

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; workshop and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Holme Road, Bamber Bridge, Preston PR5 6BQ

APPEAL NUMBER: CHG100638425

BETWEEN:	Martin Edwards RBM Ltd	Appellant
	and	
	Ms A Hitchings (Valuation Officer)	Respondent

PANEL: Mr WJ Read (Presiding Senior Member)
Mrs NC Yang (Senior Member)

CLERK: Miss F Willson

REMOTE
HEARING ON: 31 October 2022

APPEARANCES: Mr K Batty (the representative for the appellant)
Mr T Willis (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of Holme Road, Bamber Bridge, Preston PR5 6BQ (subject property) at £19,750 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal for the subject property which had been entered in the 2017 Rating List as 'storage and premises' at a RV of £19,750 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The appeal arises from a challenge proposal made by Ken Batty Surveyors on behalf of Martin Edwards RBM Ltd in respect of the entry in the rating list at £19,750 with effect from 1 April 2017. The appellant sought a revised assessment of £16,500. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 18 February 2022. The appellant made an appeal to this tribunal against the decision notice which was received on 11 April 2022, on the grounds that the existing RV was not reasonable.
4. Mr Batty 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 Batty stated that he was not instructed under a conditional 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 or not the evidence supported his client's case.
5. The subject property comprises an open fronted storage unit with an electric supply and hard surfaced fenced land. It is owned by the appellant on a freehold basis and the store consists of corrugated asbestos on a steel frame. It is situated off the A6 and can be approached via Cuerden Way, Holme Road. It is in close proximity to the M6 and M65 motorways and is on a small industrial estate.
6. Mr Batty attended the hearing by an audio only connection but confirmed that he was content that he could fully participate in the hearing by that method. The panel was satisfied that neither party had been disadvantaged by the audio only connection and that both panel members were able to hear Mr Batty's presentation in full.
7. 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.

Preliminary Issues

8. Mr Willis raised two preliminary issues concerning the invalidity of the appeal in connection with this case. He explained that Mr Batty had put in a challenge in connection with this same property, same set of circumstances and the same appellant on 15 August 2019 and had not appealed the challenge decision. Mr Batty submitted another check and then challenge on the same property, on the same grounds and for the same appellant. The VO had processed the check and challenge and then Mr Batty had put in this appeal. Mr Willis conceded that the VO had not raised any issue with the validity of the appeal at either the check or challenge stage but wished to do so now.
9. Mr Batty explained that as the VO had allowed him to make the check and challenge before raising any issue of invalidity it would be grossly unfair for his client having paid the fees for the appeal to be told at the hearing that he could not proceed to have the case heard.
10. The clerk explained that there are no invalidity grounds in respect to the 2017 Compiled List appeals and that as the VO had issued both the check and challenge decisions the appellant has the right to appeal the challenge decision.

11. The panel retired and upon returning confirmed that it was in the interests of justice to go ahead and hear the case. There were no invalidity grounds included with this type of appeal and that in any event the VO had issued a decision which must be allowed to be appealed.
12. The second preliminary issue was also raised by Mr Willis and was in connection with the evidence submitted by Mr Batty for this hearing. He submitted that Mr Batty had filed new evidence and even introduced new lines of argument since the challenge stage. When asked by the clerk to highlight the relevant pages which were new evidence Mr Willis confirmed that he was unable to reference any new evidence in the bundle and so withdrew his submission.

Issue

13. The issue between the parties is the RV of the subject property specifically the main space price for the store and the land.

Evidence and Submissions

14. Mr Batty submitted a bundle of evidence which included photographs and details of the subject property, his revised RV calculation, copies of correspondence between the parties and the issues in dispute. He submitted that the appeal should be allowed and the RV on the subject property should be reduced to £16,500.
15. Mr Willis referred the panel to the challenge application and decision. He submitted that the RV of £19,750 was reasonable and asked the panel to dismiss the appeal.

Decision and Reasons

16. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let' and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.
17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976, as referred to by the Respondent. This case had established six propositions, which gave 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 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.'

18. Mr Batty explained to the panel that the subject property included a store which had damaged corrugated asbestos and was only able to be used as it was open fronted. He referred the panel to the photographs of the store and stated that these showed the fact that the asbestos was damaged and friable and was therefore dangerous. He submitted that the appellant was unwilling to remove the asbestos as the cost of doing so would be prohibitive. He therefore suggested that a 20% reduction for the lack of safe cladding should be applied to the main space price and would reduce it to £6.00/m².
19. The panel was aware that there had not been any comparable properties to support the reduction due to the corrugated asbestos and neither is there any evidence as to the level of any such reduction.
20. Mr Batty submitted that the land contained in the hereditament of 817m² has a poor surface and is prone to flooding. He drew the panel's attention to the photographs of the land which he stated showed an area with large pools of water. The land was adjoining and encircled by the river Bostock and as it was low lying land it was therefore prone to flooding. Even in good weather conditions the surface was a quagmire and the use of forklift trucks was hampered by the bad condition of the land. He submitted that £6.50/m² was more reasonable to reflect the fact that the land has a poor surface and is prone to flooding.
21. The panel noted that whilst Mr Batty had raised the issue of flooding, he had not provided detailed evidence of how often the land floods, what impact it has on the appellant's use of the subject property and what level of financial loss was suffered during the times it was flooded. The panel could not therefore assess what impact the flooding has on the subject property and therefore on the RV.
22. In support of the revised RV of the subject property at £16,500 Mr Batty had provided details of comparable properties which had a value of £7/m² but did not have the issues with flooding and had a better surface than the subject property :
 - a. Compound 9 Leyland Business Park 1923.71m² and is valued at £7/m². This is due to the fact that this land is significantly larger

- b. Compound 11 and 12 Leyland Business Park is 1728.86m² and is also valued at £7/m².
- c. Rear of 1 Lostock Lane is 909m² of unfenced land which is valued at £7/m².
23. The panel noted that Mr Batty had produced evidence of comparable properties in support of the reduced value but these were either far larger or smaller than the subject property which is 1,420m² and so the panel found they were not persuasive comparable properties.
24. Mr Willis stated that the photographs of the store did not, in his opinion, show that the corrugated asbestos was damaged. He explained that he had visited the subject property himself on 19 October 2022 and had found a typical shed with corrugated asbestos that was in a reasonable state considering its age. He therefore rejected Mr Batty's submission that an allowance should be given on that basis. He further submitted that if the main space rate on the store was reduced to £6.00/m² this would leave its value at lower than the hard surfaced fenced land. The store had an electric supply and provided shelter for anything stored in it and so would be given a higher value than open land which Mr Batty was submitting should be valued at £6.50/m².
25. The panel found that the photographs did not show damaged corrugated asbestos and along with the lack of evidence about the reduction other assessments had due similar disadvantage, the panel put little weight on this evidence.
26. He explained that upon his visit to the subject property he found the hard fenced land had large puddles and was uneven but he did not consider that it was poorly surfaced. He saw forklift trucks being able to move quite freely around the site even when loaded. He stated that the surface appeared to have debris on it but he did not consider it to be in a bad state of repair. The issue of the land flooding had been raised by Mr Batty but he had not provided any supporting evidence or what other properties in the area had been flooded and had they been given a reduction to their RV. He was therefore unable to grant any reduction based on the flooding.
27. Mr Willis submitted that in relation to the appellant's comparable properties, the difference in size to the subject property and the fact they were up to two miles away led him to believe that they were not good comparators. The land rear of 1 Lostock Lane was unfenced land and not obvious from the roadside. The subject property's land was hard surfaced fenced land and was therefore a superior site. This meant that in his opinion, the panel should put little weight on any of the appellant's comparable properties.
28. The panel found that the comparable properties put forward by the appellant were much larger and of poorer quality to the subject property and so gave them little weight.
29. In this appeal it is for the appellant to prove their case on the balance of probabilities and the panel found that in this case Mr Batty had failed to do so. The store did not appear to be dangerous and as owners of the subject property they would have increased the value of their own property if they had carried out any repairs necessary. The main space value for both the store and the land appeared reasonable and there was no supporting evidence about the flooding or allowances being made on neighbouring properties that flooded. The panel found that it was satisfied that the current assessment of the subject property was reasonable and therefore dismissed the appeal.

Date: 28 November 2022

Appeal number: CHG100638425

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.