THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Office and premises; main space price; Ladies Hosiery v West Middlesex Assessment Committee* [1932]*; appeal dismissed.*

RE: Marshall Newbury Jaguar Land Rover, 77 Greenham Business Park, Thatcham, RG19 6HW

APPEAL NUMBER: CHG100287895

BETWEEN:	Marshall Motor Group	Appellant
	and	
	Ms D Bunyon (Valuation Officer)	Respondent

BEFORE: Mr A Ramsay (Senior Member)
Dr P Thomson

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 16 August 2021

APPEARANCES: Mr A Watson from Rapleys (Appellant's representative)
Mr S Forbes (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed. The panel made no change to the rateable value.

Introduction

2. The appeal property was entered in the 2017 rating list as 'Car Showroom and premises' at rateable value (RV) £560,000 effective from 1 November 2017, based on an unadjusted main space rate of £180.00/m^2.

3. The appeal property was a newly built state of the art Jaguar Landrover dealership containing a showroom, workshop, parts office and various other

areas. It was owned by the appellant company and had an area of 3832.12m^2.

4. Following the challenge, the VO agreed to reduce the rateable value down to £505,000 as a result of an adjustment to the value of the display spaces. The rating list has been updated to confirm the new RV. Mr Watson was seeking a rateable value of £479,000 based on an unadjusted main space price of £170/m^2. In addition to the dispute over the main space price, the VOA had valued the primary display spaces at £600, the secondary display spaces at £500 and the remaining display spaces at £400. Mr Watson was seeking values for them of £450, £300 and £130 respectively.

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 position.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Watson made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

8. This is an appeal against the RV ascribed to the property when it was entered into the rating list effective from 1 November 2017, so the material day is 1 November 2017. The appeal to this Tribunal was made on 6 April 2021 following the Valuation Officer's Decision Notice of 9 December 2020 in respect of the appeal property (hereditament).

9. Mr Watson had declared that his firm is on a fixed fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Watson's declaration of truth included a statement that he understood and accepted that his duty is 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.

10. The panel 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

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

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).

11. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

12. The issue for determination was the rateable value of the appeal property.

Evidence and submissions

13. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, a plan of the building, photographs of the appeal property, the current and proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, details of the VOA's comparable properties and copies of correspondence that had passed between the parties.

14. Mr Watson had argued that display spaces at other car showrooms in the locality were valued at between £120 to £170 per space although some were valued lower or not even valued. He also suggested that a potential tenant coming fresh to the scene would be putting in their rental bid for the showroom rather than the display spaces.

15. In support of the reduction for the main space price and the value of the display spaces, he argued that the appeal property was located further away from the large towns of Newbury and Reading so there was less passing trade at the appeal property. He highlighted comparable properties located on the A33 in Reading which were valued at £180/m^2, and that it could not be correct, that a property further away from this busier location should be valued the same. He also argued that it was difficult to get to, due to the road layout and that it was obscured by the lay of the land.

16. During questioning, he acknowledged that there was a trade-off between the cost of the land, as the land would be more expensive, the closer it was to the large towns and a reduction to the level of passing trade. However, he also argued that the locality was more of a rural location, although there was no dispute about the locality, just that it was further away from Newbury than other dealerships.

17. He also argued that it did not matter whether the showroom was built for Jaguar Land Rover, ultimately it was a showroom that could be used by any other marque and it should be valued vacant and to let.

18. Mr Forbes was representing the VO as advocate and expert witness. He contended that the display spaces were valued according to the scheme. He also contended that the main space price was higher than others in the surrounding area because it was new and purpose built. Given his

experience in this sector, he was aware that, car showrooms are built for a specific marque. As such, they expect specific criteria and certain specification such as climate control and that the manufacturer would have their own architects involved in the build to ensure that the dealership comply with the criteria.

19. Therefore, a showroom for a high end manufacturer such as the appeal property could not be valued the same as other showrooms for other cheaper branded marques. During questioning, he suggested that it would cost between £250/m^2 and £400/m^2 to change a showroom to a different branded high end marque.

20. He also contended that showrooms were refreshed every ten years, and therefore the older showrooms which were valued at £170/m^2 or lower were not ‘like for like’ comparisons.

21. To further support his contention that the appeal property was valued correctly, he had provided a large number of showrooms in and around Newbury and Reading which had been valued at between £45/m^2 to £200/m^2. He had valued two other similar showrooms at £180/m^2 and suggested that the closer one gets to London, the value of them increases to around £200/m^2. He also explained that only marked car parking spaces were valued.

22. However, he suggested that the assessment for Imperial Audi was incorrectly valued at £170/m^2 and that he was going to arrange for that assessment to be reviewed.

23. Whilst he accepted that the showroom was away from the main residential towns of Newbury and Reading, he explained that it was about four miles away from Newbury, but that cars, especially the high end ones, were not influenced by passing trade, but that someone would only buy a car if they wanted one and that they tend to be destination places as the research would have been done prior to deciding on that particular marque.

24. He also argued that the appeal property was highly visible from the roundabout and therefore the display spaces reflected this.

25. Given the above, he was satisfied that the RV was correct at £505,000 and he asked the panel to dismiss the appeal.

Decision and reasons

26. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

27. There is another important date for rating appeals and that is known as the ‘material day.’ This is the date on which the physical factors had to be taken

into account. In this appeal, the material day was 1 November 2017 when the appeal property had been entered into the rating list.

28. The term 'rateable value' is defined in 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;
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> 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; and
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> 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".

29. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 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.

30. As the appeal property was owned by the appellant company, there was no rent to assist the panel. Furthermore, as both parties acknowledged, dealerships tend to own the showrooms and therefore, there would be very little rental evidence in which to determine the appeal. The panel therefore had to determine this appeal by reference to the tone of the list.

31. Mr Watson had argued that by valuing the showroom as a specific high end showroom this offended the "*Rebus Sic Stantibus*" principle. In effect, the appeal property had to be valued as it stood, a showroom and workshop suitable for any make of car. The Rebus principle contained two strands. The appeal property had to be valued vacant and to let, having regard to its mode or category of use and it was the value of that use to the occupier that had to be determined. The leading authority was *Williams (VO) v Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd* [1993] RA 480.

32. Mr Forbes contended that as the showroom was a modern state of the art showroom, only a high end car manufacturer would be the potential tenant and that these manufacturers would want it altered to their specific specifications. Given that he had suggested that it would cost between £250 to £400/m^2 to change a showroom from one high end manufacturer to another. The panel concluded that this would be more than just tenant's improvements and that it would not offend the "*Rebus Sic Stantibus*" principle by valuing the showroom as a showroom specifically for high end manufacturers.

33. As Mr Forbes had suggested that the RV for Imperial Audi showroom was going to be reviewed, but by suggesting that the RV was incorrect, he has impugned his own list. The panel was referred to the judgment of *Ladies Hosiery v West Middlesex Assessment Committee* [1932] which held that correctness should not be sacrificed for the sake of uniformity.

34. Having been presented by a large number of assessments, the most like for like comparable showrooms in terms of size, style or age were:

Property	Area	Main space price	Rateable value	comments
Clover Leaf Honda	3120.63m^2	£170m^2	£357,000	Older and not state of the art
Greenoaks car sales	2256.85m^2	£180m^2	£275,000	10 years old
Imperial Audi	4445.01m^2	£170m^2	£575,000	Not brand design
Greenoaks	6305.84m^2	£170m^2	£595,000	Older and not state of the art
Cooper Reading	7912.87m^2	£180m^2	£835,000	3 years old. State of the art
Lancaster Reading (Jaguar)	2781.88m^2	£184m^2	£475,000	Refurbished, state of the art
478 Bath Road	2768.75m^2	£170m^2	£325,000	Refurbished 2012

35. Given the above selection of what the panel considered to be the most comparable assessments, this supported Mr Forbes' argument that older assessments were valued at £170m^2 and those newer showrooms were valued at £180m^2. The panel also noted that the Jaguar showroom in Reading was valued at £184m^2. Whilst it was an older property, it had been refurbished, and, demonstrated to the panel that a similar showroom located close to a higher populated location would be valued higher than the appeal property, thereby reflecting what Mr Watson considered to be a poorer location of the appeal property. However, it did also suggest to the panel that a main space price of £180m^2 was correct for the appeal property.

36. The panel also noted that the Lancaster Reading showroom was over 1000m2 smaller than the appeal property, but its RV was only £30,000 less than the appeal property, and similar to the RV that Mr Watson was seeking. When the panel stood back and looked at the assessments, it also noted that the RV of the appeal property, £505,000, was less than the RV for Imperial

Audi, even though that showroom was only 600m^2 larger and it was not an Audi design or specification.

37. Turning to the display spaces, although Mr Watson had argued that they should not be valued as high as other busier locations in Newbury and Reading, the majority of the display spaces had been valued at between £450 to £600 per space. Although some other locations were valued lower, including those from the same appellant company, no evidence was presented to the panel to prove that they were displaying the same type of high end cars. Furthermore, no evidence was presented to prove that those purchasing the same type of high end car would do so purely from passing by the car showrooms, especially as customers buying these types of cars would do their research first. Furthermore, the photographs presented to the panel did suggest that the appeal property was highly visible from the roundabout. Therefore, in the absence of any substantial evidence to prove otherwise, the panel concluded that the value of the display spaces was correct.

38. Given all of the above, although Mr Watson argued that the location of the appeal property put it at a disadvantage to others in busier locations, it was clear to the panel that a company such as the appellant would not spend a significant amount of money on a building without doing its research to ensure that it was viable. As Mr Watson argued, there would be a trade-off between the value of the land and being located further away from large towns. However, it was only four miles away from Newbury which was not far to travel, especially as Mr Forbes described the appeal property as a destination venue. Furthermore, the panel concluded that based on the tone of the list, especially compared to an identically branded showroom located in Reading, the rateable value was correct and the panel dismissed the appeal.

Date: 8 September 2021

Appeal number: CHG100287895