VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; car showroom; comparable properties; existing valuation unreasonable; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141*; Barnard & Barnard v Walker (VO) 1975* RA383*; K Shoe Shops Ltd v Hardy (VO) & Westminster City Council LT [1980] RA333; O'Brien v Harwood (VO) RA 22 2002; Vines Ltd v Andrew Quentin de Mauny LT [2010] RA 3 2008; Semples of Berwick v Mr R Roberts (VO) [2022] VTE; appeal dismissed.*

APPEAL NUMBER:	CHG100799884	
RE:	Units 10 & 11 Victoria Road Trading Estate, Victoria Road, Brighton BN41 1XQ (the "subject property")	
BETWEEN:	Group1 Automotive Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	22 March 2024	
BEFORE:	Mr SW Chappell, Presiding Senior Member Ms Phylicia Jarrett, Senior Member	
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)	
APPEARANCES:	Ms J Corney of Knight Frank LLP (on behalf of the appellant) Mr S Forbes (on behalf of the respondent)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel confirmed the rateable value (RV) as £182,000 with effect from 23 March 2018.

Introduction

3. This appeal has been brought in respect of Units 10 & 11 Victoria Road Trading Estate, Victoria Road, Brighton BN41 1XQ (the subject property) which was entered into the 2017 Rating List as a car showroom and premises with an RV of £182,000 effective from 23 March 2018.

4. The appellant's challenge to the Valuation Officer (VO) was made on 11 April 2022. The appellant sought a reduction to £125,500 RV from 23 March 2018. The VO issued a decision notice dated 22 May 2023 to indicate the proposal was not well founded. The appellant subsequently appealed to this Tribunal on 26 September 2023.

5. As Ms Corney appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Ms Corney declared that she was not instructed under a conditional fee arrangement. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body.

6. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

7. The subject property was a purpose built car showroom on a mostly motor park retailing estate with a range of motor manufacturers. It was a two storey showroom, workshop and ancillaries built in 2004. The showroom and offices were air conditioned. The total area was 1,404m^2 with an ITMS of 935m^2.

8. The premises were vacated and refurbished internally and externally at a cost of £600,000 prior to the opening for the sale of new and used Mini cars in 2017. The assessment was deleted from the list on 5 November 2017 whilst this refurbishment was carried out.

9. The disputed issue was the tone applied to the subject property. Mr Forbes, on behalf of the VO submitted that the tone of £180/m^2 giving an RV of £182,000 was reasonable. Ms Corney submitted that £132/m^2 giving an RV of £125,500 was reasonable in connection with the subject property.

Relevant Law

10. 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.

11. In arriving at the 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.

12. 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).

13. 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 23 March 2018 the date the subject property entered the rating list.

Discussion

14. The panel was guided by the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had set out six propositions to be followed when considering the weighting of evidence:

> (i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
> (ii) 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.
> (iii) 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.
> (iv) 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.

(v) 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.

(vi) 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.

15. The rent passing on the subject property was the starting point for the analysis of rental evidence, as stated in the first proposition in the case of *Lotus and Delta.* Mr Forbes submitted that the subject property was situated in a 'cluster' of car showrooms and so following the Rating Manual this classed the subject property as a 'CAR1' type. All CAR1's in the West Sussex and East Sussex area had been valued using a base rate of £180/m^2. He stated that there had been few Challenges from other occupiers in the lifetime of the 2017 list and he therefore suggested that this demonstrated a tone had been set for CAR1 showrooms being valued at £180/m^2. In connection with the subject property the rent passing was £165,000 for the car showroom from 3 July 2017. This analysed to £161/m^2 and therefore supported a base rate of £180/m^2. Adding in the cost of the refurbishment of £600,000 would significantly increase the analysis however the rent was some two years after the AVD. With the allowances for the variation of floor levels of 5% and the layout at 5% this would result in an RV of £182,000 and so with the allowances the tone would fall to £170/m^2.

16. Ms Corney stated that the rental agreement on the subject premises was for an open market letting for a fully fitted out car showroom. It was a 15 year lease commencing on 3 July 2017 two years after the AVD. It had a five yearly review clause and was on FRI terms. The lease covered other accommodation not included in this assessment being first floor office accommodation and a compound to the rear with a valet building and so adjustments would have to be made to the rent to take this into account. These issues, she submitted, meant that the rent on the subject property should not be given weight when determining the RV of the subject property.

17. Ms Corney argued that there was a lack of rental evidence in respect of car showrooms. The majority of car showrooms were occupied by freeholders. The rents that were available were usually not open market as they were linked to other matters such as retail price index, connected parties or financial agreements based on the cost of construction. This obviously provided challenges for rating valuers who were reliant on rental values. She therefore submitted that the rent passing on the subject property should not be considered in isolation and because it was two years post AVD little weight should be placed on it.

18. Mr Forbes drew the panel's attention to the rental evidence on the comparable property of Lifestyle Ford, Manor Royal, Crawley which had a total area of 1,303m^2 and an ITMS of 969m^2. The rent on this property was £200,000 per annum with the lease commencing on 10 May 2013 for 15 years. The analysed rent was £193.56/m^2 and it had a base rate of £180/m^2. This compared to the analysed rent of £161/m^2 on the subject property and the lease on the comparable property was just under two years before the AVD.

19. Mr Forbes also referred to five comparable properties which all had a base rate of £180/m^2 and were in the Victoria Road cluster in Brighton the same cluster as the subject property was

located in. The ITMS for them was between 524.06m^2 and 3163.14m^2 and they were all car showrooms for major franchises. Each of them had the base rate of £180/m^2 and there had been no appeals against the RV in the 2017 rating list which was now closed. This, Mr Forbes submitted demonstrated a settled tone of £180/m^2 for CAR1 car showrooms in Brighton.

20. Ms Corney gave an extensive overview of the issues and challenges facing the car market. She said it had suffered significant disruption between 2008 and 2015, and that demand for even primary locations had been eroded and no longer attracted a premium. The growth of car supermarkets and even the online purchase of cars had now put pressure on the car showrooms who struggled to compete with the low cost the online sellers could offer due to their lower overheads. As a result, car dealerships had lost a significant share of the new and used car market.

21. Mr Forbes submitted that in his opinion the areas of Crawley and Brighton were only 20 miles apart and in his opinion it was reasonable to use of a base rate of £180/m^2 across the two sites. The subject property was not a standalone car showroom which would possibly lead to a lower base rate. In the 2010 rating list the two areas had been given different base rates but Mr Forbes stated that he did not believe that this difference was supported by the rental analysis for the 2017 list. He did not believe that either site was superior to the other and the lack of Challenges in the area suggested that the other ratepayers and their agents had not considered it prudent to put in a Challenge against the base rate.

22. Mr Forbes submitted in oral evidence that he considered that he needed to equalise the 2017 list for Crawley and Brighton as he considered that it had been unbalanced in the 2010 list. As a matter of legislation he was not bound by the previous list and he therefore determined that both areas should have the same base rate. He confirmed that in his opinion the fact that his balancing up was not challenged added to the fact that the tone was accepted.

23. Ms Corney drew the panel's attention to the differences in the retail information from the two Mercedes Benz sites, one in Crawley and the other in Brighton, had a which had a 33% difference in the financial year 2021. In connection with the base rates applied to car showrooms in Brighton there was rise in the base rate for prime locations from £125/m^2 to £180/m^2 between the two rating lists which was a 44% increase.

Location	2005	2010	2017
Crawley Prime	£170m^2	£170m^2	£180m^2
Crawley Secondary	£170m^2 - Original VT confirmed £135m^2	£170m^2 - Original VT confirmed £135m^2	£180m^2 - Original VT confirmed £150m^2
Brighton Prime	£125m^2	£125m^2	£180m^2
Brighton Secondary	£100m^2	£100m^2	£135m^2

24. She further submitted that the difference which had been adopted for car showrooms in Crawley compared to Brighton in previous lists should still apply to the 2017 rating list. She submitted that not to continue to give a lower base rate to the car showrooms in Brighton was unreasonable as it did not take into account the difference in the locations which had always been taken into account in the previous rating lists. In the case of *Barnard & Barnard v. Walker (VO)* the court determined that there is a

"Presumption that differentials in the old rating list were correct unless there is a valid reason to change the differential. The differential is to be maintained if it cannot be shown there has been any material change in circumstances justifying a different differential in the new list."

25. Ms Corney drew the panel's attention to her benchmarking of car showrooms in Crawley as compared to Brighton. The Ford car showroom in Crawley was as follows:
    - 15-year lease 1 June 2017
    - 5-year rent reviews
    - FRI terms
    - Open market letting
    - £200,000 per annum
    - VOA ITMS analysis 969m² and a rate of £206.40/m²

    The subject property in comparison was:

    - 15-year lease from 3 July 2017
    - 5-year review
    - FRI Terms
    - Open Market Rent
    - £165,000 per annum
    - The adjustments made to the rent due to the separate first floor office and the rear compound produced an ITMS of 1,151.86m^2 and a rate of £143/m².

26. This she submitted demonstrated that car showrooms with rental agreements on almost the same dates when analysed give a rate per m^2 in Crawley of £206.40 /m^2 and in Brighton £143/m^2, a differential of 30.7% between the two sites.

27. Ms Corney explained that all car manufacturers insisted on having all showrooms fully branded and that the branding was always changing. The refurbishment to the subject property was therefore not a refurbishment as would normally be carried out. She referred the panel to the photographs of the showroom before the work was done and those after it was done. The areas of the car showroom were almost the same and the colour and materials used in the showroom were the main things that had changed. The subject property was not therefore significantly different as a result of the refurbishment but simply had been rebranded to meet Mini's requirements. The value of the subject property, in her opinion, had not therefore been increased.

28. The panel found that:

    - The rent on the subject property was the first piece of evidence to be considered as set out in the leading case of *Lotus and Delta*. The panel therefore put weight on the VO's evidence of the analysed rent of the subject property adjusted to take into account the fact it was determined after the AVD. This analysed rent was £170/m^2 which supported the base rate of £180/m^2.

    - the second type of evidence in the basket of evidence as outlined in the case of *Lotus and Delta* was other similar properties in the vicinity of the subject property. The panel put weight on the VO's comparable properties which the panel found had demonstrated a settled tone for the cluster of car showrooms on Victoria Road in Brighton in which the subject property was situated. The 2017 list was now closed and few of the other properties in the vicinity of the subject property had appealed the RV and so the panel found there was a settled tone at a base rate of £180/m^2.

- Each rating list was determined by the likely rental value of a premises at the AVD and so differences in the previous list are not automatically carried over into the new list. The panel put weight on Mr Forbes' evidence that the whole of East and West Sussex CAR1 car showrooms had a base rate of £180/m^2 and very few had appealed the rateable value leading to a settled tone.

- The subject property had had a refurbishment which cost £600,000 and the subject property was deleted from the rating list whilst the work was carried out and a new entry was inserted into the list after the work was concluded. This, the panel found, was not simply a rebrand but was a refurbishment and meant that a hypothetical tenant new to the scene would have been willing to offer more for the subject property and hence the refurbishment had increased the value.

- The population and economic make up of Crawley and Brighton were not that dissimilar and there was a 40 minute travel time in the car between them. It accepted the evidence of the comparable property given by Mr Forbes and his oral evidence that the two areas were very similar and neither was a superior location to the other. To change the base rate to £132/m^2 as Ms Corney had submitted would be to move away from the tone set and the panel had not been presented with any evidence to support the need for singling out the subject property from the other comparable properties in the same cluster on Victoria Road.

- The difference between the retail figures from the Mercedes branches in Crawley and Brighton were specific to that retailer and that business but the RV is not based on an individual business and so put little weight on this evidence. The VTE decision *Semples of Berwick v Mr R Roberts (VO) [2022] VTE* referred to by Ms Corney was not binding on this panel but in any event the panel found that the case concerned the difference between a primary location and a secondary location in the same area and not two different areas and so found the facts of this case differed from that case.

Disposal

29. In view of the above findings and conclusions, the Tribunal Panel confirmed the RV of £182,000 for the subject property with effect from 23 March 2018.

Date issued to parties: 19 April 2024

Right of further 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.