

VALUATION TRIBUNAL FOR ENGLAND

Referencer:

Non-Domestic Rating Appeal. Accuracy of RV in List. Warehouse and Premises. Rent. Average Rents. Comparables. Tone of the list. Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Appeal Allowed in Part.

Re: Unit 3 Whitehall Court, Whitehall Park, Leeds LS12 5SN. £25,550 Rateable Value with effect from 1 April 2010

Appeal number: 472018323271/244N10/230

Hearing on: Monday 06 February 2012

At: The Valuation Tribunal Offices, Doncaster

Party in attendance: Mr D Hirst Respondent (Valuation Officer)
Ms A Leitch Expert Witness for the Valuation Office Agency
Mr C Pickering from Jordans and Partners on behalf of Auto Charge (UK) Ltd

Members: Mr D Emmott (Chairman)
Mrs M Latham
Mr M Greetham

The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the Panel.

Introduction:

1. The appeal arose following a proposal dated 08 April, 2010 made by the Jordans and Partners North Ltd on behalf of the appellant ratepayer Auto Charge (UK) Ltd. At the date of the proposal, the existing assessment was £25,500 Rateable Value. On behalf of its client, the appellant's representative sought a reduction in the appeal property's assessment from £25,500 to £18,000 Rateable Value.

Appellant's Case

2. The appellant's representative informed the panel that the lease on the appeal property, which was a brand new building, was agreed on 1 April 2009 at £18,000 p.a. but had started on 1 August 2009 for a term of 5 years.
3. In summary, the appellant's representative, referred to the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141* which set

out six propositions to have regard to when considering the weighting of evidence and in his opinion, based on his evidence he felt the propositions should also be applied in this case.

4. He stated that the appeal property's rent should be used to set the rateable value for the premises and in support of this contention, he referred to the first proposition in *Lotus & Delta Ltd v Culverwell (VO) & Leicester City Council (1976 RA 141)* which states that 'where the hereditament which is the subject of consideration is actually let, that rent should be taken to be the starting point'. In this respect, he stated that the lease represents the best rental evidence as the lease commenced the closest to the AVD of all of the properties from the comparables of Whitehall Court and Whitehall Cross Leeds.
5. Within the regulation 17 Notice that the VO has submitted, there were no comparable properties of the same size. He referred again to *Lotus & Delta Ltd v Culverwell (VO) & Leicester City Council (1976 RA 141)* in this regard and stated that in those cases where there are no rents available of comparable properties, a review of other assessments may be more helpful but in such circumstances it would clearly be more difficult to reject the evidence of the actual rent. The other evidence was from 2005 when the country was in good economic times , but confirms the appeal property's rent is consistent.
6. The appellant's representative referred to lease statistics from units 1, 3, 5, 6 & 7, 8 and 9 Whitehall Cross which gave the rents payable on these properties and the totals and averages for these figures. , He focussed on the total rents passing at 1 April 2005 and the rateable values at that time, to indicate the difference between the rents and the rateable values for these properties.

Address	Lease from	Total Area m ²	Total Area in Terms of Main space	Main Space per m ²	Rateable Value	Rent	Main Space in Terms of rent
Unit 3 Whitehall Court	01/08/2009	475.37	474.42	£54	£25,500	£18,000	£38
Unit 1 Whitehall Cross	01/04/2005	614.76	660.71	£56	£37,000	£30,000	£45
Unit 5 Whitehall Cross	01/04/2005	366.52	296.43	£70	£20,750	£10,000	£34
Unit 6 & 7 Whitehall Cross	23/06/2009	1296.66	1407.38	£46	£64,500	£60,000	£43
Unit 9 Whitehall Cross	01/02/2005	383.21	396.63	62.4	£24,750	£24,000	£61

Unit 8 Whitehall Cross	01/04/2005	413	440.37	£52	£27,250	£27,3000	£62.00
Totals				287.98	£199,750	£169,300	£283.00
Averages				£57.60	£28,535.71	£24,185.71	£40.43

2005 Lease statistics

Total Rateable Value Total Rent

£109,750

£91,300.

Difference between 2005 RV and Rent -£20.20%

7. The appellant's representative considered that from the 2005 rental evidence, the rents indicated a difference of 20.20% lower than the rateable value. In using the Valuation Officer's figure for predicted growth from 2005 of 2% p.a. which equated to 6% for 3 years, up to 1 April 2008, the appellant's representative deducted 6% from the 20.20% difference in rent/2005 rateable value to result in a figure of 14.20%. He deducted 14.20% from the current rateable value of £25,500 to give a rateable value of £21,879 for the appeal property.
8. Alternatively, the appellant's representative referred to section 3.2.4 of the VOA's Rating Manual which addresses in his opinion, circumstances where most tenants are existing tenants i.e. 'without full knowledge of the renewal agreement or determination, care will need to be taken before attaching great weight to the rents fixed on renewal.' He then referred to section 3.2.3 of the VOA's Rating Manual Volume 1 which states '*generally, these may be regarded as the most reliable category of rental evidence.*' This in his opinion supported his view that new lettings were the most reliable source of rental evidence.
9. Consequently, the rent passing of a new tenant leasing from a new landlord was £18,000 p.a. from 1 April 2009 and taking account of a decline in rents, after the first quarter of 2007, he considered that an adjustment from 1 April 2008 to 1 April 2009 was calculated as no more than 9%. In conclusion, the appellant's representative calculated that £18,000 p.a. plus 9% for the continued economic downturn resulted in a rateable value of £19,620.
10. After questioning by the Valuation Officer, the appellant's representative confirmed that the lease on the appeal property had been signed on 1 April 2009 but had started on 1 August 2009 and it had been agreed without a rent free period. Additionally, the Valuation Officer questioned the methodology used to arrive at the rateable value as being incorrect. The appellant's representative confirmed that he was contending for a figure of £19,620 effective from 1 April 2010, based on his submitted calculation, notwithstanding that his original proposal contended for a rateable value of £18,000.

Valuation Officer's Case

11. The Valuation Officer presented the panel with a submission containing; his case, a copy of the appellants proposal, an extract from Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988 (as amended) containing the definition of Rateable Value, plans and photographs showing the appeal property and the comparable properties, a rental summary and his valuation of the appeal property.
12. The Panel were told by the Valuation Officer that he had complied with Regulation 17 (4) (a) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009; in that the notice was served on 30 August 2011.
13. The Valuation Officer confirmed that the areas were not in dispute and the point at issue was the price to be adopted for the Main Space area. He had adopted £58 per m² (insulated and heated) and to support that level of value he referred the panel to the following rental summary:

Address	Description	Total Area m ²	Area ITMS m ²	Rent Source	Effective Date of rent	Passing Rent	Adjusted Rent	RV	Analysed Rent £m ²	Assessment Unit Value £m ²
Unit 8 Whitehall Cross	Workshop and Premises	413	440.37	Rent return	01-Sep-2009	£30,000	£28,500	£27,250	£64.72	£61.99
Unit 8 Whitehall Cross	Workshop and Premises	413	440.37	Rent return	1 April 2005	£27,300	£27,300	£27,250	£61.99	£61.99
Unit 9 Whitehall Cross	Whse and Premises	383.21	388.35	Rent return	1 February 2005	£24,000	£23,160	£24,750	£59.64	£64.00

14. The Valuation Officer then also referred the panel to the decision of the Lands Tribunal in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council (1976)* and highlighted the six propositions to have regard to when analysing rental evidence, which were as follows:

(i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as a starting point.

(ii) 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 section 19 (6) of the General Rate Act 1967 the more weight should be attached to it.

(iii) Where rents of similar properties are available they too are properly to be 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 hereditament.

(iv) Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving some indication of that opinion.

(v) In the 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 different 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.

(vi) 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 clearly be more difficult to reject the evidence of the actual rent.

15. Although the starting point is taken as the rent on the appeal property, Valuation Officer pointed that the appeal property was not rented at the Antecedent Valuation Date (AVD) 1 April 2008 but later at 1 April 2009.
16. He commented that the rent on Unit 8 was agreed at 1 September 2009 at £30,000, which was far away from the AVD whilst he was aware that the 2005 rent on the same property of £27,500 was a connected party 'pension fund' rent having been rented by the owner to himself via his pension fund and was therefore flawed. The rent on Unit 9 of £24,000 at 1 February 2005 was considered by him to be a good rent.
17. With respect to the rents submitted by the appellant's representative, the Valuation Officer contended that the approach of averaging these rents to support a reduction in a lower figure for the appeal property was not in accordance with *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council (1976) [RA141]* which confirms that more weight should be given to rental evidence, agreed on terms closer to the statutory hypothesis and the AVD of 1 April 2008.
18. He commented that £10,000 for Unit 5 was agreed in 2009 not 2005, which had been confirmed with the landlord; Units 6 & 7 is nearly three times the size of the appeal property and was therefore not comparable to the appeal property as there is a quantum allowance built in to its £/m² price of 46 m². The valuation officer commented that the rent on Unit 9 and therefore its price £m² supports the assessment of the appeal property.
19. The valuation officer then referred the panel to settlements of 11 properties in the Evans Business Centre Leeds, Maybrook Industrial Estate Leeds, Albion Park Leeds, Scotch Park Trading estate Leeds, Gloucester Court Leeds and Whitehill Cross Leeds that were all in the same valuation scheme as the appeal property and ranged in size from 70.06 m² - 2,789.90 m². These properties had adopted prices between £47.00 perm² and £73.13 per m² and appeals in respect of them, had been withdrawn or dismissed at Tribunal. A previous appeal on the appeal property had also been dismissed at an earlier hearing.
20. The Valuation Officer considered that the figure originally contended for by the appellant's representative, of £37.92 m², was not appropriate. He drew the panel's attention to his revised valuation, which following an inspection, had now addressed issues relating to: a 2.5 % allowance for being unheated, an area of the property having a 10 % allowance for low headroom height of less than 2.5 metres, a shared loading and parking allowance with unit 4 of 5% and a shared loading allowance with unit 2 of 5%.
21. Consequently, the Valuation Officer contended that based on his comparable evidence and taking account of new information, the appeal property's assessment should be revised to £23,750 in accordance with his valuation.

Floor	Description	Area m² /Unit	£per m²/Unit	Value (£)
Ground	Warehouse	348.87	51.04	17,806
Ground	Office	27.51	56.14	1,544
Ground	Staff Toilets	6.16	51.04	314
Ground	Workrooms	92.83	45.94	4,265
			Sub Total	23,929
Say				RV 23,750

22. Following questions by the appellant's representative, the valuation officer considered that the information provided by him regarding the letting of the appeal property related to a date at least a year after the AVD and as such reflected the downturn in the rental market at that time, due to the national economic downturn which had started to 'bite' in late 2008. Consequently, the Valuation Officer believed that the rent that would have been achieved at the AVD would have been higher and more in line with his comparable evidence.
23. The panel had a short adjournment to consider the appellant's revised contention for a reduction to £19,620 RV instead of £18,000 RV and upon reconvening, allowed the Valuation Officer the opportunity to comment on this changed figure. The Valuation Officer stated that the appellant's representative's revised figure and approach did not alter his view that his own comparable evidence and approach was correct.

Decision of the panel:

24. The appeal is against the RV in the 2010 rating list. Parliament has provided a statutory definition of RV which has, as its basis, the property's rental value on a specific date given certain assumptions. The full definition is set out in the amended Schedule 6 of the Local Government Finance Act 1988. The valuation date for the 2010 list is provided by the Rating Lists (Valuation Date) Order 2008. Article 2 of the Order provides that the valuation date shall be 1 April, 2008. In practice, the statutory terms for RV will assess rental values passing at that date. The effects of economic policy or recession after that date cannot affect the market evidence prevailing on the valuation date.
25. The figure contended for by the appellant's representative, based on his submissions resulted in a Rateable Value, £19,620. The respondent Valuation Officer considered that his revised figure of £23,750 RV was correct taking into account the evidence available of comparables within the locality of the appeal property and his approach to the weighting of evidence.
26. The panel was informed by the appellant that his approach, of analysing the average figures for 2005 rents for comparable properties and then deducting this figure from the average figure for the rateable values, which resulted in a difference in figure for the rateable value of 20.20%. After taking account of the (valuation officer's) predicted growth from 2005 to April 2008, of 2% p.a. this resulted in a 6% deduction, resulting in a 14.20% deduction to be made to the appeal property's rent

in April 2009 of £25,5000 which in his opinion, was indicative of the rent that would be passing at 1 April 2008 of £21,879.

27. Alternatively, the appellant's representative took a figure of £18,000 p.a. from 1 April 2009 for a new tenant leasing from a new landlord and as rents were in decline from the 1st quarter of 2007, he adjusted the rent to take account of the fall between 1 April 2008 and 1 April 2009 by 9%. This resulted in a figure of £19620 RV.
28. The panel was not persuaded that this approach or figure was indicative of the general level of rents that would have been achievable at that time and are more persuaded by arguments of the Valuation Officer, in referring to case law in *Lotus and Delta v Culverwell (VO) & Leicester City Council [1976]* which states the six propositions to apply when considering the weighting of evidence.
29. The Panel in taking account of the above case finds that the rent of the appeal property in 2009 was not a good indicator of the rents that would be passing in this locality at the AVD and the panel were more persuaded by the rental evidence available from other similar property in the locality.
30. The comparable assessments referred to by the respondent were taken from the same locality and contained properties that were similar in mode, size or use as the appeal property. Importantly, the Panel considered that the comparable evidence submitted on the eleven properties in the locality of the appeal property which highlighted the prevailing price m² between £47 per m² and £73.13 per m².
- 31.. Importantly, the panel also considered that as the burden of proof lay with him the appellant's representative had failed to substantiate the case that a lower assessment, than that which had been adopted by the Valuation Officer, was warranted,. Additionally, the rental evidence that had been provided by him, in support of his contention for a reduction in the rateable value of the appeal property, had been superseded by the weight of evidence of other comparable properties, in the locality.
32. In conclusion, the panel was satisfied that the approach used by the Valuation Officer in coming to a revised assessment for the appeal property was fair and reasonable and therefore the appeal was allowed in part to the extent of confirming the figure contended for by the Valuation Officer.
33. In view of the foregoing, the Valuation Officer's revised assessment of £23,750 Rateable Value was upheld as being correct and the appeal property's assessment was reduced in accordance with the order below.

Order(s): Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List for Unit 3 Whitehall Court Whitehall Park Leeds LS12 5SN within two weeks of the date of this order to show a Rateable Value of £23,750 with effect from 1 April 2010.

34. Date of Order(s): 05 March 2012

Approved for issue by the Chairman

LB/CH