THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Workshop and premises; accuracy of rateable value; found that weight of evidence did not support a reduction in the assessment of the subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed

RE: Kwik Fit, 23 Marsh Hill, Birmingham B23 7DS

APPEAL NUMBER: CHG100725159

BETWEEN:	European Tyre Enterprises Ltd t/a Kwik Fit (Represented by Lambert Smith Hampton)	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mr A Backway, Presiding Senior Member
Mrs A E Fielder, Senior Member

CLERK: Ms R Muller

HEARING: Remote Hearing 2: 26 July 2023

APPEARANCES: Mr D Bullimore from Lambert Smith Hampton, representative for the Appellant
Mr H Bhatti, representative for the Respondent.

Summary of decision

1. The appeal was dismissed. The panel determined the Rateable Value (RV) of Kwik Fit, 23 Marsh Hill, Birmingham B23 7DS (“hereafter, known as the subject property”) at £64,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 Rating List as 'Workshop and Premises' at an RV of £78,000 with effect from 1 April 2017. As this was a compiled list appeal the material day was 1 April 2017.

3. The challenge proposal was submitted by Lambert Smith Hampton on behalf of European Tyre Enterprises Ltd t/a Kwik Fit and was received by the Valuation Officer (VO) on 2 September 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed a revised RV of £42,500 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 19 July 2022. The VO's decision was that the appellant's challenge was not well-founded but proposed a revised RV of £64,000 with effect from 1 April 2017.

5. The subject property fronted onto Marsh Hill in Erdington, Birmingham. It had a total area of 869.38 m², which comprised a workshop on the ground floor with a small reception area, a reception area with a staff room and internal storage. There was a stores area on the first floor. The stores on the first floor did not have natural light. The scheme for the subject property was address based and area specific to the former Birmingham group area, the subject properties age code was A5, which meant the subject property was built between 1955 and 1964.

6. It was noted during the hearing that Mrs Fielder, the Senior Member had lost connection. The panel adjourned the hearing in order for Mrs Fielder to re-join. Once she had re-joined, the hearing reconvened without any further loss of connection from any of the parties.

7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

8. The issue between the parties concerned the RV of the subject property, specifically, the rate per m² that should apply. Mr Bullimore, for the appellant, sought a reduction to £42,500 RV based on an unadjusted rate of £55.00 per m². Mr Bhatti, for the VO, defended the revised assessment of £64,000 RV, which was based on the revised unadjusted rate of £82 per m².

9. All relevant factual information regarding the subject and comparable properties, including their areas, was not disputed by the parties.

Evidence and submissions

10. Mr Bullimore 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 Bullimore declared at the hearing that he was instructed under a conditional fee arrangement. He also 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. Mr Bhatti also appeared in a dual role capacity for the VO.

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

12. Mr Bullimore contended that the current assessment on the subject property at £82 per m² was excessive based on the assessments of other Kwik Fit properties in the local and wider areas.

13. The subject property was held on a 34 year lease from March 1989. The rental history had been provided, which showed that as of 2002, the rent had been £54,000 but had increased to £60,000 in 2006 and had remained that amount at the following rent reviews in 2010 and 2014.

14. However, his main comparable property had been a warehouse at the rear of the subject property, which was demised to Kwik Fit but was sublet to Dallas Motor Company Ltd from March 2015 at an annual rent of £18,195. In taking into account the 2014 rental figure for the subject property and removing the 2015 sublet value, he analysed the rent for the subject property as being £54.13 per m².

15. Mr Bullimore had provided a list of comparable properties in the locality which showed that the vehicle repair workshops had been valued between £22 per m² and £65 per m², whereas the comparable properties located further afield had been valued between £60 per m² and 100 per m². Having regards to the evidence provided, in particular vehicle workshops within the local area, he proposed a reasonable tone for the subject property would be £55 per m², which resulted in a revised RV of £42,500 with effect from 1 April 2017.

16. Mr Bhatti, stated that originally, the subject property had been assessed at £78,000 RV, calculated on a base price of £100 per m². Due to the rental adjustment and the analysis, which equated to £82.95 per m². Having regards to the rental analysis and the comparable properties evidence provided, the VO agreed that the base rate had been too high and reduced it to £82 per m². However, the VO did not agree with Mr Bullimore's proposed value of £55 per m².

17. Mr Bhatti stated that as the base rate was reduced to £82 per m², it revised the assessment of the subject property to £64,000. He considered that the revised rate of £82 per m² applied to the subject property was reasonable.

Decision and reasons

18. 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.

19. The panel had regard to the Lands Tribunal judgment of Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council [1976] RA 141, 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 1976 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.'

20. The panel was aware that, following the propositions set out above, the rent on the subject property should be a starting point. It noted that the lease had commenced in 1989 with a rent review, which had taken place in 2002, 2006, 2010 and again in March 2014. The rent had been agreed at £54,000 but had increased to £60,000 in 2006. It had remained at £60,000 at the rent review of 2010 and 2014. The panel held that the rent, had it been an open market rent, would have been higher around the AVD than £60,000 with it remaining the same since 2006. The panel therefore placed lesser weight on this rental evidence.

21. The panel considered the warehouse that had been sublet by the appellant to Dallas Motor Company. It was a fact that the warehouse had its own entry within the Rating List and therefore, the occupiers of the warehouse were paying separate business rates. The panel was aware that Mr Bullimore wanted the panel to reduce the price per m² due to the rent paid on the warehouse by the occupier, but the VO discounted this, as they did not know the details of the sublet. The panel noted that no evidence had been provided to show how the sublet of the warehouse had affected the subject property's business.

22. The panel held that as it did not have any details of the lease of the sublet, it could not make a determination based on assumptions. The panel noted that the VO had excluded the warehouse area that had been sublet, and then had based the £82 per m² on the rental figure and analysis, as well as the comparable properties provided. Therefore, if the panel was to reduce the price per m² again, due to the passing rent on the sublet property, it held that it would be double counting.

23. The issue that the panel had to consider was whether the approach Mr Bullimore had used, along with the comparable properties he had provided, supported a reduction in price per m² for the subject property. Mr Bullimore informed the panel that 547-557 Moseley Rd, Birmingham, B12 9BU has been settled by consent order. This comparable property had a price per m² of £72.50 per m².

24. To assist the panel, it went on to consider the evidence provided by the VO. Mr Bhatti referred the panel to the comparable properties of 1277 Stratford Road, Birmingham B28 9AJ and ADJ 315 Longbridge Lane, Birmingham B31 4RF. According to the table provided by Mr Bhatti, it showed that 1277 Stratford Road had been valued at £77.50 per m² and ADJ 315 Longbridge Lane had been valued at £90 per m². However, it was also noted that the base rate at ADJ 315 Longbridge Lane had been reduced from £90 per m² to £75 per m² based on a list of Challenges against properties of this type.

25. It was Mr Bhatti's opinion that the revised value for the subject property of £82 per m² was correct. He had used the two comparable properties above, along with the analysed figure of the subject property to determine the value of the price per m². The panel considered the location of 1277 Stratford Road and ADJ 315 Longbridge Lane was comparable to the subject property. It noted that 1277 Stratford Road was located circa nine miles from the subject property, it was similar in terms of distance from the Birmingham city centre. It had been valued at £77.50 per m².

26. From the basket of rental evidence provided by the parties, the panel was satisfied that the current assessment of the subject property at £82 per m^2 was reasonable and the evidence provided by Mr Bullimore had not persuaded the panel that it was excessive. The requested £55 per m^2 suggested by Mr Bullimore did not support an open market rent that the subject property might have achieved if leased as a new dwelling around the AVD of 1 April 2015.

27. Therefore, the panel confirmed the current entry in the list for the subject property at £64,000 RV and dismissed the appeal.

Date: 7 August 2023

Appeal number: CHG100725159

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.