THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; car showroom and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: Porsche Centre Tewkesbury, Shannon Way, Tewkesbury, Gloucestershire GL20 8ND

APPEAL NUMBER:	CHG100321484	
BETWEEN:	Dick Lovett (Specialist Cars) Ltd	Appellant
	and	
	Mr D Virk, Valuation Officer	Respondent
PANEL:	Mr M H Smith (Senior Member sitting alone)	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Wednesday 6 July 2022	
APPEARANCES:	Mr A Flower from Jones Lang LaSalle Limited, representing the appellant Mr M Young representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The Rateable Value (RV) of the appeal property is altered from £340,000 to £277,500 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Porsche Centre Tewkesbury, Shannon Way, Tewkesbury, Gloucestershire GL20 8ND, (the ‘appeal property’) had been entered in the 2017 rating list as Car Showroom and Premises at a RV of £340,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by Jones Lang LaSalle Limited on behalf of the appellant Dick Lovett (Specialist Cars) Ltd, and was received by

the Valuation Officer on 17 June 2020. It sought a reduction in RV from £340,000 to £275,500 with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 29 September 2021, which stated that the rating list was reasonable based upon the evidence and information available.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received on 28 January 2022.

6 The appeal property is a car showroom located approximately 1.5 miles from the centre of Tewkesbury. It occupies a site immediately adjacent to junction 9 of the M5, with frontage to the A438 dual carriageway. It forms part of the general Tewkesbury Industrial Estate area and is accessed from Shannon Way.

7 The property was purpose built in 2014 and designed in line with Porsche's corporate contemporary specification and trademark layout. The accommodation comprises showroom, workshop, ground floor and first floor offices, kitchen and mess room. There is a secure yard to the rear. There are 30 prominent vehicle display spaces and a further 64 vehicle display spaces.

8 The total area of the property is 2,699.85 m^2 and the present valuation of £340,000 RV is based upon an unadjusted price of £185 per m^2.

9 Due to the late cancellation of the second panel member, in accordance with the Consolidated Practice Statement part 1 Tribunal Business Arrangements, I am authorised to sit alone as a Senior Member.

10 Mr Flower appeared on behalf of the appellant in the dual role of advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he confirmed that he was instructed under a contingency 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 the evidence supported the client's case.

11 It was therefore appropriate to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue before the Tribunal.

12 This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that I fully considered all of the evidence presented 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.

Preliminary issues

13 At the commencement of the hearing the parties agreed that all evidence before the Tribunal was admissible: where objections for missing evidence had been made, it was agreed that the evidence should be admitted; and where objections to "new evidence" had been made it was agreed it should be entered into evidence.

Issues

14 The issue in dispute was the price per m^2 to be adopted in the valuation of the appeal property.

15 Mr Flower confirmed that he no longer disputed the addition of £1,863 for plant and machinery.

Evidence and submissions

16 The bundle comprised 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 and additional evidence.

17 Mr Flower contended that the present adopted price of £185 per m^2 was excessive and had been the highest value adopted for all car showrooms across the Cheltenham and Gloucester area. In the 2010 rating list the appeal property had been valued at £120 per m^2 in line with all other car showrooms and he argued that there was no reason why that parity should not be maintained in the 2017 list. The adopted price of £185 per m^2 reflected an increase of 56% between lists and Mr Flower was not aware of any evidence which supported such an increase in value.

18 With reference to comparable assessments, Mr Flower submitted that the appeal property should be valued at £150 per m^2. One of those was Cotswold BMW, Corinthian Way, Cheltenham, GL51 6UP, a "state of the art" car showroom built in 2019, valued at £150 per m^2. Mr Flower considered that it was convenient that the Valuation Officer had only recently increased the price adopted from £150 per m^2 to £195 per m^2, despite his reference to it in the check made in February 2020.

19 Mr Young described the appeal property as being situated in a prime location with prominent visibility and excellent access off the M5. He defended the unadjusted price of £185 per m^2 with reference to primary rental evidence: a new lease rent of £365,000 per annum with effect from June 2014. While this was a Pension Scheme Fund rent, it had been declared on two statutory forms of return to have been based on open market value and on a full repairing and insuring basis.

20 In further support of his adopted price of £185 m^2 for the appeal property, Mr Young referred to a Valuation Tribunal decision in respect of Warners of Gloucester Ltd, Eastern Avenue, Gloucester GL4 3BS (appeal number

CHG100145374). The underlying tone basis of £150 per m^2 had been upheld for an older property sited in a poorer location.

21 Mr Young disputed Mr Flower's reference to the increase between lists, and argued that each rating list stands alone based on relevant evidence at the material day.

22 The additional evidence provided by the Valuation Officer related to Cotswold BMW, Corinthian Way, Cheltenham, GL51 6UP. Following receipt of a check received after the closure of the subject challenge case, the Valuation Officer reviewed the assessment. The tone of £150 per m^2 was not considered to be appropriate for a very high specification hereditament of regional importance, and Mr Young submitted that the increase to £195 per m^2 was pertinent to the subject appeal.

Decision and reasons

23 The Valuation Tribunal is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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;
>
> (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.

24 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 AVD of 1 April, 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

25 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.

26 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

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 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 differing types of evidence depending on the one hand 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.

27 In the subject appeal a new lease had been agreed with effect from June 2014 at a rent of £365,000 per annum. This was a pension scheme rent agreed between the landlord, Trustees of Dick Lovett Group Exec Pension Scheme, and the tenant, Dick Lovett Ltd t/a Porsche Centre Tewkesbury. Mr Young confirmed that a RICS “Red Book” valuation had been carried out in accordance with HMRC rules, which had to be based upon an open market value rent. As such, he contended that the best evidence is the subject rent.

28 Mr Flower stated that he was not aware that there had been a Red Book valuation carried out. He submitted that as it was not an arm’s length rent it should not carry any weight.

29 As outlined in *Lotus and Delta v Culverwell*, the starting point is the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements need to be taken into account when deciding the weight to attach to it. Usually little or no weight would be attached to a connected party rent, however, according to the forms of return, the subject rent had been agreed at open market value. Consequently I decided that the evidence of the subject rent should not be disregarded, given that it was the only piece of rental evidence available for consideration, however, it should be treated with some caution.

30 In the absence of any other rental evidence, I turned to the comparable assessments cited by the parties. Mr Flower provided a schedule of all large car showrooms in the Gloucester Valuation Office area. He highlighted that as the only property at £185 per m^2, the appeal property had been valued at a significant premium to the rest of its rival showroom operators. The established value across the areas was only £150 per m^2. This included showrooms on the well-established car showroom location of Tewkesbury Road in Cheltenham and others:

- 599 Princess Elizabeth Way, Cheltenham (Audi);
- 4 Barnwood Point, Corinium Avenue, Gloucester;
- Mercedes Benz of Cheltenham & Gloucester, Ashville Business Park, Commerce Road;
- Blade House, Northern By-pass, Gloucester.

31 Mr Flower further pointed out that in the 2010 list, the appeal property was valued at £120 per m^2 in line with all other car showrooms in the Gloucester area.

32 Mr Young submitted that the comparable assessments valued at £150 per m^2 reflected their inferior location and/or specification. The Valuation Tribunal had upheld the tone of £150 per m^2 in respect of Warners of Gloucester Ltd, a converted 1980’s warehouse located on a slip road off an A road dual carriageway. He disputed Mr Flower’s comparison of the 2010 and 2017 lists, and stated that in his opinion the appeal property was under assessed in the 2010 list.

33 As stated above, for the 2017 rating list, the valuation date is 1 April 2015 and the material day is 1 April 2017. For the 2010 rating list the valuation date is 1 April 2008 and the material day is 1 April 2010. Mr Young was correct in stating that the rating lists are separate and distinct, and the RV is not based upon percentage differences. However, it was significant that the appeal property had been assessed at the same value as comparable assessments in the 2010 list. It appeared that the reason for the difference in the 2017 list was due to the Valuation Officer’s reliance on the subject rent. Having determined that the rent should be treated with some caution, I was not persuaded that on its own it should be relied upon to increase the value adopted for the appeal property. In asserting that the appeal property had previously been under assessed, Mr Young was at risk of impugning the 2010 list.

34 In consideration of all the evidence presented, I decided to attach most weight to the appellant’s comparable assessments. The schedule provided by Mr Flower contained 29 other car showrooms from the same valuation scheme. The values adopted ranged from £75 per m^2 to £150 per m^2. Prior to the Valuation Officer’s alteration of Cotswold BMW, Corinthian Way, the appeal property was the only car showroom assessed at the highest adopted value of £185 per m^2. Properties which had been deemed to be comparable previously remained at £150 per m^2. I therefore determined that at £185 per m^2, the

assessment of the appeal property was unreasonable and inconsistent with comparable assessments.

35 Mr Young had sought to demonstrate that the increase of Cotswold BMW was relevant to the subject appeal, however, as he had described it as a “different animal”, being significantly larger at 9,050.5 m^2, I was not persuaded of its relevance.

36 Having conceded the valuation of plant and machinery, it was necessary to add £1,863 to Mr Flower’s valuation. In adopting a revised price of £150 per m^2, this resulted in a revised total of £279,993 RV which rounded down to £277,500 RV (adopting the Valuation Officer’s usual rounding practice).

37 The appeal is therefore allowed in part, and 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 (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

38 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £277,500 with effect from 1 April 2017.

Date: 20 July 2022

Appeal Number: CHG100321484

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.