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.

RE: Keith Garages Ltd, Bicester Road, Aylesbury HP19 8AL

APPEAL NUMBER: CHG100414853

BETWEEN: Jardine Motors Group Ltd — Appellant

and

Dawn Bunyan (Valuation Officer) — Respondent

PANEL: Mrs J Ellis (Presiding Senior Member)
Mr W J Read (Senior Member)

CLERK: Ms S Hodgson

ON: 23 November 2022

REMOTE HEARING

APPEARANCES: Mr H Neal of Avison Young (UK) Ltd for the appellant
Mr S Forbes of the Valuation Office Agency for the respondent

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Summary of decision

1. Appeal allowed. The Rateable Value (RV) of the appeal property is altered from £310,000 to £262,500 with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. Keith Garages Ltd, Bicester Road, Aylesbury HP19 8AL, (the 'appeal property') had been entered in the 2017 rating list as Car Showroom and Premises at a RV of £310,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by Avison Young (UK) Ltd on behalf of the appellant and was received by the Valuation Officer (VO) on 5 October 2020. It sought a reduction in RV from £310,000 to £260,000 with effect from 1 April 2017.

4. Following the challenge proposal Avison Young (UK) Ltd increased the RV it was seeking to £262,500. The VO also amended its original figure from £200 per square metre (psm) to £180psm, however as the areas had changed, and were agreed, the RV increased to £340,000 in its proposed valuation. The appeal property was deleted from the rating list with effect from 10 July 2020 and was therefore an historic assessment. The VO was prevented by law from increasing the RV of the historic assessment and therefore the RV in the list remained as £310,000 despite the VO's amended valuation.

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 30 May 2022.

6. The appeal property was a car dealership made up of two separate showrooms, one for Audi and one for Volkswagen. It was located in Aylesbury on a corner site adjacent to the A41 and included 243 parking spaces which included display spaces.

7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary issue

8. In advance of the hearing, the VO objected to additional evidence that had been included in the appeal papers by the appellant's representative. Both parties' comments were forwarded to Mrs M Cole, a Senior Member of the Valuation Tribunal for England, for her consideration.

9. On 11 November 2022, Mrs Cole's decision to include the additional evidence was sent to the parties to this appeal. No further submissions were received by the parties in relation to this.

Issue

10. The issue for the panel to determine was the correct RV to be ascribed to the assessment from 1 April 2017.

Evidence and submissions

11. Mr Forbes for the respondent argued that the lease on the subject property was between connected parties and therefore unreliable. The evidence bundle included the assessments of other car showrooms in the South East area and reference to four car showrooms within Aylesbury. He requested that the appeal was dismissed and the current RV of £310,000 confirmed.

12. Mr Neal provided a history of the site ownership and sale documents of the adjoining petrol filling statement to show what the lease of the subject property actually included. He argued that the rent on the subject property was an open market rent and was the best evidence in this appeal as no other rents had been put forward by the VO. Mr Neal requested the RV was reduced to £262,500 with effect from 1 April 2017.

13. Mr Neal appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Neal declared that he was not instructed under any conditional fee arrangement. Mr Neal 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.

14. Mr Forbes had sent his declaration to the Tribunal in advance of the hearing that stated he was an expert witness. However, at the end of his presentation to the panel he stated he had not been involved with the preparation of the evidence bundle and therefore could only act as advocate. The panel were disappointed that Mr Forbes had not declared this at the start of the hearing since his prepared declaration suggested otherwise.

Decision and reasons

15. 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;

(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.

16. 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).

17. 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.

18. 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.

19. There was a renewal lease in respect of the subject property that had been agreed with effect from 18 October 2015 at a rent of £240,000 per annum.

20. Mr Forbes stated it was the VO's position that this was a rent between connected parties and was not open market. The challenge decision notice referred to the rent including the adjoining petrol filling station which would need to be accounted for in any analysis and therefore moves the rent further away from the definition of rateable value. Due to this he contended it should not be given weight in this appeal.

21. Mr Neal had provided a history of the site ownership and leases and referred to the rent review clause which stated that the yearly rent would represent the open market rental. He also showed that the petrol filling station was not part of the 2015 rent renewal or the original lease as it had been sold in 2004.

22. The panel had regard for the rent renewal and questioned Mr Forbes as to why further information was not requested from the appellant if there were concerns over the lease. Mr Forbes suggested that it was thought the VOA had enough evidence at the time to show the

lease was between connected parties. However, insufficient evidence had been provided to the panel to substantial this argument to cast doubt upon the veracity of the rental evidence for the subject property

23. The panel noted that in this appeal the only other rent referred to was a lease renewal from 25 December 2015 for £506,961 on Stratstones. Mr Forbes stated this was a rent linked to the retail price index (RPI) on a nearby car showroom that analysed to £254.96psm. A challenge had been submitted on this property, but no appeal was made in the time limit.

24. Two other car showrooms from Aylesbury were submitted to demonstrate a tone in the area, however there was no rental evidence provided for these. The two properties were in the 2017 rating list at £180psm and £200psm respectively.

25. Mr Forbes referred to further assessments listed in the evidence bundle of car showrooms from the South East. This showed that twenty assessments were valued between £180psm and £210psm.

26. The panel considered all of the evidence before it and found that on balance the best evidence was the lease in respect of the subject property. The lease was not found to be unusual, and the panel noted the clause that stated it was an open market rent. While the VOA disputed this, no further interrogation was done in respect of the lease and, therefore, there was insufficient evidence provided to persuade the panel otherwise.

27. The panel referred to the principles set out in *Lotus and Delta* and agree the rent of the subject property should only be the starting point, however it then goes on to state that where there are no rents of comparable assessments it would be difficult to reject the evidence of the actual rent.

28. In relation to the other car showrooms in the South East that Mr Forbes referred to, it was the panel’s view that the subject property was unique in that it had two car showrooms on the same site. It was of the opinion that this would affect the rental market.

29. In conclusion, the panel found that the best evidence was the lease on the subject property and therefore the appeal was allowed with the RV reduced to £263,451, rounded down to £262,500, with effect from 1 April 2017 by way of an unadjusted base rate of £127psm.

30. The appellant is 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

31. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of Keith Garages Ltd, Bicester Road, Aylesbury HP19 8AL within two weeks, to £262,500 RV with effect from 1 April 2017.

Date: 22 December 2022

Appeal number: CHG100414853

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.