

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2017 list appeal; club and premises; comparable properties; subject rent; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed.

Re: Highcliffe Sailing Club, Mudeford Quay, Christchurch BH23 4AB

APPEAL NUMBER: CHG100286790

BETWEEN: Highcliffe Sailing Club Appellant
and
Mr D Virk Respondent
(Valuation Officer)

PANEL: Dr J Johnson (Presiding Senior Member)
Ms L Dubow (Senior Member)

CLERK: Mrs C McAvoy

REMOTE HEARING No.4 on 11 January 2022

APPEARANCES:

Mr M Radford of Mark Radford Rating on behalf of the appellant as both advocate and expert witness

Ms S Pascoe on behalf of the respondent Valuation Officer as advocate and expert witness

Summary of decision

1. Appeal allowed; the 2017 rating list assessment was reduced to £5,500 (RV) with a base rate of £30/m².

Introduction

2. This appeal has been brought in respect of the following: Highcliffe Sailing Club, Mudeford Quay, Christchurch BH23 4AB (the 'appeal property') which was entered in the 2017 Rating List at £7,400 RV, effective from 1 April 2017 calculated using a base rate of £40p/m².

3. The appeal property was shown in the list as club and premises. It is situated within Mudeford Quay. The site comprises of a clubhouse (which is subject to this appeal), and a separately assessed land used for storage. The clubhouse assessment consists of clubrooms, changing rooms and external storage. There is also an outdoor terrace area.
4. Mr Radford, on behalf of the appellant, disputed the RV and proposed a reduction from £40/m² to £30/m², equating to a revised RV of £5,500 with effect from 1 April 2017.
5. The challenge process was completed on 13 May 2021 and the VO's decision was that the proposal was not well-founded and no alteration to the current RV was made. Mr Radford disputes this decision on the grounds that the passing rent, closest comparable and the clubs' ability to pay has not been considered. He therefore lodged an appeal to this Tribunal.
6. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers), the VTE may determine the form of any hearing.
7. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.
8. Mr Radford 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), he was asked about his fee arrangement. He submitted that he was instructed under a contingency based fee, although due to the time and resources spent on this case, this was essentially now the cost of work. He declared that he understood and accepted that his duty was to the Tribunal in giving her evidence and she 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.
9. 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).
10. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

12. The issue between the parties concerned the RV of the appeal property and specifically the price per m² to be adopted. The base rate was £40/m² and a reduction to £30p/m² was sought.

Evidence and submissions

13. The evidence bundle presented to the panel comprised the information exchanged between the parties as part of the check and challenge process.
14. Mr Radford submitted that the rent is charged for the sailing club as a whole, but the RV is split into three separate assessments following the *Woolway v Mazars* [2015] UKSC 53 supreme court decision. In respect of the sailing club subject to this appeal, on behalf of the appellant, he sought a reduced base rate of £30/m², resulting in a reduced RV of £5,500 with effect from 1 April 2017. The areas were agreed between the parties and the proposed RV was broken down as follows:

Description	Area m ² /unit	£ per m ² /unit	Value £
1.1 Club rooms	128.50	30	3855
1.2 Changing rooms/entrance	68.60	19.80	1358.28
1.3 External storage	45.00	7.5	337.5

15. Mr Radford argued that in accordance with the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976 the passing rent on the appeal property should be the starting point when determining a suitable RV. He disputed the VO's comments in respect of the rent being agreed between connected parties. He submitted that 30-year leases were not uncommon when the lease was agreed in 1998 and the rent charged on the property had been tested on an open market at this time and at each review as stipulated within the lease agreement. The landlord, Christchurch District Council, has a statutory duty to achieve market rent under Section 123 of the Local Government Finance Act 1972 and had appointed Vale Williams to survey the premises at the 2019 review to ensure it reflected the market value. He referred to an email from the treasurer at Highcliffe Sailing Club which stated that the club receives no rental concessions from the landlord and the council exercised the rent review provisions and it was agreed that the rent represented open market value. The rent increased to £12,879 at the 2013 review.

16. Mr Radford also questioned the valuation method, submitting that given the property's uniqueness, the receipts and expenditure method may be more appropriate. He submitted that the club's ability to pay should be a consideration and provided three years of accounts for 2014, 2015 and 2016. He stated that having worked together with the VOA in the early 90's, a memorandum of guidance was agreed in respect of valuing sport centres. He submitted that ability to pay was a consideration and he referred to section 6 of the VOA's current rating manual and referred to caselaw in support of this. This included *Tomlinson (VO) v City of Plymouth and Plymouth Argyle FC* [1960], *Tyldesley RUFC v Cole (VO)* [1989] LT 29 RVR 152, *Heaton Cricket Club v Westwood (VO)* [1959], and *Astley Bridge Cricket Club v Westwood (VO)* 52 R&IT 499.
17. Mr Radford considers that the VO had impugned its own list in respect of the assessment on Christchurch Sailing Club, stating in the challenge response that in the VO's representative's opinion this was under assessed. In support, Mr Radford referred to *Burroughs Machines Ltd v Mooney (VO)* [1977] 1 EGLR 182, *Shrewsbury Borough Council and Plumpton (VO)* [1960] 7 RRC 313 and *Shearson Lehman Bros Ltd v Humphreys (VO) and Hackney Borough Council* [1991] RA 12. As he noted that the VO had increased the assessment prior to the hearing, he provided a summary of *Burroughs Machines Ltd v Mooney*, whereby the VO made steps to increase an assessment during an adjournment and the new assessment was rejected. In this case, Mr Radford therefore submitted that the VO had impugned its own list and following the case law, he considered that the new assessment on Christchurch Sailing club should be rejected and submitted that he believes the VO should have waited until the outcome of this appeal.
18. Ms Pascoe also referred to *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976. She agreed the rent on the appeal property was the starting point, but she argued that little weight could be attached to this evidence given it was agreed in 1998 and upon review the parties were connected. She submitted that the Billing Authority's statutory duty was not relevant.
19. Ms Pascoe also argued that the case law put forward was for hereditaments in different mode and categories and there is a national market for sailing clubs, as such the consideration of the accounts, the ability to pay and the use of the receipts and expenditure valuation method was rejected.
20. Ms Pascoe had referred to a number of properties within the written submission and primarily relied on the assessment of Cobbs Yacht Club Ltd. It was also argued that the basket of assessments referred to support a tone, rather than relying on just one rent which was unreliable as it did not fit the statutory hypothesis of a new tenant coming fresh to the scene. The basket of evidence supported the current assessment of £40m² which she considered to be fair and reasonable. She therefore sought dismissal of the appeal.

Decision and reasons

21. The panel firstly considered the valuation method. Mr Radford main contention was the RV but as a separate issue, within his submission, he stated that the receipts and expenditure method may be more appropriate given the unique property class and limited market.
22. The panel was aware that the receipts and expenditure method was an alternative approach usually adopted when there is no or only limited rental evidence. The appeal property was occupied at the antecedent valuation date (AVD) and a rent was being charged, this is primary evidence of demand. The VO submitted that there was a national demand with rental evidence having been provided for the appeal property and the for one of the comparable properties. The panel therefore concluded that it was reasonable for the VO to use rental evidence as opposed to the receipts and expenditure method and proceeded to consider the arguments raised by both parties in respect of the price per/m² to be adopted.
23. Turning to the consideration of the RV, the panel had regard to the term 'rateable value' as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):
- “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”.
24. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 1 April 2017.
25. In reaching its decision, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council*. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

- (1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
- (2) 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 s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
- (3) Where rents of similar properties are available they too are to be properly 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 property.
- (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
- (5) In 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 differing 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.
- (6) 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 be clearly more difficult to reject the evidence of the actual rent.'

26. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. The lease commenced on 1 September 1998 and was a 30-year lease on a full repair and insurance basis. It was leased from Christchurch District Council. The rent was £12,750 per annum with upward only reviews carried out every five years. This rent is for all three assessments, the appeal property (the clubhouse), the dinghy storage and the boat storage. In accordance with the current split in the list, the proposed RV for the clubhouse was apportioned to £5,500. There was a rent review on 1 September 2013, with a rent increased to £12,879. During proceedings, Mr Radford submitted that there was a further rent review in 2019 and the Billing Authority employed surveyors to value the property and the outcome was that the rent was a representation of the market. No evidence of the 2019 review or the mentioned survey was provided but the panel had regard to the terms of the lease and the 2013 rent review.

27. The panel recognised that whilst the rent review was agreed closer to the AVD, it had to consider that this was not a new letting, and that it related to all three assessments not just the appeal property. Adjustments therefore would be required to conform with the statutory rating hypothesis. The date the lease

was agreed was far removed from the AVD, but it had regard to Mr Radford's submission in that the BA are compelled to seek current market rent at each review. This was also stipulated within the copy of the lease agreement provided.

28. In accordance with *Lotus v Delta*, the panel agreed that the passing rent on the appeal property should be the starting point, but weight still needs to be attributed to it and the passing rent was not necessarily always the best evidence. The panel therefore found it necessary to turn to the third proposition and examine the rents passing on comparable properties to test the rent for the appeal property.
29. The panel was presented with a schedule of comparable property evidence which included other club houses within Christchurch and Poole. The VO's four comparable properties ranged between £37.05/m² to £60/m². It was noted that the rental evidence was only available on one of the assessments, given that the others were freehold or peppercorn rent. Ms Pascoe therefore relied on this one rent for the Cobbs Yacht Club, but also argued that the other assessments supported an established tone.
30. The Cobbs Yacht club was let in 2014 for £23,000 and had been analysed by the VO to £80.77/m². The price per m² adopted was £60 with a RV of £14,000. It was noted that the Cobbs Yacht Club was in Poole so was further removed from the appeal property situated in Christchurch. The panel noted the extract provided in regard to this property in that it is a fine dining hospitality venue, which Mr Radford argued was too far removed from the accommodation of an amateur sailing club. The use of the property had changed in 2013 and now that the VO was aware of this, it was stated that the assessment will be reviewed. However, Ms Pascoe argued that it is currently valued in the same mode and category, and it is not unusual for a club to have a bar for members so the mode and category may not change. Having regard to the submissions from both parties, the panel concluded that this was not a good comparison, given the differences described, the locality and the uncertainty over the use.
31. Mr Radford had referred to Christchurch Sailing Club. No rental evidence had been provided but it was rated at £25 per m². The VO had submitted within its response that this appeared to be underassessed. At the hearing, the parties confirmed that the assessment had since been reviewed and had been increased to RV £35,500 based on £40p/m² with an effective date of 10 September 2020.
32. The panel gave due consideration to Mr Radford's comments regarding the VO impugning its own list. Having regard to *Burroughs Machines Ltd v Mooney (VO)* [1977] 1 EGLR 182, he considered that the VO should not increase an assessment until after the conclusion of this case. The panel found that the circumstances in the case before it somewhat differed to the situation described within this judgment in that a review of a property's assessment was initiated within a hearing adjournment. The panel was aware that the VO has a duty to maintain the accuracy of the list, which had been

demonstrated via case law referred to within the VO's submission, *Valuation Office Agency v West London Aero Club* [2014]. The panel therefore give full weight to the new assessment, however, it noted that no rental evidence had been provided.

33. In conclusion, the panel found that there was a lack of rental evidence and for the reasons previously stated it did not attach significant weight to the rent for Cobbs Yacht Club Ltd. In respect of the other assessments referred to, there was limited evidence put forward to demonstrate the comparability of the properties and given the lack of reliable rental evidence the panel was not persuaded by the VO's evidence. It therefore considered, in the absence of any other evidence, that the actual rent was the best evidence.

34. In conclusion, after full consideration of the evidence presented, the panel found it could not reject the actual rent of the appeal property. It had been demonstrated that the lease stipulated that the rent reviews would be considered at market value and the 2013 review was closer to the AVD. Having regard to this rent, and the nature of the hereditament, the panel agreed that if vacant and let, the hypothetical tenant would likely be another amateur sailing club entering negotiations, it therefore found the proposed valuation of £30p/m² to be reasonable.

35. In view of the foregoing, the appeal was allowed.

Order

36. Under the provisions of regulations 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 reduce the entry in the rating list to show the following:

Highcliffe Sailing Club, Mundeford Quay, Christchurch BH23 4AB
£5,500 RV with effect from 1 April 2017

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

38. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 31 January 2022

Appeal number: CHG100286790