THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; car showroom and premises; accuracy of rateable value; comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

RE: 220 The Radleys, Birmingham B33 0GR

APPEAL NUMBER: CHG100876221

BETWEEN	Motorfair (Birmingham) Ltd	Appellant
	and	
	Lucy Formela-Osborne (Valuation Officer)	Respondent

BEFORE:	Mr PJ Hickson (Senior Member)
CLERK:	Miss N Shepherd (IRRV Hons)
REMOTE HEARING:	Thursday 28 February 2024
APPEARANCES:	Mr A Simons from Altus Group, representing the appellant Mr H Bhatti, representing the Valuation Officer

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Summary of decision

1. Appeal allowed in part. I concluded that the main space rate should be reduced to £85 per m^2. The resultant rateable value (RV) was £80,000 from 10 January 2022.

Introduction

2. This was a 2017 rating list appeal. 220 The Radleys, Birmingham B33 0GR (the “subject hereditament”) had been entered into the 2017 list as “Car Showroom and Premises” at an RV of £85,500 with effect from 10 January 2022.

3. The challenge proposal was submitted by Altus Group on behalf of Motorfair Ltd and was received by the Valuation Officer on 7 November 2022. The proposal had been made on the grounds that the RV shown in the rating list was inaccurate. The appellant's representative sought a revised RV of £78,000 based on a reduction in main space rate from £100m^2 to £81.25m^2 effective from 10 January 2022.

4. The Valuation Officer issued a challenge case decision notice on 6 February 2023 which stated, that based upon the evidence and information available, that the rating list entry of £85,500 was considered to be reasonable and there would be no amendment.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal to this Tribunal was then made on the grounds that the valuation of the hereditament was not reasonable. The appeal was registered by the Tribunal on 25 May 2023.

6. The subject hereditament is a car showroom located on the east side of Birmingham in a mostly residential area. It consists of 798.24m^2 of building and has 123 car display spaces.

7. Mr Simons 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) his statement of truth included a statement that he was not instructed under any conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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. I 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). I therefore considered the expert evidence and attached such weight to it as it saw fit.

9. A second panel member had been allocated to this hearing. However, on the morning of the hearing they were no longer able to sit.

10. I referred to the Valuation Tribunals Consolidated Practice Statement Part 1 Tribunal Business Arrangements paragraph 11 "Hearings where a member is unable to sit": -

    "Where a panel member is allocated to a hearing and unable to sit for any reason or fails to appear……. a hearing will proceed with a Senior Member alone where a member gives notice of unavailability within one working day of the hearing, to avoid postponing the hearing."

11. I duly proceeded alone.

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

Issues

13. The issue in dispute was the main space rate that should be applied to the subject hereditament.

Evidence and submissions

14. 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.

Decision and reasons

15. When arriving at its decision, I am governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis 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 the 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 antecedent valuation date (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 appeals, the material day is 10 January 2022.

18. The appellant had referred to Lotus and Delta v Culverwell. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject

hereditament was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

19. I noted that the subject hereditament was held by the appellant on a freehold basis, and as such no rental details were available for my consideration. In the absence of any rental evidence for the appeal property I therefore had regard to the comparable properties submitted by both parties.

20. The appellant's representative, Mr Simons, submitted that there had been an agreement in respect of Motor Depot, Mackadown Lane with the unadjusted rate reduced from £100m^2 to £81.25m^2. Mr Simons contended that this settlement supported a reduction in the unadjusted rate for the appeal dwelling from £100m^2.

21. I noted that Motor Depot adjoined the subject hereditament and therefore in terms of locality was a good comparator. I had regard to the rental details at Motor Depot, which had a lease commencing from 6 October 2014 at an adjusted rate of £175,000. This had been adjusted by the VO to £164,323 analysing to a main space rate of £81.25 per m^2.

22. Mr Bhatti contended that he did not consider Motor Depot to be comparable to the subject hereditament, as it was entered into the valuation list as a "Car Supermarket and Premises", as opposed to a car showroom. He submitted that Motor Depot measured 1268m^2 and had 535 car spaces meaning there was far higher ratio of car spaces to m^2 than at the subject hereditament. As such, there was a distinct difference between the physical characteristics of the two and they could not be compared.

23. During questions Mr Simons submitted that although the subject hereditament and Motor Depot had different descriptions within the Valuation List this was merely a label, and both essentially had the same mode of category. Both sold cars, provided finance, MOTs and repairs. Mr Bhatti conceded that although this was the case, the services provided by both were done in different ways, and the subject hereditament did not have the capacity in which to operate as a car supermarket.

24. Taking both parties arguments into account I found that there was no discernible difference between the mode of category of the subject hereditament and Motor Depot, and they both ultimately provided the same service to customers. As such, due to the locality of Motor Depot and the proximity of the date of rent to the AVD, I considered this comparable to be useful evidence.

25. Mr Bhatti submitted that there was a lack of rental evidence available in relation to car showrooms which were directly comparable to the subject hereditament, however he provided details of several other car showrooms within the locality. 585 Tyburn Road measured 635.40m^2 and a rent of £118,798 effective from 12 June 2013 which analysed to £141.68 per m^2.

Volvo Car Dealership measured 968.80m^2 and had a rent of £174,235 effective from 26 July 2013, analysing to £148.20 per m^2. Taking into consideration the commencement of the leases at these properties I found them to be too far removed from the AVD and as such attached little weight to these comparables.

26. Mr Bhatti also referred to 971 Kingsbury Road which measured 2765.90m^2 and had a rent of £260,000 pa with effect from 1 April 2015, analysing to £75.76 per m^2. I considered that this rent had been agreed at the AVD and therefore found it to be good evidence. However, I also noted that this property was significantly larger than the appeal dwelling. Taking the difference in sizes into account I considered that it would not be unreasonable to expect the 971 Kingsbury Road to have a lower main space rate than the subject hereditament. However, I found that this did not necessarily support the current rate of £100m^2 being justified at the subject hereditament.

27. Having consideration to the evidence and submissions of both parties I ultimately found that this did support a reduction in RV at the appeal dwelling. I attached most weight to the assessment of Motor Depot. Whilst this property had a different description within the valuation list to the subject dwelling, the services provided at both were virtually the same. However, taking into consideration the difference in size between Motor Depot and the subject dwelling I did not consider the proposed main space rate of £81.25 per m^2 to be appropriate. In view of all the evidence presented I determined a main space rate of £85.00 per m^2 to be reasonable giving an RV of £80,000 from 10 January 2022.

Floor	Description	Area m^2	£ per m^2	
Ground	Workshop	121.9	£38.25	£4662.70
Ground	Office	12.2	£51	£622.20
Ground	Showroom	361.4	£85	£30,719
Ground	External Storage	48.3	£21.25	£1026.40
Mezzanine	Internal Storage	12.2	£19.12	£233.26
Ground	Office	59.82	£85	£5084.70
Ground	Workshop	123	£38.25	£4704.80
Ground	Office	59.42	£85	£5050.70
	Vehicle Spaces	123	£230.00	£28,290
Total Value				£80,394

Say, £80,000 RV

28. The appeal was therefore allowed in part.

Order

29. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009,

that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of 220 The Radleys, Birmingham B33 0GR to an RV of £80,000 with effect from 10 January 2022.

30. A refund of the paid fee will now be arranged (Regulation 13E of the Non-Domestic Rating (Alteration of Lists & Appeals) (England) Regulations 2009. Provided there is no review of the Tribunal's decision the refund will take around six weeks to process.

Date: 27 March 2023

Appeal Number: CHG100876221

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.