THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; land used for car wash; price per m^2 and end allowance for access in dispute; rental evidence; comparable assessment; appeal allowed in part.

RE: Very Best Hand Car Wash Adj 172 Blackburn Road, Accrington, Lancs BB5 4NZ

APPEAL NUMBER:	CHG100740933	
BETWEEN:	Very Best Hand Car Wash Ltd	Appellant
	and	
	Ms A Hitchings, Valuation Officer	Respondent
PANEL:	Mr S W Chappell (Senior Member) and Ms S Eze	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Friday 6 January 2023	
APPEARANCES:	Mr M Bates from FCS Nationwide Ltd, representing the appellant Ms K Duffy representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The panel determined a revised rateable value (RV) of £11,000 with effect from 1 April 2017, based upon an adopted price of £13.00 per m^2.

Introduction

2 This is a 2017 rating list appeal. Very Best Hand Car Wash Adj 172 Blackburn Road, Accrington, Lancs BB5 4NZ, (the ‘appeal property’) had been entered in the 2017 rating list as ‘land used for car wash’ at a RV of £15,500 with effect from 1 April 2017.

3 The challenge proposal was submitted by FCS Nationwide Ltd on behalf of Very Best Hand Car Wash Ltd and was received by the Valuation Officer on

25 October 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £10,750 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 4 January 2022 which disagreed with the proposed alteration of the list but stated that the rating list entry was unreasonable based on the evidence and information available. The RV was altered to £15,000 based upon a reduction in the price per m^2 for the store from £25 to £20 per m^2.

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 by the Tribunal on 14 January 2022.

6 As Mr Bates appeared on behalf of the appellant in the dual role of advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

7 Mr Bates declared that he was not instructed under any conditional fee arrangement. He confirmed 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.

8 The appeal property is mostly comprised of hard surfaced, unfenced land. There is a small amount of rough surfaced, unfenced land, an office, store and canopy. The present valuation of £15,000 RV is based upon an adopted price of £18 per m^2.

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

Issues

10 The remaining issues in dispute were the price per m^2 to be adopted in the valuation and whether an end allowance of 5% for access was warranted.

Evidence and submissions

11 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

12 Mr Bates confirmed that he had revised his valuation from £10,750 to £10,500 RV to reflect the Valuation Officer's alteration of the price per m^2 adopted for

the store. He sought an adopted price of £13 per m^2 with reference to his comparable property, Baxenden Car Spa, Manchester Road, Accrington BB5 2RG. In support of an end allowance, he referred to units to the rear of the appeal property which had a 5% end allowance applied to their valuations.

13 On behalf of the Valuation Officer, Ms Duffy presented rental evidence which she contended supported the existing tone of £18 per m^2. She disputed the relevance of the appellant's comparable property as this was 3.4 miles from the subject. Ms Duffy explained that the units to the rear were set back and could not be seen from the main road which is why an end allowance was warranted for those properties. She disputed that the same allowance should be applied to the appeal property.

Decision and reasons

14 In arriving at a decision, the panel 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.

15 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, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

16 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.

17 Ms Duffy had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 in support of the Valuation Officer's case. This was a

leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent.

18 The regulation 17 Notice scheduled two rental transactions for the appeal property:

- A six year lease effective from 1 April 2011 at an annual rent of £21,320. The Valuation Officer's analysis of the rent, reflecting four open spaces was £22.27 per m^2.
- A rent of £21,320 effective from 1 August 2019 which the Valuation Officer assumed to be for a five year lease and analysed at £27.25 per m^2.

19 In an email dated 2 December 2021, Ms Duffy had asked Mr Bates to confirm the lease term for the 2019 rent. He responded "there appears to be no term and agreements are reviewed and renewed every year by the landlord. The sites that we have submitted challenges for have come from one landlord who seems to charge whatever he can negotiate and figures seem well above market rent."

20 As set out in *Lotus and Delta*, the starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. In view of the uncertainty of the lease term and the fact that the rent was four years after the AVD, the panel attached little weight to the 2019 rent. The panel considered that as the 2011 rent was agreed four years before the AVD, it also carried little weight.

21 The remaining propositions in *Lotus and Delta* required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

22 The Valuation Officer presented three rental transactions in support of an adopted price of £18 per m^2 for the appeal property:

Steinhoff Group, Land at Huncoat Industrial Estate, Newhouse Road, Accrington BB5 6NT

Land used for car parking and premises of 1,122.50 m^2. A new FRI lease effective from 12 December 2013 at a rent of £15,000, with four year rent reviews. The rent analysed at £18.72 per m^2 which Ms Duffy contended supported £18 per m^2 for the appeal property.

Unit 2 Spring Gardens, Grange Lane, Accrington BB5 2BT

Car sales site and premises of 478.70 m^2 and 16 open spaces. A new lease effective from 1 May 2019 at a rent of £10,000, with five year rent reviews. The rent analysed at £20.85 per m^2 which suggested to Ms Duffy that the current tone of £18 per m^2 was not unreasonable.

R/O 42 New Lane, Accrington, BB5 3PH

Land used for storage and premises of 975 m^2 and 5 open spaces. A lease renewal effective from 1 April 2014 at a rent of £5,531. The rent analysed at £14.16 per m^2 which suggested to Ms Duffy that after looking at the basket as a whole, £18 per m^2 was not unreasonable.

23 In response, Mr Bates stated that the unit values adopted did not relate to the analysed rents: Steinhoff Group analysed at £18.72 per m^2 yet it was valued at £8.00 per m^2; Unit 2 Spring Gardens analysed at £20.85 per m^2 yet it was valued at £14.00 per m^2; R/O 42 New Lane analysed at £14.16 per m^2 but it was valued at £8.50 per m^2. He therefore asked Ms Duffy how the unit values had been calculated. Other than suggesting an element of quantum for Steinhoff, she was unable to explain how the unit values had been arrived at.

24 Through questioning it was established that the Valuation Officer's comparable properties were drawn from different valuation schemes.

25 The panel noted that the rental transaction for Unit 2 Spring Gardens was four years post AVD, and as a car sales site and premises in a different valuation scheme, it was not found to be relevant for comparison with the appeal property. While the rents of Steinhoff Group and R/O 42 New Lane were closer to the AVD, the panel had to take into account the fact that they were in different valuation schemes and their unit values were significantly lower than their analysed rents. As such, the panel was not persuaded that the Valuation Officer's rental evidence demonstrated that £18 per m^2 was reasonable for the appeal property.

26 Mr Bates' contention for an adopted price of £13.00 per m^2 was based upon Baxenden Car Spa, Manchester Road, Accrington BB5 2RG, a hand car wash and premises. He described it as being similar in size to the appeal property at 788.60 m^2 and similarly located on an A road. The hard surfaced, unfenced land was valued at £13 per m^2 and therefore Mr Bates could see no reason why the appeal property should be valued at £18 per m^2.

27 A rental transaction for Baxenden Car Spa was included in the Valuation Officer's rental summary: a rent of £12,000 effective from 1 July 2016 which analysed at £15.22 per m^2. This property was rejected as a suitable comparable by the Valuation Officer as it was 3.4 miles from the appeal property.

28 The panel was not persuaded that a distance of 3.4 miles was too far removed from the immediate locality. The property was similar in type, size and also situated on an A road. The rent was one year post AVD and therefore did not reflect a value as at 1 April 2015, however, the significance of Baxenden Car Spa to the panel was the level of value adopted, £13 per m^2.

29 Having rejected the relevance of the Valuation Officer's rental comparables, the panel decided to attach most weight to Mr Bates' comparable property,

Baxenden Car Spa. At £18 per m^2, the valuation of the appeal property appeared excessive and out of line with the closest comparable property, and therefore the panel determined a revised adopted price of £13 per m^2.

30 The second issue considered by the panel was whether an end allowance for access of 5% should be applied to the valuation of the appeal property.

31 Mr Bates contended that the appeal property should have the same end allowance which had been applied to Units 1, 2, 3a, 3b, 4, 5-6 Kirkham Garages, Blackburn Road, situated to the rear of the appeal property. He submitted that traffic going to and from the units affected access to the appeal property.

32 In response, Ms Duffy submitted that the units were not comparable, as they were industrial units which were set back and could not be seen from the main road, unlike the appeal property.

33 The panel referred to the photograph of the appeal property (provided by Ms Duffy during the hearing as this had not been received by the Tribunal with the appeal documents). The location of the units to the rear and the shared access along an unmade road was noted, however, the panel was not persuaded that access to the appeal property was an issue which warranted the same end allowance.

34 The panel concluded that the appellant's representative had failed to demonstrate that an end allowance of 5% for access was warranted, but he had successfully demonstrated that the adopted price of £18 per m^2 was unreasonable. The appeal was therefore allowed in part and a revised RV of £11,000 determined as follows:

Description	Area m^2/unit	£ per m^2/unit	Value
Hard surfaced, unfenced land	686.6	13.00	8,926
Rough surfaced, unfenced land	85	13.00	1,105
Additional features			
Canopy	148.7	2.00	297
Office	11.5	40.00	460
Store	23	20.00	460
		Valuation sub-total	11,248

Rounded down to £11,000 RV

Order

35 Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list to rateable value £11,000 with effect from 1 April 2017.

36 Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

37 A refund of the paid fee will now be arranged provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 17 January 2023

Appeal number: CHG100740933

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.