THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Land used for storage; The Valuation for the hereditament is not reasonable; Rental evidence; Unadjusted base rate £m^2; Tone and comparable properties; Narrow access, end allowance; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal allowed in part.

Re: Copart, Stephenson Road, Northacre Business Park, Westbury, Wiltshire BA13 4WD

APPEAL NUMBER: CHG100175198

BETWEEN:	Copart UK Limited	Appellant
	and	
	The Valuation Officer	Respondent

PANEL:	Mrs Lindsay Bryning	(Chair)
	Dr Patricia Thomson	(Member)

CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 2:	9 November 2021	
PARTIES PRESENT:	Mr William Secrett, Altus.	
	Mr James Fitzgibbon, Altus.	Appellants' representatives
	Mr Sam Lewis	Respondents' representative

Summary of decision

1. The appeal against the Rateable Value (RV) was allowed in part. The RV was reduced from £135,000 to £96,500 with effect from 1 April 2017.

Introduction

2. This appeal was brought in respect of Copart Limited, Land used for storage located at Stephenson Road, Northacre Business Park, Westbury. The hereditament is a large area of land behind security fencing, situated on a large industrial estate to the north east of Westbury. It is a unique property, storing used motor vehicles that are sold by on-line car

auction. It is a hybrid assessment somewhere between car sales land, a scrapyard and storage land and is therefore valued on its own unique scheme.

3. The property previously had a rateable value of £139,000 based on a £2.75/m^2 base rate. During the check process the VO increased the base rate to £2.85/m^2 but also reduced the overall site area from approximately 59,000m^2 to 56,000m^2 giving an RV of £135,000.

4. The appellant now sought a reduction of the £135,000 valuation to £62,500 based on a reduced base rate of £1.17/m^2 . The appellant also sought an end allowance of 2.5% due to the narrow access to the site and its layout as there is only one single entrance.

5. The challenge submission date was 9 March 2020 with the challenge being completed on 21 April 2021.

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 William Secrett appeared on behalf of the appellant in a dual role as advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), their declaration of truth included a statement that he was instructed on a contingency fee basis. 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 cases.

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

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

Preliminary Issue

11. The appellant's representative submitted that the challenge decision notice dated 21 April 2021 had been submitted without full engagement from the respondent and therefore issued

prematurely resulting in the appellant having to accept the decision or proceed to the VTE. He referred to the VTE President's case CHG100063118 in respect of this matter.

12. The respondent stated that there was no statutory requirement to respond to the appellants' rebuttal.

13. In response, the appellant's representative was aware of this and stated that he had not and did not want to apply for any sanctions, he simply requested that the panel noted the matter.

14. The panel duly noted the appellant's representative's comments but made no comment.

Issues

15. The rateable value of the appeal property based on a base rate per square metre and an end allowance for narrow single site access.

Evidence and submissions

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

17. Mr Secrett had contended that the VO scheme used in the valuation, number 438618, was incorrect as it was only applicable to land used for scrapyards in Wiltshire with no area for car parking when the appeal property actually is land used for the storage of cars. He also stated that it is held on a freehold basis and there is therefore no passing rent from which to consider the appropriate rateable value.

18. Further, there is only a single gateway system entry point to the site. It is therefore disadvantaged and an end allowance of 2.5% should be applied.

19. The respondent stated that the hereditament had similarities to both a scrapyard and a car sales site with elements of storage and fencing security, auction and sales and therefore quite unique. He agreed that the absence of a passing rent created some difficulty in valuation but he also contended that there had been little evidence from the appellants' representatives to show that the RV should be reduced. He stated that the hereditaments submitted by the appellant did not compare very well with the appeal property.

20. The respondent also stated that the single site access was at a gentle curve in the road and, in fact, may be considered to give improved visibility on exit. He was of the opinion that the site was not disadvantaged given the high use and large amount of vehicles on the site and stated that he felt that no allowance was due for the reasons of access.

Decision and Reasons

21. 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".

22. 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).

23. 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.

24. Both parties had referred to there being no rental evidence on the appeal property as it was held freehold and the panel noted that no rental evidence of any properties had been exchanged at all by either party.

25. In accordance with the authoritative judgment, *Lotus and Delta*, it was necessary to look at assessments on other comparable properties which may be relevant. All of the evidence could then be weighted.

26. The panel noted the different arguments put forward by the parties and their respective views on submitted comparable properties. 139 Engineer Road is a very small site of only 3215.8m^2 and is hard surfaced fenced land valued at £7/m^2 and therefore not a reasonable comparator. Greenhous Group Holdings was half the size of the appeal property and a similarly poor comparator. 5 5A 10 (COPART) Broadway East was an industrial warehouse with associated land and, again, not a useful comparator.

27. However, the panel was presented with comparable property evidence at Smart Fleet Solutions 2, a neighbouring property which, in terms of its car storage land, was valued at £3/m^2. The appeal property is over five times the size of Smart Fleet Solutions and exceptionally large for the area and the panel therefore found that a degree of quantum should be accommodated.

28. The current unadjusted base rate of £2.85 therefore seemed excessive.

29. The panel was also presented with the hereditament at Right Side Land Adj 300, Greenham Business Park. Whilst this was some distance from the appeal property the panel found it reasonable to use as a comparator mainly due to the paucity of other comparable data.

30. It was larger than the appeal property at 75,000m^2, listed as Land used for storage and premises and was used in a similar way to the appeal property. It had been previously subject to a VTE appeal and its base rate was determined at £1.17/m^2 reduced from £2.83/m^2. The panel found this to be very good evidence that the appeal property should be valued at a reduced unadjusted base rate.

31. The panel found that the appeal property certainly seemed more like a car storage site than a scrapyard and it is not unreasonable therefore to consider a base rate less than the current £2.85/m^2. However, the panel recognised that the appeal property is a unique hereditament and that this had caused some difficulties when attempting to value it against comparators which have some similarities but are not the most valid comparators for valuation purposes.

32. The panel therefore found that an unadjusted base rate of £2.00/m^2 was appropriate for this hereditament and the appeal was allowed in part.

33. The panel also found that the access to the site is disadvantaged in that there is only one site access point to what is a very large area, the access is on a curve in the road and a gated system means that ingress and egress cannot be undertaken at the same time. The panel therefore found that a 2.5% end allowance was appropriate for these reasons.

34. The panel found that the rateable value of the property should be reduced to £96,500.

Order

35. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of Copart, Stephenson Road, Northacre Business Park, Westbury, Wiltshire BA13 4WD to £96,500 with effect from 1 April 2017.

36. 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: 29 November 2021

Appeal number: CHG100175198