

THE VALUATION TRIBUNAL FOR ENGLAND



Non-Domestic Rating; 2017 Rating List Appeals; car showroom and premises; price per m², superfluity and whether repairs were uneconomic to undertake in dispute; no supporting evidence at the material days; appeals dismissed.

RE: Hartwells, Newbridge Road, Bath, BA1 3HW

APPEAL NUMBERS: CHG10040780 and CHG10047091

BETWEEN Hartwell Plc Appellant

and

Mr D Virk Respondent
Valuation Officer

PANEL: Mr M H Smith (Senior Member) and Mr M Nwosu

CLERK: Mrs L Horne

REMOTE HEARING: Thursday 14 July 2022

APPEARANCES: Mr I Allison (expert witness) and Mr J Thompson
(advocate) from BNP Paribas representing the appellant
Mr M Pocock representing the Valuation Officer

Summary of decision

- 1 Appeals dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £241,000 with effect from 1 April 2017 and £239,000 with effect from 16 October 2017.

Introduction

- 2 These appeals had been brought in respect of the following: Hartwells, Newbridge Road, Bath, BA1 3HW, which was entered in the 2017 rating list as car showroom and premises at £241,000 with effect from 1 April 2017. The RV had been altered to £239,000 with effect from 16 October 2017 to reflect the loss of 710 m² of land.

- 3 The appellant's challenges to the Valuation Officer were made on 25 September 2020 and sought a reduction to £63,000 with effect from 1 April 2017 and £61,000 with effect from 16 October 2017. The RVs were disputed on the grounds that there was superfluity, the property was in a poor state of repair, and the basis of value adopted was excessive.
- 4 The Valuation Officer issued challenge decision notices on 16 September 2021, each of which stated that the rating list entry was reasonable based upon the evidence and information available.
- 5 In accordance with regulation 13A of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal had been made on the grounds that the valuation for the hereditament was not reasonable. The appeals were received on 13 January 2022.
- 6 The appeal property is a car showroom and premises built in the late 1960s of reinforced concrete frame construction. It is located on the A4 to the west of Bath town centre. It was occupied by the appellant as a Citroen dealership until February 2019.
- 7 The main building comprises four storeys, basement, lower ground, ground and first floor. Office accommodation is situated above the main showroom on the first floor. The main vehicle repair workshop, valet and stores are on the lower ground floor. The basement is mostly storage accommodation. The present valuations of £241,000 RV and £239,000 RV are based upon a total area of 5,343.93 m², or 2,123.52 m² in terms of main space (ITMS) at a basic price of £105.00 per m².
- 8 Mr Allison appeared on behalf of the appellant as an expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration 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 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.
- 9 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 when 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.

Issues

- 10 The issues in dispute for both appeals were:
1. The basic price per m² to be adopted in the valuation.
 2. Superfluity in respect of the first floor and lower ground floor stores.
 3. Whether the property was beyond reasonable economic repair as at the material dates of 1 April 2017 (appeal number CHG100407080) and 16 October 2017 (appeal number CHG100407091).

Evidence and submissions

- 11 The bundle comprised all of the documents exchanged between the parties as part of the challenge process. With the agreement of the Valuation Officer, Mr Allison provided an indexed and paginated “master bundle” with revised proposed valuations. Both parties agreed that additional material in respect of a cited comparable, 491 Bath Road could be presented: On behalf of the Valuation Officer, Mr Pocock provided internal and external photographs and Mr Allison provided an assessment history and summary valuations.
- 12 The following Upper Tribunal cases were cited by the parties:
- *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141.
 - *Thomas & Davies v Denly (VO)* [2014] RA 40
- 13 Mr Allison submitted that the appeal property should be valued in line with older comparable properties found in suburban and village locations in the vicinity of Bath which accommodated midrange and budget brands. In support of his adopted basic price of £90.00 per m², he referred to four comparable properties: 491 Bath Road (Salford Vauxhall); 59 High Street, Weston (Landsdown Mazda), Prior Park Road (Bath Honda) and 36 Box Road, Bath (Minerva SsangYong).
- 14 It was stated by Mr Allison that while the showroom, workshop and much of the storage space was occupied, the de minimis occupation of the first floor and lack of occupation of the lower ground floor stores demonstrated that these areas were surplus to requirements. He therefore applied a nil value to those line entries.
- 15 In support of his contention that the appeal property was beyond reasonable economic repair, Mr Allison provided photographs dated 12 August 2015, 16 September 2016 and 12 March 2019; a report on the basement valet bay structure dated July 2018; and a condition survey report dated 24 April 2020.
- 16 Mr Allison confirmed that having reviewed the Valuation Officer’s arguments, he now accepted that some value should apply to the areas that were in disrepair but nonetheless occupied at the material days. In his revised

disrepair valuations he adopted repair factors of 0.90 for customer facing areas and 0.50 for back of house areas:

In repair	Disrepair
£181,000 w.e.f. 1 April 2017	£145,000 w.e.f. 1 April 2017
£179,000 w.e.f. 16 October 2017	£143,000 w.e.f. 16 October 2017

- 17 Mr Pocock defended the present adopted value of £105.00 per m² with reference to rental evidence scheduled in a Regulation 17 Notice and a schedule of comparable assessments. With the exception of 491 Bath Road, the relevance of the appellant's comparable evidence was disputed.
- 18 The Valuation Officer disputed the appellant's reduction for superfluity, as a hypothetical tenant is assumed to want use of all available space. Mr Pocock referred to Temple Gate Peugeot, Clarence Road, Bristol, a similarly large car showroom of 5,404.18 m². No areas had been removed from the valuation for superfluity.
- 19 The Valuation Officer disputed that the appeal property was beyond reasonable economic repair for the following reasons:
- The property was occupied by a main dealership until February 2019.
 - The lack of survey and cost analysis evidence at the material days.
 - The photographic evidence showing the fair condition at the material days.
 - The evidence survey and cost analysis provided being so far from the material day making it much less reliable.
- 20 However, for completeness, a cost analysis exercise was undertaken by one of the Valuation Officer's building surveyors. Their conclusion was that the repairs required would not be uneconomical to undertake.

Decision and reasons

- 21 When arriving at its decision, the panel is 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.

22 The relevant assumption in the subject appeal is part (b). Essentially, if it can be shown that the cost of the repairs are uneconomic to undertake, then a property is not assumed to be in a reasonable state of repair, and can be valued accordingly.

23 Before turning to the issue of repair, the panel considered the issues of superfluity and the basic price to be adopted.

24 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

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 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.
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.

- 25 In the subject appeal the lease was subject to a peppercorn rent and therefore provided little assistance. In accordance with *Lotus and Delta*, the next step was to consider the rental evidence of comparable assessments. Details of three rental transactions were scheduled in the Regulation 17 Notice:

Allen Group (Bath) Ltd, Lower Bristol Road, Bath, BA2 3EW

A car showroom and premises of 2,682.23 m² (1,572.56 m² ITMS). A rent of £199,750 effective from 8 July 2013 analysed at £114.42 per m². The property was assessed at a basic price of £150.00 per m².

There was limited information available for this rent, which was not obtained from a form of return (FOR) or a rent and lease details documents (RALD). It was described by the Valuation Officer as a very good comparable in terms of age, size and facilities, and was located slightly closer to the city centre.

Westward Motors, Riverside Business Park, Lower Bristol Road, Bath, BA2 3DW

A car showroom and premises of 1,130.69 m² (747.27 m² ITMS) built in 1988. A rent of £137,500 effective from 1 December 2016 analysed at £183.52 per m². The property was assessed at a basic price of £145.00 per m².

The information obtained from a FOR confirmed that this was a lease renewal between connected parties. Described as similar in age, but slightly newer and in a slightly better location closer to the city centre.

Motor Services (Bath) Ltd, Locksbrook Road, Bath, BA1 3EU

A car showroom and premises of 1,597.02 m² (1,065.04 m² ITMS) built in 1988. A rent of £205,000 effective from 1 March 2016 analysed at £163.49 per m². The property was assessed at a basic price of £150.00 per m².

This transaction was a rent review between connected parties. Described as similar in age, but slightly newer and in a slightly better location closer to the city centre.

- 26 The appellant had not provided any rental evidence and the Valuation Officer acknowledged that the rental information available was of limited quality. Consequently the panel could not attach significant weight to it and therefore turned to the evidence of comparable assessments.

- 27 Mr Allison argued that the appeal property should be distinguished from the modern dealerships with quality marques that were mostly located on the A36 Lower Bristol Road approximately one mile away. He relied on older comparable properties located in suburban and village locations in the vicinity of Bath, which accommodated midrange and budget brands:

491 Bath Road, Saltford, BS31 3HQ (Vauxhall)

Saltford is a village location approximately four miles west of the appeal property. The property comprises a two-storey split level car showroom with ancillary workshop accommodation at the rear of the corner plot.

Mr Allison stated that the compiled list entry of £111,000 was based on £105 per m², which he believed reflected a degree of air conditioning. He submitted that the property was of interest as it appeared to be of a similar age (if not older) than the subject property. Although the branding and livery appeared to be new, those features were improvements imposed by the manufacturer.

59 High Street, Weston, Bath, BA1 4DB (Masda)

Weston is an outlying village to the north of Bath. Mr Allison described the property as being constructed upon a cramped site, with interwar workshop accommodation, a showroom with a retail frontage that abuts the pavement and no external display spaces. The unadjusted basis of value is £90 per m² in respect of the showroom accommodation.

Prior Park Road, Bath, BA2 4NF (Honda)

Located on a minor A road to the south of Bath in a village location. It is constructed into a slope on a corner plot and arranged over three storeys. It is valued at £90 per m² with a 5% end allowance for flooding.

36 Box Road, Bath, BA1 7QH (Minerva SsanYong)

Located east of Bath on the A36 in a semi-rural location. The building appeared to comprise a converted workshop, and it lacked a purpose-built showroom. The basis of value is £85 per m².

- 28 Mr Allison contended that his adopted basic price of £90 per m² derived from Weston and Prior Park Road was correct. Although those properties were much smaller, in his opinion they had the same location attributes as the subject property. He therefore argued that £105 per m² for the appeal property was excessive.
- 29 In response, the Valuation Officer submitted that little weight should be attached to the appellant's comparables, with the exception of 491 Bath Road.
- 59 High Street was very small in comparison with limited forecourt, display and parking space.
 - Prior Park Road was similar in terms of construction and age, but very small in comparison, with limited forecourt, display and parking space.
 - 36 Box Road was a more modern premises, but a much smaller converted unit with a lack of forecourt, display and parking space. It was in a very different location on the opposite side of Bath and not within the city limits.
- 30 In addition to the three properties scheduled in the Regulation 17 Notice, (Allen Group (Bath) Ltd and Motor Services (Bath) Ltd at £150.00 per m², and Westward Motors at £145.00 per m²) the Valuation Officer scheduled the following assessments as comparable property evidence:

491 Bath Road, Saltford, Bristol, BS31 3HQ

A car showroom of 1,869.74 m² (1,060.34 m² ITMS) valued at £105.00 per m². Described as similar in age and size with similar facilities in a slightly inferior location outside the city limits.

Mr Pocock confirmed that the base rate of £105.00 per m² did not include an uplift for air conditioning, as submitted by Mr Allison. It was therefore the Valuation Officer's opinion that this property supported the base rate applied to the subject property.

Hinton Garage (Bath) Ltd, Albion Place, Bath, BA1 3AD

A car showroom of 1,619.31 m² (894.72 m² ITMS) valued at £115.00 per m². Described as a much older property (early 1900s) but in a slightly better location closer to the city centre.

Roman Volvo, Riverside Business Park, Lower Bristol Road, Bath, BA2 3DW

A car showroom of 1,086.10 m² (609.26 m² ITMS) valued at £145.00 per m². Described as similar in age/slightly newer (1988) in a slightly better location closer to the city centre.

- 31 The Valuation Officer summarised that all of the comparable assessments had been valued in excess of the basic price of £105.00 per m² applied to the subject property. Allen Group (Bath) Ltd was highlighted as the most appropriate being similar in location, although slightly closer to Bath centre, and similar visibility, age, facilities and size. It was also stated that the valuation for Roman Volvo had been agreed at £145.00 per m² in the 2017 list.
- 32 The panel referred to the location plan contained within the challenge notice, which was annotated with the parties' comparable properties. The panel noted that there was a clear difference in the location of the appellant's comparable properties, which were mostly situated in rural and village locations, whereas the Valuation Officer's comparable properties were mostly located close to the centre of Bath, and also closer to the appeal property.
- 33 It was also significant that the properties relied upon by the appellant were much smaller with limited facilities. Consequently, the panel was not persuaded that the appeal property should also be valued at £90 per m².
- 34 Both parties cited 491 Bath Road as a relevant comparable assessment, being similar in age and facilities. The appellant had believed that the adopted price of £105 per m² reflected an uplift for air conditioning, however, the Valuation Officer confirmed that was not the case. In consideration of the inferior location of 491 Bath Road, the panel held that this demonstrated that the adopted price of £105 per m² for the appeal property was not excessive.
- 35 The panel found further support for the adopted price of £105.00 per m², when viewed alongside comparable assessments located closer to the centre of Bath valued at £145.00 and £150.00 per m².
- 36 The next issue considered by the panel was that of superfluity.
- 37 Mr Allison stated that at 5,343 m² the appeal property was ten times the size of the next largest comparable in Saltford as regards the built accommodation. Hartwells had occupied the property as a multi-faceted operation, however, only 4,620 m² was required. Mr Allison confirmed that at the material days the first floor and lower ground stores were not in use, as demonstrated by photographs dated 12 August 2015. He contended that vacant and to let a similar operation could also operate without those areas and therefore they were of nil value.

- 38 In response, the Valuation Officer argued that a hypothetical tenant is assumed to want use of all available space let under a lease agreement. Although the appeal property was the largest of the car showrooms in Bath, there were similar large premises in nearby Bristol: Temple Gate Peugeot, Clarence Road, Bristol, BS1 6PR. At 5,404.18 m² (4,738.60 m² ITMS) it was similar in size to the subject, and no areas had been removed for superfluity.
- 39 Although it had been stated in the challenge decision that the occupier was seen to be utilising the whole of the premises, Mr Pocock accepted Mr Allison's submission that they were not.
- 40 While it had been acknowledged that the appellant had not utilised the areas in dispute, the panel was not persuaded that this supported the removal of those areas from the valuation. The panel had to consider the property vacant and to let, and in the absence of any evidence to the contrary, it was not unreasonable to assume that a hypothetical tenant would want to use all of the available space.
- 41 The panel then turned to the final issue, whether the cost of repairs were uneconomic to undertake at the material days of 1 April 2017 and 16 October 2017.
- 42 From the condition survey report dated 24 April 2020, Mr Allison summarised the notable items in disrepair as follows:
- Asbestos refurbishment survey to be carried out before intrusive work commences.
 - Roof in life expired condition, resulting in corrosion to steel decking and supports.
 - Lower ground floor workshop level access in poor condition.
 - Ground level vehicle parking area, severe water ingress.
 - Guttering in poor condition with defective gaskets and seals.
 - External wall rendering cracking indicative of steel corrosion.
 - Water ingress and staining in showroom.
 - Corroded steel structural frame section and water ingress at workshop level.
 - Severe water ingress in wash down area.
 - Acrow pops at basement level supporting part of the structure above.
- 43 The amount for necessary works toned back to the AVD was stated to be £1,883,410. This equated to a multiplier of 10.4 times the appellant's assessment of £181,000 RV as at 1 April 2017. Mr Allison highlighted that this was twice as much as the multiplier of 5.63 in *Thomas Davies v Denly*. On the

basis that it would be unreasonable for the hypothetical landlord to incur the expense of the repairs, Mr Allison contended that the property would be let at a lower rent. In applying repair factors of 0.90 for customer facing areas and 0.50 for back of house areas, he arrived at disrepair valuations of £145,000 RV with effect from 1 April 2017 and £143,000 with effect from 16 October 2017.

- 44 It was acknowledged by Mr Pocock that there had been some confusion over the Valuation Officer's position regarding whether the appeal property was in a state of disrepair at the material days. He confirmed that the Valuation Officer's opinion was that the appeal property should be valued in a state of reasonable repair. While calculations had been provided in the challenge decision notice, they were for illustrative purposes only.
- 45 Mr Pocock referred to the photographic evidence provided which illustrated that the main building and premises were in a better/fair state of repair at the material days than when the building condition report was carried out on 24 April 2020. There had been a structural survey carried out in July 2018 showing some issues, but this did not include a cost analysis. Following the vacation of the Citroen dealership in February 2019, the property had been vacant for 16 months after the structural survey and before the main condition/costing report was carried out. It was contended that the vacancy would have exacerbated the decline of the premises and therefore increased the number of repairs needed.
- 46 Essentially the case for the Valuation Officer was that there was no evidence provided by the appellant detailing the repairs needed including costings at the material days of 1 April 2017 and 16 October 2017.
- 47 After consideration of all of the evidence presented, the panel decided that the appellant had failed to demonstrate that any repairs required at the material days were uneconomic to undertake. Most significantly, the costs, although toned back to the AVD, were based upon the actual condition of the appeal property on 24 April 2020, and not as at the material days of 1 April 2017 and 16 October 2017.
- 48 It was also of relevance to the panel that the calculations which had led to Mr Allison's opinion that repairs were uneconomic to undertake had been based on significantly lower RVs derived from a basic price of £90 per m² and the removal of areas for superfluity. Having determined that the present basic price of £105.00 per m² was fair and reasonable, and that there should be no areas removed for superfluity, this further called into question the contention that repairs were uneconomic to undertake.

- 49 The panel considered that it was reasonable to assume that there were repair issues prior to the date of the condition report. However, for the purposes of the subject appeals, it was the state of repair as at the material days which had to be determined.
- 50 The panel concluded that at the material days, there was no compelling evidence to support the contention that the repairs required were uneconomic, and therefore the appeal property is assumed to be in a state of reasonable repair, in accordance with Schedule 6 to the Local Government Finance Act 1988.
- 51 The present assessments of £241,000 RV with effect from 1 April 2017 and £239,000 RV with effect from 16 October 2017 were confirmed by the panel and the appeals were dismissed.

Date: 2 August 2022

Appeal Numbers: CHG100407080 and CHG100407091

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.