when using your parking space', the use of the word 'neighbour' makes clear the space is to be used by residents as an extension of their domestic accommodation.
20. In response Ms Thorne argued that no evidence had been provided to demonstrate that the individual car parking spaces were domestic. Having regard to section 66 she argued that it cannot be considered domestic under (1)(a) as it clearly was not actually used for the

purposes of living accommodation, nor could it be considered domestic under sections (1) (c) or (d), it was not a private garage, or private storage premises. When considering (1) (b), it was not considered to be a yard, garden or outhouse, so it came down to whether a car parking space is an “appurtenance” and is “belonging to and enjoyed with” the domestic property occupied by the same ratepayer as the car parking space. Ms Thorne argued that the car parking space was not an appurtenance to the domestic property as it can be licensed to any individual, the licensee was not required to be a resident or a ‘local resident’.

21. Having regard to all the evidence presented, the panel held that the car parking spaces were not an appurtenance to the residential flats and therefore not domestic. The panel carefully considered the conditions of the licence agreement and found that there were no restrictions as to who could lease a space, which meant that there was no link between the domestic flats and the parking spaces. The car parking spaces could be let by anyone over fifteen minutes’ walk away, ‘non-locals’, and, a licensee could be private, not specifically council tenants. This meant that anyone could apply for a parking space. The panel also noted that there was no automatic right to the residents in the flats obtaining a space. The council had deliberately split the parking spaces from the flats.

Disposal

22. In view of the above findings and conclusions, the panel was satisfied that the appeal properties were correctly entered into the 2017 rating list from 1 April 2017 as non-domestic properties, and therefore the appeals were dismissed.

Date issued to parties: 1 October 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.
