

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2017 list appeals; workshop and premises; warehouse and premises; main space price disputed; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141, Lamb (VO) v Go Outdoors Ltd RA 66/2013 [2015] UKUT 0366 (LC), Masala Zone Limited v Golding (VO) (2016) UKUT 0328 (LC), appeals dismissed.

RE: 9 Warwick Road, Borehamwood, Hertfordshire, WD6 1US and

Europa House, 108 Ripon Way, Borehamwood, Hertfordshire, WD6 2JA

APPEAL NUMBERS: CHG1000187867 and CHG100192262

BETWEEN: White Ellerton Products Ltd (Warwick Road) and

Orange Music Electronic Company Ltd (Ripon Way) Appellants

and

Ms D Bunyan

Respondent

(Valuation Officer)

PANEL: Mrs M Cole (Senior Member) and Mr M Bhatti

CLERK: Mrs S Morgan

REMOTE HEARING: Friday 10 June 2022

PARTIES PRESENT: Mr M Evans from Altus Group representing the appellants.

Mr L Stevens representing the Valuation Officer.

Summary of decision

1. The appeals were dismissed. The panel confirmed that 9 Warwick Road, Borehamwood, Hertfordshire had been correctly valued as a workshop and premises at £41,250 rateable value (RV) with effect from 1 April 2017 and Europa House, 108 Ripon Way, Borehamwood, Hertfordshire had been correctly valued as warehouse and premises at £67,000 RV with effect from 1 April 2017.

Introduction

2. These two 2017 rating appeals were brought in respect of 9 Warwick Road, Borehamwood, Hertfordshire, WD6 1US and Europa House, 108 Ripon Way, Borehamwood, Hertfordshire, WD6 2JA (the appeal properties).
3. 9 Warwick Road, Borehamwood was a workshop and premises with an RV of £41,250 with effect from 1 April 2017. The appellant's representative sought an initial reduction to £28,500 RV. This was amended to £29,500 RV in later evidence. The challenge submission was received on 15 April 2020. The grounds for the challenge disputed the accuracy of the RV in the Rating List on 1 April 2017.
4. Europa House, 108 Ripon Way, Borehamwood was a warehouse and premises with an RV of £67,000 with effect from 1 April 2017. The appellant's representative sought a reduction to £42,000 RV. This was amended to £48,250 RV in later evidence. The challenge submission was received on 22 April 2020. The grounds for the challenge disputed the accuracy of the RV in the Rating List on 1 April 2017.
5. Mr Evans appeared on behalf of the appellant as an expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Evan's declaration of truth included a statement that he was instructed under a contingency based fee.
6. Mr Evans also 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 his 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. It was agreed by the parties that these two appeals could be heard together.
9. 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.

Issue

10. The issue for determination is the RV for each of the appeal properties. The main space price was in dispute.

Evidence and submissions

11. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; comparable properties; rental evidence, location plans; photographs of the appeal properties and comparable properties, the definition of rateable value and case law.
12. Reference was made to the following case law:
- Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, *Lamb (VO) v Go Outdoors Ltd* RA 66/2013 [2015] UKUT 0366 (LC) and, *Masala Zone Limited v Golding (VO)* (2016) UKUT 0328 (LC).
13. Number 9 Warwick Road, Borehamwood is a semi-detached warehouse/workshop unit with first floor offices. The property had workshop space of 367.16m² and 70.97m² and first floor office space measuring 74.54m² (total area of 512.67m²). There was loading access to the side with a roller shutter door and parking on the front forecourt. The property is situated within one mile of Borehamwood town centre, within a well-established industrial area.
14. Europa House, 108 Ripon Way, Borehamwood is a detached warehouse unit with two storey front offices. The property was understood to have been built circa 1948 and had a comprehensive refurbishment in 1997. It has a ground floor warehouse area under the first floor of 161.87m², a further warehouse area of 416.17m² and office space measuring 161.67m² (total area of 739.71m²).
15. Both appeal properties were freehold. The appellant's representative contended that the rating assessments were not in line with comparable properties in the locality. The Warwick Road property is one of the oldest industrial units in Borehamwood being built between 1919 and 1939. It's base price increased by 45% between the 2010 and 2017 rating lists from £55/m² to £80/m². It was on valuation scheme 309472.
16. A similar scheme, 308145, for pre 1971 industrial units in Borehamwood had seen a nil increase between rating lists. Similar sized properties were previously valued at £57.50/m², 5% higher than the appeal property compared with 40% lower in this list.
17. The appellant's representative made reference to a reduction on the scheme as having been agreed for Pt Unit 6 and Unit 7 Elstree Way, Borehamwood. This property had also seen a large increase between rating lists. A nil increase was sought and at the time of the submission the appeal remained outstanding.

18. The appellant's representative believed that there was a significant disparity between similar aged properties in the locality and the older units on scheme 309472. He originally sought a reduction in the main space price from £80/m² down to £55/m². However, at the hearing the appellant's representative sought a main space price of £57.50/m² for both properties. This gave a proposed valuation of £29,500 RV with effect from 1 April 2017 for the Warwick Road, Borehamwood property and £48,320 RV for Europa House, Ripon Way, Borehamwood with effect from 1 April 2017.
19. The respondent believed that the rental summary set out the correct basis of assessment. He considered the current assessments to be fair and reasonable and sought a dismissal for both appeals.

Decision and reasons

20. The main issue in dispute concerned the level of value to be adopted for the appeal properties.
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 appeals, the material day is 1 April 2017.
24. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council*. 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.

25. The rental and comparable property evidence provided by the respondent was the same for both appeals. In the case of the Warwick Road property the rental evidence showed that in terms of size, the unit sat between R/O Unit 6 Elstree Way, which measured 412m² and had a September 2013 analysed rent of £109/m² and Europa House, Ripon Way, which measured 739m² with a September 2014 rent of £101.15/m², 6 months prior to the AVD. Dayson House, Warwick Road was situated opposite the appeal property and was of a similar appearance. It had an October 2010 rent at £85/m². The respondent considered that overall, the rents showed that the current £80/m² was not unreasonable.
26. In relation to Europa House, Ripon Way it also had a base price of £80/m² but increased by 10% for the quality of the 1997 refurbishment to the unit. The respondent again referred to rents on Dayson House, Warwick Road, a similar age and size to Europa House and R/O Unit 6 Elstree Way where a main space price of £80/m² had been applied. Number 10 Warwick Road and 6 Elstree Way were larger than Europa House and their size was reflected by the £70/m² applied to those properties. The respondent believed that the rental evidence showed that the main space price for Europa House was not unreasonable compared to other properties in the locality of a similar size and age.
27. The appellant's representative contended that the three main rents referred to by the respondent were too far away from the AVD to be useful whilst two other rents were between connected parties. He referred to Pt Unit 6 and Unit 7 Elstree Way, Borehamwood, to support his contention that that the level of value for both appeal properties were too high. This assessment was reduced by a Valuation Office decision notice from £173,000 RV to £156,000 RV with effect from 1 April 2017 to give an amended base price of £52.50/m². (It should be noted that the current 2017 appeal has not been correctly reflected in the headline figure). The appellant's representative contended that this agreement demonstrated that the matrix used on the scheme was excessive. The 10% allowance devalues the base price to £54/m² which was comparable to properties on scheme 308145 in the list at £52.50/m².
28. Number 9 Warwick Road is the oldest industrial property in Borehamwood and had seen a 45% increase in the base rate despite comparable age and size industrial units maintaining their 2010 value. He argued that the 45% uplift between the lists was not supported and that the respondent had incorrectly weighted the rental evidence in the 2017 revaluation. Using a stand back and look approach the appellant's representative sought a revised base price of £57.50/m².
29. Europa House related to industrial units, not otherwise classified, built before 1971, or of a similar standard to a property of this age, at Elstree Way, Manor Way and Chester Road areas of Borehamwood in Hertsmere Borough. Properties on this scheme had seen increases between the two rating lists whereas similar properties in scheme 308145 had seen no increase on their 2010 base price. In his evidence for Europa House, the appellant's representative had referred to comparable properties in Theobald Street and Shenley Road, Borehamwood in scheme 308145, where there was no increase to the base price. Applying the stand back and look approach again, a revised base rate of £57.50/m² was not unreasonable.

30. In addition, the appellant's representative contended that the 10% uplift for the 1997 refurbishment work on Europa House was unjustified as he had noted that this was for redecoration and the installation of cladding, which did not warrant an uplift in the base price.
31. The panel found that the properties in Theobald Street and Shenley Road were located too far away from Europa House to be useful. In addition, the property referred to by the appellant's representative for Pt Unit 6 and Unit 7 Elstree Way, Borehamwood was not directly comparable to either of the appeal properties due to its size of 3,020.16m². It was approximately 6 times larger than the Warwick Road property and four times larger than Europa House. Its main space price was £60/m² with a 10% (survey line) adjustment to reflect it was of poorer quality than Churchill House in Sterling Way, Borehamwood. The panel took on board the comments made by the appellant's representative with regard to the different valuation schemes however it placed more weight on the rental and comparable evidence provided by the respondent.
32. In relation to the rental and comparable property evidence, the panel noted that the respondent had provided a rental summary for a number of comparable properties in the locality. The panel noted that the analysed rents on the comparable properties ranged between £59.55/m² and £109.09/m² against the adopted base rates of £60/m² to £80/m². Based on the comparable properties, closest in terms of age, size and location, the panel found that the adopted value of £80/m² for the appeal properties, with a 10% uplift on the Europa House assessment, was not unreasonable.
33. When considering the comparisons between the 2010 and 2017 lists, the respondent had referred to paragraph 82 of the judgment *Lamb (VO) v Go Outdoors Ltd*.
- “I am not persuaded that any weight should be attached to a comparison between the two rating lists. The variance between the 2005 and (current but in many cases appealed) 2010 assessments was notable. Some had increased, some decreased, and some remained static. I accept Mr Cohen's point that this variance and parameters of increase or decrease may alter as and when each assessment is agreed or determined by a Tribunal. To limit the amount by which the assessment of the appeal property should alter, by reference to the change between rating lists of other assessments which themselves are subject to appeal, and in doing so then possibly affect the ultimate result of those other appeals, would in my judgement be to let the tail wag the dog”.
34. In paragraph 83 of that judgement, it stated.
- “Rental evidence and assessment evidence are the key components of value, in my judgement, rather than a comparison between lists”.
35. With the above in mind, the panel was also not persuaded that any weight should be attached to the appellant's representative's comparison between the 2010 and 2017 rating lists.
36. Having considered all the evidence presented at the hearing, the panel determined that the assessments should not be reduced. The price per m² that had been applied to other similar

aged industrial properties in the same locality with some being on the same valuation scheme, supported the level of value adopted of £80.00/m² for the appeal properties. With this in mind, the panel was not persuaded to reduce the level of value from the existing £80.00/m² for the appeal properties with a 10% uplift on the Europa House.

37. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the cases before it, the panel concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value. Consequently, the panel was satisfied that the grounds for the appeals were not substantiated and dismissed the appeals.

Date: Friday 8 July 2022

Appeal numbers: CHG1000187867 and CHG100192262

Right of Appeal:

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.