THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Car Showroom and Premises; Rental evidence on appeal property; Comparable properties; End allowances; Appeal allowed in part.

Re: Warners of Gloucester Ltd, Eastern Avenue, Gloucester GL4 3BS

APPEAL NUMBER: CHG100145374

BETWEEN: Warners of Gloucester Ltd Appellant

and

Mr D Virk Respondent

(Valuation Officer)

PANEL: Mr A Jobanputra (Senior Member) and Mr A Asante

CLERK: Mrs S Morgan

REMOTE HEARING: Thursday 15 April 2021

PARTIES PRESENT: Mr H Wilkinson – Appellant's representative

Mr S Lewis – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. the assessment was determined at £130,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal and the property had been entered in the rating list at £161,000 RV with effect from 1 April 2017, with a description of Car Showroom and Premises. At the challenge stage, the Valuation Office Agency (VOA) made a revised offer and reduced the assessment to £145,000 RV. The appeal was made by the appellant's representative against the Valuation Officer's (VO) Decision Notice.

3. The case was originally listed for hearing on 18 February 2021. However, the panel established at that hearing that the appellant's representative wished to add new evidence in the form of a statement of his case, submitted on 19 January 2021. The panel on the last occasion, having looked at the statement, were prepared to admit it but no additional new evidence from the parties. However, in fairness, the panel decided that the respondent should be given the opportunity to provide a rebuttal and that the final bundle should be served on the Valuation Tribunal by 17 March 2021.

4. 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.

5. 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.

6. Mr Wilkinson 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), Mr Wilkinson confirmed that he was not instructed under a conditional 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 parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

8. 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 item of evidence, should not be construed as it having been overlooked.

Issues

9. The issue between the parties concerned the RV of the appeal property, specifically, whether an end allowance for various disabilities was justified and whether a number of line valuations within the assessment were correct.

10. The basic rate for the car showroom was not contested and no rental evidence was exchanged.

Evidence and submissions

11. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; assessment summary evidence; appellant's challenge submission; photographs and location plans of the appeal property; comparable assessments and emails exchanged between the parties.

12. The subject property is a car showroom with a total significant area of 1,229.84m^2. It was initially built as a warehouse in 1981 and adapted to retail car sales in the 1990s. The property was then refurbished and reconfigured in 2012. The assessment was subsequently increased by a Valuation Office Notice to £107,000 RV with effect from 22 June 2012. An appeal against that 2010 rating list assessment was dismissed by the VTE at a hearing in December 2014 confirming £107,000 RV. This figure was increased in the 2017 rating list to £161,000 RV. Following the challenge, the VO revised the assessment to £145,000 RV. This figure took into account elements of heating, air conditioning and the presence of CCTV, as an element of plant and machinery, which had been present for some years. The £145,000 RV is the figure that is being appealed at this hearing.

13. Although there was initially a difference in the areas between the parties, Mr Wilkinson accepted the Valuation Officer's areas prior to the hearing. However, he differed on two points: firstly, the customer toilets were staff toilets and no other garage had added value for customer toilets. Secondly, the area added as yard/hard surface and fenced, he had valued as 22 car spaces. This area was used for customer parking, MOT parking and some staff parking and he contended that it was not fenced.

14. There is a rent passing on the appeal property which has not altered from the date the lease started in April 2011. The current rent passing is £105,000 pa. This is for 10 years on FRI terms. Years 1-5 at £101,500 pa and years 5-10 at £105,000 pa. The tenant had a break in years 6 and 7. There was a rent review at year 5, which was not implemented.

15. Mr Wilkinson contended that the rating assessment of £150.00/m^2 on the subject property is not in line with the other assessments in the Cheltenham and Gloucester areas when considering the differences in the physical attributes between the properties. The VO have considered this garage to be in line with premier dealerships in the locality, which is unjust compared to the 1980s built appeal property, which is no longer fit for purpose.

16. With the aid of photographs, Mr Wilkinson provided comparable properties which supported lower base rates and where, in some instances, end allowances had been conceded as follows:

    593 Princess Elizabeth Way, Cheltenham. This was a 2014 purpose-built car showroom, in an arguably better location. This property had a basic rate of £115.00/m^2 with a 5% end allowance for masking.

    81 Bristol Road, Quedgeley, Gloucester was purpose built with plenty of circulation space around the garage. The base rate on this property was £118.39/m^2. There was an end allowance of 5% given by the VO.

Wessex Garage Mercia Road, Gloucester was in a prominent position. The base rate on this property was £80.00/m^2 with a 10% end allowance given by the VO.

Baylis of Gloucester was in a prominent position with several other dealers nearby. This property has a base rate of £80.00/m^2. Mr Wilkinson believed that the appeal property was more akin to this car showroom.

17. In relation to the disadvantages and disabilities to the site of the subject property at Eastern Avenue, Mr Wilkinson listed the following points. He was of the opinion that these points should be reflected in the assessment, as he contended that there were major differences between the appeal property and the assessment for the newer ex-BMW site in Cole Avenue, where the same basic rate had been applied to both properties.

    i. The premises were initially built as a warehouse and were adapted to retail car sales in the 1990s.
    ii. There is only one vehicular access to the car showroom and therefore all cars have to be moved every time there is a vehicle arriving or leaving the showroom.
    iii. No direct access from Eastern Avenue and very easy to miss the entrance to the showroom. Heading east, one has to double back on oneself and cross the carriageway.
    iv. Not sufficient vehicle circulation area.
    v. No direct vehicle or bulk parts deliveries to the site because vehicular access is so difficult. Parts are delivered to Peugeot in Tewkesbury and then delivered on to Gloucester.
    vi. New vehicles are delivered to another site in Quedgeley because there is no vehicle access for transporters.
    vii. Insufficient customer parking.

18. In his original submission, Mr Wilkinson sought a revised assessment of £107,000 RV to include an end allowance of 10%. However, at this hearing, he sought a revised assessment of £110,500 RV to include an end allowance for access, constrained and cramped site.

19. Mr Lewis contended that this case had had its difficulties as there had been inconsistent and misleading information from the appellant’s representative, particularly with regard to the areas/floor plan for the appeal property.

20. With regard to the lease on the subject property, Mr Lewis contended that as this was a stepped rent, nearly four years prior to the antecedent valuation date, it was too far away from that date to be useful.

21. With regard to the comparable properties put forward by Mr Wilkinson, Mr Lewis contended that there was no depth or detail beyond his opinion on location. Furthermore, none of his assertions were backed up by any rental evidence.

22. Mr Lewis had provided four comparable car showrooms in the Gloucestershire area, where £150.00/m^2 had been applied to each assessment. These car showrooms included the Mazda Dealership in Shepherds Road, Johnsons Cars in Cole Avenue, Blade House, Northern Bypass and 4 Barnwood Point in Corinium Avenue. He believed that this was the accepted rate for car showrooms of this quality in Gloucester.

23. In relation to the disadvantages/disabilities, Mr Lewis disagreed that the subject property had any disabilities. He argued that the appeal property was a car showroom, next to a busy dual carriage way with good visibility. This was also supported in the 2010 VTE decision on the appeal property where the panel was of the opinion that in considering the location and prominence in Eastern Avenue, "I find the subject property is in a good position with visibility to passing traffic".

24. Mr Lewis was of the opinion that £145,000 RV with effect from 1 April 2017 was reasonable for the subject property and he sought a dismissal of the appeal.

Decision and reasons

25. The term 'rateable value' is 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".

26. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

27. 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.

28. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

29. As a starting point, the panel examined the rent passing on the subject property commencing in 2011. However, it found this to be a stepped rent, too far from the antecedent valuation date to be of use when determining open market rents at the valuation date of 1 April 2015. No other rental evidence was exchanged.

30. Having examined the evidence presented by both parties, the panel found that although the appellant's representative believed that the base rate was high for the subject property, he had not contested this figure in any of his revised assessments. Furthermore, there were at least three comparable properties which supported the current tone of £150.00/m^2. The panel was therefore persuaded that the base rate of £150.00/m^2 for the showroom was reasonable.

31. The panel was aware that there had been difficulties between the parties in agreeing the floor areas at various stages of the appeal process, despite requests from the VO for plans and photographs of the property to be provided by the appellant's representative. The panel noted at the hearing that the appellant's representative had accepted the VO's areas apart from the two points he raised. However, as the appellant's representative's areas had been constantly revised, the panel had little faith in their accuracy and therefore it took the VO's measurements and values in their Decision Notice as being correct.

32. The appellant's representative had argued that the disadvantages and disabilities to the site at Eastern Avenue justified an end allowance, bearing in mind it was a converted warehouse to a car showroom. The panel took into account those arguments in that there was only one vehicular access to the car showroom which meant that all cars had to be moved whenever there was a vehicle arriving or leaving the premises. There was no direct access from Eastern Avenue making it easy to miss the entrance to the showroom. Furthermore, there was insufficient vehicle circulation area and customer parking. The panel was aware that in the 2010 VTE decision, there was no allowance given for the layout/location of the appeal property. However, the panel was aware that that decision was not binding on them. It was mindful that compared with a newer purpose-built showroom, such as the Volvo (Ex-BMW) and Mazda, both in Cole Avenue, Gloucester, which had also been assessed at £150.00/m^2, the appeal property would not be so attractive to the hypothetical tenant in view of its disabilities. The panel was therefore persuaded to give a 10% end allowance for the disadvantages/disabilities outlined by the appellant's representative and determined a revised RV of £130,000, with effect from 1 April 2017.

33. In view of the foregoing, the panel allowed the appeal in part.

Order

34. Under the provisions of regulation 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 amend the entry in the rating list to show a revised assessment of £130,000 RV for the appeal property, with effect from 1 April 2017.

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

Refund of fees

36. If the appeal was successful (either in part or full) 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: Wednesday 12 May 2021

Appeal number: CHG100145374