THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; Local Government Finance Act 1988; Unadjusted rate per m^2 in dispute; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal allowed.

RE: Unit D, Maidenbower Business Park, Balcombe Road, Crawley, West Sussex RH10 7ZJ

APPEAL NUMBER: CHG100309108

BETWEEN:	Inchcape Estates Limited	Appellant
	and	
	Ms Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mr Ian Lonsdale	(Senior Member sitting alone)
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 3:	28 February 2023	
PARTIES PRESENT:	Mr Paul Nash of Lambert Smith Hampton	Appellant's representative
	Mr Simon Forbes	Respondent's representative

Summary of decision

1. Appeal allowed. I confirmed the Rateable Value (RV) of the appeal property as £214,000 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the business rates payer of the appeal property at Unit D, Maidenbower Business Park, Balcombe Road, Crawley, West Sussex RH10 7ZJ. The RV of the property was £250,000 with effect from 1 April 2017.

3. The property was a car showroom purpose-built in 2003 and refurbished in later years. It was located on a B road on the outskirts of Crawley adjacent to the M23 motorway.

4. Through the Check, Challenge, Appeal (CCA) process the appellant proposed that the base rate be reduced from £180/m^2 to £150/m^2. This would reduce the RV to £214,000.

5. During the check process the RV had been reduced from £252,000 to £250,000.

6. The appellant appealed to the Valuation Tribunal (VT) against the RV of £250,000.

7. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two members of the Tribunal, including at least one Senior Member. However, paragraph 11 of those Arrangements also provide that a Senior Member may sit alone to avoid postponing the hearing where a second panel member gives notice of unavailability within one working day of the commencement of the hearing.

8. In respect of this hearing, the second panel member was unable to join the hearing due to technical problems with his connection.

9. In accordance with Paragraph 11 of the Tribunal Business Arrangements, I am satisfied that I am authorised to hear and determine this appeal alone.

10. Mr Paul Nash appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his 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 case.

11. I 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). I therefore considered the expert evidence and attached such weight to it as I saw fit.

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

Issue

13. The issue in dispute was the RV of the appeal property.

Evidence and submissions

14. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the valuation officer's (VO) case decision notice, rental evidence and assessment summaries and the appellant's challenge submission.

15. Mr Nash stated that the key part of his case was the location of the appeal property. It was situated on the far south eastern edge of Crawley on Maidenbower Business Park, away from the main commercial area. He provided a map of the area highlighting eight car

showrooms north of the A2011 in comparison to the sole premises in the Maidenbower business park.

16. He stated that the appeal property was categorised by the VO as a type 1 car showroom (rate of £180/m^2) but should be a type 2 (rate of £150/m^2). He had provided a precis of the VO's own rating manual in respect of the valuation of car showrooms:

> Type 1 Prime – Modern purpose built showrooms built in the best locations
>
> Type 2 – Modern main dealer – Older purpose built showrooms situated in a variety of locations including those occupied by type 1 showrooms.
>
> Type 3 – Older purpose built or conversions – Inferior older showrooms in a variety of locations.

17. Further, the VO had previously categorised the appeal property as a type 1 in both the 2005 and 2010 rating lists. Both of these valuations were appealed to this tribunal and the appeals were allowed with the property being recategorised as a type 2 car showroom. He provided copies of the VT decisions.

18. There had been no changes made to the property or the locality and he could see no reason to deviate from the VT decisions.

19. He stated that paragraph 13 of the 2010 decision still applied:

    "The panel found that the VOA had given insufficient regard to the locality of the appeal property, which it was acknowledged was located near to a motorway junction with only one way access. The panel had regard to the age and character of the appeal property and was satisfied that had it been located in the main car alley among other dealerships, it would have been a CAR 1 dealership but located where it was, the panel agreed with the appellant's representative and the previous valuation tribunal that this was a CAR 2 dealership and it allowed the appeal to that extent and adopted a basic main price of £135 per m^2".

20. The VO's representative had provided properties that, in his opinion, were comparable to the appeal property but these were all located in the main commercial centre where the eight properties had been identified on the map provided. They were therefore not comparable.

21. He was not aware of any rent on the property and advised that it had been sold freehold in July 2019.

22. For these reasons the appeal property should be valued at the type 2 rate of £150/m^2 giving an RV of £214,000.

23. The respondent stated that seven years had passed since the 2010 list and the market had changed. He stated that the rating manual dated from 2005 and did not now properly reflect how the market and such valuations may have changed. However, he stated that it was still the only guide the VO had.

24. He placed no reliance on the previous VT decisions but offered that there was rental evidence to support the current valuation.

25. He stated that it actually supported a rate of £200/m^2 and he provided details in respect of Units 1A and 1B, The Drive, 46 – 62 Gatwick Road, Crawley. The two units were leased on one agreement of £800,000 per annum and, as they were the same size, he contended that £400,000 was therefore the rent for one unit and this analysed to £200.66/m^2. As it was rented on a new lease on a full repair and insurance basis from June 2015 for 25 years it was good evidence to support the current valuation on the appeal property.

26. He also provided a schedule of comparable property evidence of six car showrooms all scattered around Crawley that were valued at the £180/m^2 rate. As most car sales were now made on-line and had increased over the years, location was of less importance and would not affect the valuation of the appeal property.

27. For these reasons he contended that £180/m^2 was correct for the appeal property.

Decision and reasons

28. I referred to the Local Government Finance Act 1988. The term 'rateable value' being defined in paragraph 2(1), Schedule 6 to the Act (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".

29. 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.

30. 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.

31. I was not presented with any rental evidence in respect of the appeal property and had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had established six propositions giving clear guidance to be followed when assessing rateable value, namely:

    (1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.

32. The VO representative had offered six properties as comparable to the appeal property all of which were type 1 car showrooms valued on a base rate of £180/m^2. Their construction years ranged from 2003, the same as the appeal property, to 2017. However, I found that five of the properties were three miles or more from the appeal property with one of them being nearly eight and a half miles away.

33. The VO representative had also presented Unit 1A and Unit 1B as comparable properties in terms of their rent. However, there was no individual rental evidence for either of them. He had simply divided the rent for the two units in half. Further, he had stated that they were the same size, however, the schedule shows them as having very different sizes in terms of main space.

34. I did not find this to be helpful in my decision making and attached very little weight to both pieces of evidence. I also noted the VO's and the appellants comments in respect of the rating manual. I found that the manual was still clearly relevant and whilst it may need updating it remains as the rating manual for the rating of car showrooms and I found that the summary of the three types of showrooms by the appellant to be very helpful.

35. In respect of the previous VT decisions on the 2005 and 2010 I am aware that I am not bound by those decisions but I am free to use anything from them if it aids my decision-making. As far as I can see, very little has changed in respect of the appeal property, its location and its comparability to other car showrooms within and around Crawley. Consequently, I found the VT decisions to be helpful and found that paragraph 13 of the 2010 decision still applied.

36. Overall, I found that the appellant's case had been proven. In cases of this nature the onus is on the appellant to prove that the valuation of the appeal property was excessive and offer evidence supporting such a contention. I found that such evidence had been provided and it

was fair and reasonable to reduce the base rate used in the valuation of the appeal property to £150/m^2, giving a revised RV of £214,000. I therefore allowed the appeal.

Order

37. Under the provisions of regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the tribunal orders the valuation to alter the appeal property's entry in the rating list within two weeks of the date of this order to show a revised assessment of £214,000 with effect from 1 April 2017.

38. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1) (a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations (as amended) provided there is no review of the tribunal's decision. The refund will take around six weeks to process.

Date: 9 March 2023

Appeal number: CHG100309108

Rights of appeal

Any party who is aggrieved by the Tribunal's decision 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.