THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; car showroom and premises; mode and category of occupation; comparable properties; appeal dismissed as the evidence showed that the appeal property was correctly valued as a car showroom and premises and that the existing valuation was reasonable.

Re: 19 Oak Industrial Park, Dunmow, Essex CM6 1XN

APPEAL NO: CHG100127578

BETWEEN:	George Browns Limited	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Miss L Moses (Senior Member) and Miss R Punia

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING 1: Friday 11 June 2021

APPEARANCES: Mr A Sparsi of Altus Group (on behalf of the Appellant)
Mr H Watson (Respondent's representative)

Summary of decision

1. The appeal was dismissed; the appeal property's assessment remained unaltered at £102,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 19 Oak Industrial Park, Dunmow, Essex CM6 1XN, which was entered in the 2017 Rating List as car showroom and premises at £102,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 20 September 2019. The appeal to this Tribunal was made on 11 March 2021, following the VO's Decision Notice

of 1 December 2020, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The appeal hereditament was a modern purpose-built showroom. It had been built in 1988 of brick and profile metal construction. It had large plate glass windows fronting the main road and prominent display spaces. There were first floor offices and a workshop to the rear. It was located to the front of Oak Industrial Park. The premises were formerly used as a car showroom but was now used as a showroom by an agricultural and ground-care dealer.

5. 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.

6. 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.

7. Mr Sparsi was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. Mr Sparsi explained that Altus Group was representing the appellant in this appeal on a contingency fee basis. However, he declared that he understood and accepted that his duty was 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.

9. The panel have 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. A preliminary issue was raised. Mr Watson pointed out that Mr Sparsi had referred to two comparable properties that had not been introduced at the Challenge stage. Mr Watson considered that the comparable properties were fresh evidence and the appellant's representative could have reasonably been aware of those properties when the Challenge was submitted. However, Mr Watson had not been the original caseworker for this appeal and he acknowledged that his predecessor had broadly accepted the additional evidence. Accordingly, whilst Mr Watson made no formal objection to the inclusion of the two comparable properties, he wished to have it noted that they should have been introduced at the Challenge stage. The panel noted the comments raised, as no formal objections had been raised, it proceeded to hear the appeal having regard to all of the evidence presented.

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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

12. The issue to be determined was the correct mode or category of occupation for the appeal property. The VO was defending the current entry, which valued the appeal property as a car showroom and premises at a main space rate of £150/m^2. In contrast, the appellant's representative contended that the appeal property should be valued on an industrial basis at a main space rate of £45/m^2.

Evidence and submissions

13. In a statement which accompanied the Challenge, together with his oral presentation at the hearing, Mr Sparsi gave several reasons as to why he believed that the 2017 assessment was incorrect and excessive, which included:

    i) The appeal property's assessment was not in line with the assessments placed on comparable properties in the locality, taking into account the differences in the physical attributes between the properties.

    ii) The appeal property used to be occupied by Ford, the car dealership. Therefore, the property was valued as a car showroom and premises in accordance with scheme 364075 that was applicable to 'all car showrooms selling new cars in the county of Essex'.

    iii) Since 22 May 2014, the appeal property has been occupied by George Brown Ltd who were Kubota Agricultural and Ground-care Dealers.

    iv) The appeal property was no longer a car showroom and premises and therefore should not be valued as such. The property fitted within scheme 369171 which was applicable to 'all industrial units at Oak Industrial Park, Chelmsford Road, Dunmow'. Mr Sparsi's proposed assessment had adopted a main space rate of £45/m^2, which was a value within scheme 369171.

    v) Mr Sparsi contended that the 'car display spaces should be removed from the assessment as the property was no longer a car showroom. Furthermore, it was considered that the 32 car parking spaces were excessive and should be reduced to 20.

    vi) In support of his case, Mr Sparsi referred to two comparable properties, which were both located within the Essex area but valued differently to the subject property, namely 11 Zone C Chelmsford Road Industrial Estate and 16 Fox Burrows Lane, Writtle, Chelmsford. The occupiers of these properties also sold agricultural machinery and had showrooms.

    vii) To conclude, Mr Sparsi sought a revised valuation of £49,250 RV, with effect from 1 April 2017.

14. In the VO's Challenge case decision notice and in oral presentation at the hearing, it was also explained that:

i) In view of the case of *Scottish & Newcastle v Williams (VO)* RA-480-1993 (LT), it was suggested that the property must be valued in its current use. Whilst it was no longer a 'car' showroom, the property was still a showroom and used as such by the current occupier. This was evidenced by the fact that tractors were displayed along the road frontage and the showroom area was used for displaying equipment.

ii) It was unrealistic to believe that the value of the appeal property would fall overnight from £102,000 RV to £49,250 RV as proposed by Mr Sparsi. No rental or comparable information had been provided to support his contention.

iii) The proposed valuation of £49,250 was below the 2010 Rating List assessment, which was subject to an appeal lodged by the Altus Group that was withdrawn.

iv) There was no passing rent on the appeal property. The property had been purchased in March 2014 for a sum in the region of £1,075,000. That sum would equate to nearly twenty times the rental value of £49,250 which was not reasonable. The sales price more reasonably supported the assessment at £102,000. If one worked on a yield of 8%, it would give a rental value in the region of £134,000, which was higher than the current assessment.

v) It was normal practice to value car spaces with showrooms. It was clear that the spaces fronting onto the main road were being used for display purposes and should be valued at a premium from those at the side and rear. Having regard to the photographs provided, the VO pointed out that there looked to be at least eight tractors parked there, without obscuring the showroom, and these spaces were generally larger than a normal car space. Valuing eight spaces at £350 per space appeared more than reasonable.

vi) There were three marked car spaces for customers close to the entrance of the property and this did not appear to be disputed. The exact number of the other spaces was less clear, some were not marked and some were larger than usual. There was a large yard/land area with this property and this needed to be reflected in the valuation. The rear boundary of the property was approximately 42 m in length and taking a car space at 2.25 m wide one would expect it to fit say 18 spaces against the rear perimeter. The side boundary (excluding display spaces to the main road) was approximately 36 m, so one could expect to fit say 16 spaces here. The total number of spaces around the perimeter and including the three close to the entrance would be 37. This would still allow sufficient access around the site. There would however, be an area in the corner of the yard where the rear and side perimeter meets which would be a void area. In view of this, the VO believed that valuing 32 car spaces (as previously) was more than reasonable and they should remain at £150/space rather than the £100/space as proposed by Mr Sparsi. No rental or comparable evidence has been put forward in support of the lower rate.

vii) The two comparable properties referred to by Mr Sparsi were 'different animals' to the appeal property. The VO contended that the appeal property was still being used as a showroom and should be differentiated from Mr Sparsi's comparable properties, which were industrial in nature, had smaller showroom contents and were situated within locations that did not benefit from passing trade.

viii) In the late 1980s, the appeal property was built as a showroom. Subsequently, in 2003/04 an application was lodged to have the planning permission widen to usage such as B1. However, the planning department were very keen for the appeal property's usage to be retained as a vehicle showroom. The planning granted to the two comparable properties referred to by Mr Sparsi was not in line with that on the appeal property.

ix) To conclude, Mr Watson referred to the rental and assessment summary, which both suggested that the current assessment of £102,000 RV was reasonable. Accordingly, he sought dismissal of the appeal.

Decision and reasons

15. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

16. The panel noted that there was no rent passing on the appeal property as it was held on a freehold basis.

17. The main issue in dispute related to the correct description for the appeal hereditament, together with the appropriate valuation. The current description was 'car showroom and premises' in accordance with valuation scheme 364075. However, Mr Sparsi had contended that, vacant and to let, the appeal hereditament should be valued as 'industrial', in accordance with valuation scheme 369171.

18. The panel turned to valuation scheme 364075, in which the appeal hereditament was currently valued in accordance with. That scheme was applicable to 'all car showrooms selling new cars in the county of Essex'. Within that scheme the main space rate adopted ranged from £75.00/m^2 to £250.00/m^2 depending upon size, location and other physical factors. The most commonly adopted value within that scheme was £150.00/m^2. Mr Sparsi disputed that this was the correct scheme. He contended that the premises should be valued in line with valuation scheme 369171 which was applicable to 'all industrial units at Oak Industrial Park, Chelmsford Road, Dunmow'. Values within that scheme ranged from £42.50/m^2 to £80.00/m^2. Mr Sparsi highlighted that the current valuation scheme was for showrooms selling 'new cars', so was no longer applicable to the appeal property.

19. The panel had to have regard to the appeal property 'vacant and to let' and considered what had been the correct mode or category of occupation as at the material date of 1 April 2017. When determining the issue of mode or category of occupation, the panel had to consider the appeal property physically as it stood or *rebus sic stantibus*.

20. The issue of valuing a property *rebus sic stantibus* had been considered by the Court of Appeal in the judgment of *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* as referred to in the VO's evidence bundle. The *Scottish & Newcastle* case involved two public houses located within a shopping centre in Milton Keynes. The Court of Appeal upheld the Lands Tribunal's decision which found that the subject premises had to be valued *rebus sic stantibus* and having regard to the actual mode or category of occupation. It was held that the works required to strip the subject premises back to shells suitable for them to be let as retail units were not minor works and would not be in the contemplation of the hypothetical tenant when formulating a rental bid. It was held

that the two public houses were not in the same mode or category of occupation as the shops and restaurants replied upon by the Valuation Officer; the premises were valued as public houses and premises.

21. The panel was aware that there were two limbs to the *rebus sic stantibus* rule, which must be treated separately. The first rule being that the physical state of the property had to be regarded as at the material day (1 April 2017). The only alterations permitted were minor alterations of a non-structural character. On this point, the panel had not been presented with any evidence to suggest there had been any major physical changes to the premises. When questioned, Mr Sparsi confirmed that there had been no physical alterations carried out since the property had operated as a car showroom and premises. As such, any alterations made would have been minor in nature and would not offend the *rebus* rule.

22. The second limb of the *rebus sic stantibus* rule was that it had to be assumed that the hereditament could only be occupied for a purpose within the same mode or category of purpose as that for which it was being occupied on the material day. Any prospective change of use outside that mode or category should be ignored. As such, the question to be addressed was in what mode or category of use did the appeal property's actual use place it on the material day. After having regard to all of the evidence presented, the panel found the evidence overwhelmingly suggested that the following characteristics/facilities of the appeal property were more in keeping with a vehicle showroom and premises:

    i) the property was a good quality, purpose built showroom;
    ii) the property had large plate glass windows fronting the main road;
    iii) the property was located in a prominent main road position, with passing trade;
    iv) the property comprised a higher showroom percentage in comparison to Mr Sparsi's comparable properties;
    v) the property benefitted from parking spaces fronting the main road that were being used for display purposes; there were at least eight tractors parking in those spaces without obscuring the view of the showroom; and
    vi) the planning permission granted in respect of the appeal property was for a car showroom and premises.

23. The panel accepted that the appeal property was no longer a showroom that sold new cars. However, it determined that the appeal property was still correctly valued in accordance with scheme 364075. Whilst the premises were not operated as a showroom for the sale of new cars, it did operate as a showroom for an agricultural and ground-care dealer, which amongst other items, sold compact tractors and ride-on lawn mowers. Therefore, whilst the words 'new car sales' were not truly accurate, the premises were still used for selling new vehicles.

24. The panel then turned to the two comparable properties presented by Mr Sparsi, namely 11 Zone C, Chelmsford Road Industrial Estate and 16 Fox Burrows Lane, Writtle, Chelmsford. The panel agreed with Mr Watson, that these two properties were 'different animals' to the appeal property. The panel noted that both of the comparable properties had a lower showroom content in comparison to the appeal property, they had been built as industrial properties, had different planning restrictions to the appeal property and they did not benefit from prominent main road positions. Accordingly, the panel attached very little weight to this evidence.

25. Having regard to the above conclusions, the panel determined that vacant and to let the hypothetical landlord would not accept a reduced rental bid to let the appeal property on an industrial basis. The panel considered that the appeal property had been correctly valued as a car showroom and premises, in accordance with scheme 364075.

26. As the panel had determined that the correct mode or category of occupation for the appeal property was that of a car showroom and premises, it then went on to determine its valuation. The panel found no evidence had been presented to demonstrate that the current rates applied to the appeal property, together with the parking spaces were excessive. Accordingly, the panel confirmed the existing assessment of £102,000 RV, with effect from 1 April 2017 was fair and reasonable.

27. Therefore, the panel dismissed the appeal.

Date: 23 June 2021 APPEAL NO: CHG100127578