UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2020] UKUT 0052 (LC)

UTLC Case Number: RA/12/2019

RATING – alteration of 2017 non-domestic rating list – valuation – comparables – assessment of scrapyard with ELV licence – post AVD letting of hereditament – other rental comparables – whether tone of list established – whether new evidence not available to VTE admissible – effect of small business rates relief – appeal dismissed – rateable value determined at £20,000

IN THE MATTER OF AN APPEAL FROM THE

VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:	**STOCK AUTO BREAKERS LTD**	**Appellant**
	and	
	CHRIS SYKES	
	(VALUATION OFFICER)	**Respondent**

Re: Yard A,

Rear of Good Companions Garage,

Chelmsford Road,

Rawreth,

SS11 8SY

A J Trott FRICS

Royal Courts of Justice, Strand, London WC2A 2LL

On

23 October 2019

Mr Roger Waterman for the appellant

Ms Mandy Franklin MRICS Dip Rating for the respondent

The following cases are referred to in this decision:

Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141

Futures London Limited v Stratford (VO) [2006] RA 75

Magell Limited v Dumfries & Galloway Regional Assessor(No.1) [2004] RA 188

Magell Limited v Dumfries & Galloway Regional Assessor(No.2) [2005] RA 306

DECISION

Introduction

1.
This is an appeal by the ratepayer, Stock Auto Breakers Ltd, against a decision of the Valuation Tribunal for England ("VTE") dated 13 February 2019 determining the rateable value of Yard A, rear of Good Companions Garage, Chelmsford Road, Rawreth, SS11 8SY at £16,500 with effect from 1 April 2017.

2.
The appellant seeks a rateable value of £12,000, while the respondent valuation officer ("VO") seeks a rateable value of £22,500 which is higher than the compiled 2017 non-domestic rating list assessment of £21,750 which formed the subject of the appeal to the VTE.

3.
The appeal was heard under the Tribunal's simplified procedure. Mr Roger Waterman appeared for the appellant and, with the permission of the Tribunal, gave oral evidence under oath based upon the appellant's statement of case and its response to the VO's statement of case.

4.
Ms Mandy Franklin MRICS Dip Rating appeared for the respondent and called Mr Hugh Watson MRICS, a rating caseworker in the Colchester Valuation Office, as an expert valuation witness.

Facts

5.
The parties helpfully prepared a statement of agreed facts and issues.

The appeal site

6.
The appeal site is located in the village of Rawreth, midway between Wickford and Rayleigh, on the west side of the A1245 Chelmsford Road. It lies behind the Good Companions Garage, formerly a petrol filling station, now used for motor repairs, car sales and a car wash, with which it shares a concreted access. Between the garage and the appeal site are two other storage yards, one to the north (304.9m^2) and the other to the south (Yard B, 194m^2), which also share the common vehicular access.

7.
The appeal site has an area of 1,779.6m^2. It is a level yard which tapers slightly from east to west. The surface of the yard comprises a dressing of crushed road stone (or similar) laid directly onto bare soil. At the entrance to the east is a concrete apron which extends 5.7m into the site.

8.
There does not appear to be a sub-soil drainage system to remove surface water from the yard.

9.
At the entrance to the site are steel security gates. The site is enclosed by 2m high fencing around the perimeter comprising a mixture of metal chain link and steel mesh panels fixed to pre-cast concrete or steel posts and topped with barbed wire.

10.

There is mains electricity to the site but no gas or water supply. The site does not have its own WC facilities and shares the facilities of the neighbouring garage, but without any contractual right to do so.

11.
The appellant installed two steel containers on site prior to 1 April 2017 which are used as basic office accommodation. These are rateable. It subsequently added a canopy between them which is not included in the compiled list assessment.

12.
The appeal site is used for car storage/breaking and for the sale of salvaged automotive parts. This is a permitted planning use under a certificate of lawful use or development issued in late 2013.

Occupation

13.
The appellant commenced occupation of the appeal site in early 2017 having relocated from temporary premises at the Rawreth Industrial Estate. It took a three year lease from 27 March 2017 at a rent of £28,600 per annum without review. In addition the tenant paid an insurance rent. The tenant was responsible for repairing the demised premises, including all boundary fences. The permitted use was as a vehicle salvage yard. The lease was excluded from the security of tenure provisions of the Landlord and Tenant Act 1954.

14.
The appellant has a licence from the Environment Agency to use the site for end of life vehicle ("ELV") processing. Depolluted vehicle shells are taken from the site for further processing at licenced scrapyards. Items such as catalytic convertors, alloy wheels and batteries are removed from vehicles and taken away by specialist secondary processors. Liquids such as oil and fuel are drained at the site and removed by licensed collectors. Customers may visit the yard and purchase salvaged components direct.

Legislation

15.
The rateable value is to be determined in accordance with the provisions of section 56 and Schedule 6 of the Local Government Finance Act 1988.

16.
The antecedent valuation date ("AVD") is 1 April 2015 and the material day is 1 April 2017.

17.
This is the first appeal heard by the Tribunal since the introduction of the "Check, Challenge, Appeal" process to resolve disagreements in relation to non-domestic rating lists compiled on or after 1 April 2017. There is an issue about whether the respondent is entitled to introduce new evidence that was not before the VTE given the amendments to the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (S.I. 2009/2269) introduced by the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017.

Description of comparable sites

18.

The following abbreviations are used to describe the physical characteristics of comparable site in this decision:

LFH: Hard-surfaced fenced land (concrete, asphalt or block paving)

LFG: Loose-surfaced fenced land (gravel or similar compacted materials)

LFU: Unsurfaced fenced land (bare earth or grass)

LOH: Hard-surfaced unfenced land

The appeal site was categorised as LFG.

Issue

19.
The rateable value of the appeal property depends upon the unit price (£/m^2) to be applied to the gross area of the yard. The rateable value of the containers has been agreed at £300 each. The figure of £21,750 in the 2017 compiled list represented a rate of £12 per m^2.

The case for the appellant

20.
Mr Waterman's evidence was given as a knowledgeable witness with over 40 years experience in the vehicle dismantling and scrap industry. He does not hold professional qualifications and is not a qualified valuer.

21.
Mr Waterman said the relevant valuation scheme for the appeal property gave a range of values from £2 to £12 per m^2. Given the appeal site comprised poor quality, rough surfaced land he thought it should be valued at the lower end of this range. He relied upon four comparable assessments:

(i)
Benfleet Scrapyard, Brunel Road, Benfleet: LFH 5,200m^2, £7.50 per m^2

(ii)
HBC Depot, Haven Road, Canvey Island: LFH 13,789m^2, £2.50 per m^2

(iii)
HBC Depot, Haven Road, Canvey Island: LFG, 73,781m^2, £2.00 per m^2

(iv)
G8 Export Limited, r/o 190 Lower Road, Hullbridge, Hockley: LFH, 5,896m^2, £9.00 per m^2 [1]

22.
Mr Waterman said this evidence showed a differential in value between hard-surfaced and rough-surfaced storage land with the latter being worth as much as 78% less than the former. He said these comparables, together with the assessment of a LFH yard opposite units 36/37 Lubards Farm, Hullbridge Road, Rayleigh, at £7.50 per m^2, supported a valuation for the appeal site (LFG) at £6.50 per m^2 rather than the £9.00 per m^2 determined by the VTE.

23.
Yard B at Good Companions Garage, which lay between the appeal site and the car sales area fronting Chelmsford Road, was a fully concreted and fenced (LFH) yard assessed at £10 per m^2. The partly

concreted yard at the rear of the workshop at Good Companions Garage, on the opposite side of the shared access from Yard B, was assessed at £7.50 per m^2. Mr Waterman said that by comparison with these two sites the appeal site was worth £6.50 per m^2.

24.
Mr Waterman said the assessment of comparable sites could be relied upon because there was now an established tone for the 2017 local non-domestic rating list. The relatively low number of challenges against assessments was a clear indication that the majority of valuations had been accepted.

25.
In response to the VO's statement of case, Mr Waterman said rental comparison was a starting point for determining value but reiterated that a tone of the list had now been established and that the comparable assessments reflected all the variables that influenced the level of rent. He disagreed with the VO's view that sites with a licence for ELV processing would be worth more than other storage uses. Such a licence was personal to the operator and did not attach to the land. In any event the area of a site used to undertake the depollution process tended to be a small part of the site with the majority being used for the storage of processed vehicles. The evidence failed to establish any pattern of higher values for licenced ELV facilities. Many sites which had a higher unit rate per m^2 than the appeal site would not generate challenges because their assessment was under the £15,000 threshold for small business rates relief ("SBRR") [2] . There was no incentive for an occupier to challenge an assessment where he was receiving up to 100% rates relief in any event.

26.
Mr Waterman challenged the VO's view that to obtain a full understanding of the wider rental market for hereditaments primarily consisting of land it was necessary to study a relatively wide geographical area. He thought the local market for ELV sites was a more relevant guide to value. But in case it was necessary to look further afield, Mr Waterman produced a schedule of comparable assessments from locations ranging from Canvey Island to Chelmsford and Colchester with values of £2.00 to £7.50 per m^2.

27.
The VO had criticised the four assessment comparables relied on in the appellant's statement of case. Mr Waterman rejected such criticism:

(i)
G8 Export Limited, Hullbridge: Mr Waterman personally designed these premises to be an EU and Environment Agency compliant ELV facility and he oversaw its construction. It was superior to the appeal site and of interest to ELV operators and the scrap industry. It was only 12 minutes drive from the appeal site on a route with no traffic issues.

(ii)
HBC Depot, Canvey Island: This was not an isolated location and was only 5 kilometres from the A13 dual carriageway which led to the M25 and 4 kilometres from the London Gateway. It was an accessible site of interest to ELV operators and the scrap industry.

(iii)
Benfleet Scrapyard: Contrary to the VO's comments this site did not have a restricted access as Brunel Road was located on the Manor Trading Estate (34 acres) with the main access from Church Road where there were parking restrictions to prevent obstruction.

(iv)
Yard opposite Lubards Farm: Mr Waterman secured a reduction in the compiled list assessment through the Check, Challenge procedure from £31,750 to £24,000 based on £6 per m^2 (LFG) and £7.50 per m^2 (LFH). The declared rent was £17,000 per annum from the 1April 2017 and Mr Waterman said that the revised assessment still appeared excessive.

28.
Mr Waterman challenged the VO's sole reliance on rental evidence which had led him to seek an increase in the rateable value of the appeal site above its value in the compiled list. Mr Waterman said that comparable assessments were good relevant evidence, as was the range of values (£6.50 per m^2 to £9.00 per m^2) contained in the valuation scheme applicable to the site. The VTE had determined the rateable value at the top end of this range.

29.
The poor quality of vehicular access to the site and its propensity to retain surface water due to the lack of drainage were factors which Mr Waterman considered would diminish its value.

30.
Mr Waterman said that by June 2019 [3] the 2017 List had been in force for 27 months, a more than adequate period of time in which to challenge the compiled list valuations.

31.
Mr Waterman noted the VTE had accepted that assessments of other properties in the same mode or category of use should be considered (paragraph 22) and preferred to rely on local evidence (particularly the G8 Export Limited Site) as an indicator of value (paragraph 28).

32.
Mr Waterman denied the VO's statement that scrapyards with planning permission commanded a value premium over other land uses due to the anti-social and unneighbourly nature of the user. He said this may have been the case before the introduction of the EU ELV Directive [4] in 2000 but since then the industry had evolved and local authorities, who must ensure the provision of adequate waste cycling operations, took their responsibilities seriously.

33.
The attraction of the appeal site to the appellant was not, as the VO suggested, an advantageous location near the main road networks of south Essex but the fact that he was offered security of tenure under a lease. The location of the appeal site was no better than (and only 1.8 km from) the appellant's previous site. There was very little passing trade at the appeal site which was not clearly visible from the road.

34.
Mr Waterman noted that there was no consistency in the differential between LFH and LFG/LFU sites listed in the VO's schedule of assessments of licensed ELV hereditaments.

The case for the respondent

35.
Mr Watson began the substantive part of his evidence with a commentary on the evolution of the waste industry in Essex, discussing what he considered to be a significant change in the character of the UK Waste Industry in recent decades. He acknowledged that his analysis was "only a lay person's

understanding of how the waste trade functions, and in this regard I cannot claim expert knowledge of these matters." He concluded:

"What is clear to me from a valuer's perspective is that the demographics of southern Essex and around the greater London area make this a very good target market for many operators within the industry."

36.
In considering the appropriate valuation approach, Mr Watson relied upon Lotus and Delta v Culverwell (VO) and Leicester City Council[1976] RA 141 in which the Lands Tribunal described a number of established propositions. The first of these was that where the subject hereditament is actually let that rent should be taken as the starting point. The more closely the circumstances under which such rent is agreed both as to time, subject matter and conditions relate to the statutory rating hypothesis the more weight should be given to it. If rents of similar properties are available they should be analysed in order to confirm or contradict the level of value indicated by the actual rent of the subject hereditament. Mr Watson noted the importance given to the calibration of the actual rent by reference to other rents from similar properties in Futures London Limited v Stratford (VO)[2006] RA 75. It was important to test the rent of the appeal hereditament against other rents.

37.
Before he commenced his analysis of rental transactions, Mr Watson spent some time explaining that the VOA's survey records were "not always wholly consistent with each other, or totally up-to-date, and that this issue had led to known anomalies when rental evidence is analysed or when valuations are applied." He gave the example of valuers describing a land surface in different ways; one valuer might say "unsurfaced", another "loose", a third might say "gravelled". Finishes consisting of compacted stone might be described as "rough" by some or "hard surface" by others. Such variations, which Mr Watson acknowledged to be "obviously most unhelpful", explain why the relativity of value between different types of surface was so inconsistent. He said "in practice however, no clear or set ratio is observed."

38.
Another problem identified by Mr Watson was the practice of some VOA valuers to make a gross to net allowance to reflect the supposed need for access into and around the site. Mr Watson said he was perplexed by such adjustments and thought they were unjustified. He excluded any comparable hereditaments where such an allowance had been made. Mr Watson acknowledged that these factors meant the VOA's data "may not be uniformly reliable" and that there was "some potential to misread the rental evidence where a transaction is analysed" leading to possible "inappropriate pricing in Valuation Office schemes". Finally, Mr Watson explained it was possible to rely on comparables of lettings where the use of the site was not for ELV purposes. This would determine the minimum rent that a hypothetical tenant would be prepared to pay given, as Mr Watson said: "historically there has been an assumption that the rent for a non-conforming use (such as a scrapyard) would carry a premium element."

39.
In the light of the above Mr Watson said the starting point for the assessment of the rateable value of the appeal site should be its letting to the appellant on 24 March 2017 for a term of 3 years at a rent of £28,600 pa. This was an arms-length transaction to a tenant who was fresh to the scene with the tenant paying for repairs and insurance. The main objection to the use of this letting as evidence was the fact that it occurred two years after the AVD. The respondent countered this objection by

reference to the Scottish cases of Magell Limited v Dumfries & Galloway Regional Assessor(No.1) [2004] RA 188 and (No.2)[2005] RA 306 in which the Lands Valuation Appeal Court allowed an appeal against the Valuation Appeal Committee's failure to give any weight to an open market letting of the subjects some 20 months after the tone date (AVD), a period during which rental levels had not changed significantly. In Magell (No.2) the court, Lord Gill, the Lord Justice Clerk, found that this letting "was therefore primary evidence bearing directly on the statutory test" (313 [17]).

40.
Mr Watson devalued the letting of the appeal site at £16.07 per m^2. He said that during discussions with Mr Waterman it had been said that the appellant had taken the lease in the belief that he would not have to pay any rates as he expected to benefit fully from the SBRR scheme. Mr Watson acknowledged that the combined liability to rent and rates was an important financial consideration for most occupiers and so he did a second rental analysis on the assumption that rent plus rates equals £28,600. This gave a rateable value of £19,500 [5] or £10.96 per m^2.

41.
Mr Watson considered whether rental values had changed in the period before and after the AVD. In doing so he did not consider any formal indexation of values but instead offered a commentary on the physical changes in south Essex in recent years, the effect of Brexit, including the comment that "there is no doubt that many organisations have resorted to stock-piling more materials, components and merchandise" and that "the value of many buildings which have storage capability has increased substantially". Mr Watson conceded that such comments were "of course in the nature of hearsay as I have not provided rental evidence to support my views." As "a corollary to this anecdotal material" he went on to express the opinion that the "marked increased" in the rental value of storage buildings had not been matched by a similar uplift in the value of storage land in Essex. He concluded by saying that "whilst I may concede that some growth in land rents between (say) 2013 to the AVD and then from the AVD to (say) 2017, I do not believe that this has been of a very marked character."

42.
Turning to the rental evidence of other hereditaments Mr Watson relied upon a total of 25 comparables. [6] These were located across six identified geographical areas. The areas overlapped and therefore some comparables were included in more than one area. The total area covered measured 31km from east to west and 23km from north to south.

43.
Mr Watson said the comparables included 22 sites which were not authorised treatment facilities ("ATF") for ELVs, but he thought such non-ATF sites would help set a "base level of rental value" for the appeal site. He said this was a highly imperfect market and that it was not straightforward to discern any clear trends. But he thought the identified area(s) of south-west and central Essex commanded better prices than sites in the north and east of the county and that the appeal site fell within the higher value end of the rental market at the AVD, albeit "not at the very highest echelons".

44.
Mr Watson said the VOA's valuation schemes should not be thought of as constituting a binding price range or as indicative of the value of any particular hereditament.

45.
Mr Watson proceeded to describe each comparable in detail. He concluded that the rent paid for the appeal site was "not so far removed from the wider market that it ought to be disregarded", notwithstanding that it was fixed two years post-AVD. He relied on Magell as authority for this

approach and he gave “prime significance” to the rent paid where there was a lack of rental evidence from similar properties in the same mode or category of occupation.

46.
Mr Watson contrasted the rent paid under the 2017 lease of £28,600 pa with the appellant’s valuation of £12,000 pa at the AVD. He said this implied rental growth of 138% over two years which was wholly unrealistic and unsupported by any evidence.

47.
Turning to the assessment evidence Mr Watson said that the 2017 list had not reached the stage where a tone of the list had been established. As at 7 October 2019 only eight challenges had been made under the new “Check, Challenge, Appeal” procedure, resulting in five reductions and only one appeal (the current case). Ms Franklin pointed out that under the new procedure for the 2017 list it was possible to seek a check until 31 March 2021. The tone of the 2017 list was likely to settle later than for previous lists.

48.
Nevertheless, Mr Watson considered 24 comparable assessments, 11 of which were sites used for ELV processing and the remainder used for other open storage purposes. He began by looking at the four comparable ELV assessments relied on by Mr Waterman (see paragraphs 21-22 above). He thought these offered no compelling evidence to support the appellant’s case. The HBC depot was completely different in terms of size to the appeal site. At 87,570m^2 it was nearly 50 times as large. It was simply not comparable on that basis alone, but could also be distinguished in terms of location and accessibility. The site at Benfleet Scrapyard, Brunel Road was also a rental comparable and there were doubts about what was included in the lease, the tenant having possibly carried out hard surfacing at its own expense. Mr Watson noted that the VOA had recently undertaken a referencing check and that it seemed likely that the hereditament may have been under assessed in the light of the rental evidence. The site was approximately three and a half times as large as the appeal site. Mr Watson considered the access to the G8 site to be inferior to that of the appeal site. It too was some three and a half times the size of the appeal site. Mr Watson also considered Lubards Farm to be in an inferior location despite being less than 3km to the east of the appeal site. He said Lubards Farm was not an ELV site. The Essex Ford site at 58-60 Hambro Hill was also considerably larger than the appeal site and had relatively poor access.

49.
Having reviewed all the other assessment evidence Mr Watson concluded that there was no conclusive case to support the appellant’s value of £6.50 per m^2. He acknowledged that there was some evidence at that level but other assessments indicated a higher value. He considered location and accessibility to be important drivers of value and although there were inconsistencies in the 2017 list assessments he believed he had established a strong case to show why the actual rent paid for the appeal site (which he analysed at £16.07 per m^2) should not be ignored in favour of assessments of other premises.

Discussion

50.
Mr Watson produced a comprehensive array of rental and assessment comparables, which he updated just two days before the hearing. It is unusual, to say the least, for a party to a simplified procedure case to produce some 50 comparables. Unfortunately, the overall effect is one of confusion rather than clarity; each comparable is carefully analysed but the collective results do not reveal a cogent and

coherent valuation approach by the VOA to this type of property. Mr Watson explained that the assessments of many of the comparables would have to be reviewed because the rental evidence had not always been properly analysed by the VOA when determining rateable values. Indeed, the last minute amendments submitted by Mr Watson included six comparables where the list entries had been amended by the VO with effect from 15 October 2019. Their rateable values were increased by an average of 44%.

51.
Mr Watson made some unsupported assertions in his evidence, as illustrated by the following examples:

(i)
He gave a three-page commentary on the "Evolution of the waste Industry in Essex" despite his acknowledgement that "I cannot claim expert knowledge of these matters". He went on to say that "What is clear to me from a valuer's perspective is that the demographics of southern Essex and around the Greater London area make this a very good target market for many operators within the industry." This may or may not be the case, but it is not based on expert knowledge or any evidence in his report about such demographics.

(ii)
Based upon what he described as a historical assumption that the rent for a "non-conforming use" such as a scrapyard commanded a premium element, Mr Watson worked on the assumption that rental values for other open land storage would determine a minimum level of rent (his emphasis). But there was no evidence to support this assumption and an analysis of his assessment comparables shows that the average assessment of 16 LFH, LFG and LFU ELV sites is, for each category, lower than those for the 14 other open land use comparables. There may be other explanations for this, such as the fact that the ELV sites are generally larger, but no explanation or analysis is provided.

(iii)
In commenting upon the effect of Brexit, Mr Watson said there was no doubt that many organisations had resorted to stock-piling, leading to a substantial increase in the rental value of many buildings which had storage capacity. He gave no evidence to support such statements and accepted this material was anecdotal. He went on to say "as a corollary" to this that in his opinion the "marked increase in the rental market" for buildings was not matched by similar uplift in the value of storage land in Essex "simply because the type of business looking to safeguard its interests during the 3-year hiatus which ensued after the events of June 2016 would not have significant need of open yardage for vehicle parking, outdoor storage or similar activities". Again there is no evidence to support this reasoning.

52.
Mr Watson concluded his general observations about the rental evidence by saying "whilst I may concede some growth in land rents between (say) 2013 to the AVD, and then from the AVD to (say) 2017, I do not believe that this has been of a very marked character." He bases this on his general reasoning (see paragraph 51(iii) above) and on his 25 rental comparables. The former is speculative and the latter, as Mr Watson fairly recognises, were "fixed in a highly-imperfect market where individuals may lack detailed knowledge of other transactions, and the motivations which drive the decision-making of others (whether landlords or tenants) cannot always be understood."

53.

Mr Watson's conclusion on this point is important because he uses the perceived lack of rental growth between the AVD and the date the appellant took a lease of the appeal site (27 March 2017) to justify reliance on the rent under that lease as being of "prime significance" in the assessment of rateable value.

54.
I accept Mr Watson's caveats about the difficulties of analysing the rental evidence. These difficulties are exacerbated by a lack of clear and consistent application of the categories LFH, LFG and LFU. But the size variation in the rental comparables is much smaller than for the assessment comparables, with the largest site being 8,334m^2 and only four of the 25 lettings being more than 2,500m^2. The average size of letting was 1,660m^2 or 93% the size of the appeal site (1,779.6m^2). By contrast 11 of the 31 analysed assessments were more than 2,500m^2. The average size of assessment was 4,873m^2 or 174% larger than the appeal site. The average size of the 17 ELV assessments [7] was 7,435m^2 or just over four times as large as the appeal site.

55.
There were three lettings of LFG sites close to the appeal site (LFG) in Doublegate Lane, Rawreth; two of which were on Rawreth Farm and the third on Dollyman's Farm. These were all let for transport related uses and showed the following values:

(i)
Compound 14, 13 November 2014: £7.10 per m^2;

(ii)
Compound 15, 1 January 2016: £9.43 per m^2;

(iii)
Compound 26 (Dollyman's Farm), 1 April 2017: £11.05 per m^2.

56.
Mr Watson acknowledged this might indicate some increase in the market over time but thought it equally plausible that Compound 26 commanded a higher rent because it was better located and more secure. Nevertheless, these lettings provide at least some support for rising rents over time in respect of similarly located sites.

57.
The rental and assessment evidence shows a value gradient between the three main categories of sites with LFH sites being the most valuable. The analysis of the rental evidence showed the following average rents:

LFH: £16.22 per m^2;

LFG: £13.56 per m^2 (84% of LFH);

LFU: £10.62 per m^2 (65%).

58.
The rental value of the appeal site (LFG) was £16.07 per m^2 (27 March 2017) which is above the average but certainly not exceptional. Three of the eight LFG comparables were let at higher figures, all of which lettings took place before the AVD.

59.

In Magell(No.1) Lord Gill said at 193 [15]:

“although [the rent] was fixed about 20 months after the valuation date, there was uncontradicted evidence before the Committee that the market had not moved materially in the interim.”

In this appeal there is limited evidence of an increase in rental values between the AVD and 27 March 2017 when the appellant took a lease of the appeal site. But it is not possible to say with any confidence that this is a clearly established material change in value. The appellant also said that it mistakenly believed the rent of the appeal site included payment for rates, a possibility that was fairly considered by Mr Watson in his alternative rental analysis of £10.96 per m^2. I think the letting of the appeal site is relevant and should be given some weight, but I do not afford it the primacy given to it by Mr Watson.

60.
I note, in passing, that Mr Watson may perhaps have misunderstood the reference by the Lord Justice Clerk in Magell (No.2) to “primary evidence” (which Mr Watson appears to have understood as evidence of prime significance). The issue in Magell concerned the sufficiency of the reasons given by the Valuation Committee for preferring the VO’s rating scheme to the evidence of the letting of the subject property. The point being made by Lord Gill was that, as an open market letting of the subject of the valuation, the agreed rental was primary evidence of the very thing which had to be determined, i.e. the letting value of the property on the statutory hypothesis. It was “primary evidence”, as opposed to “secondary evidence” such as the evidence of assessments, or the VO’s opinion. The court did not express any other view on the weight to be given to it except that it could not be ignored, which is what the Committee had (twice) done, without providing any explanation.

61.
There are three other lettings of ELV sites, all of which were let after the AVD:

(i)
Essex Vehicle Hire Unit, Downham, 30 October 2015: £7.93 per m^2 (LFU);

(ii)
16 Brunel Road, Benfleet, 2 January 2016: £10.20 per m^2 (LFH);

(iii)
GBN Services Ltd, Basildon, 1 July 2015: £19.22 per m^2 (LFU).

None of these comparables are in the same category as the appeal site (LFG) and are dissimilar in size and accessibility.

62.
The appellant relied on assessments and argued that there is now a settled tone of the 2017 List. I do not agree. There were only eight challenges to the assessment of land hereditaments in Essex as at 7 October 2019. There is no time pressure on a ratepayer to check and challenge an assessment and the importance of making early proposals under previous lists, and thus the earlier establishment of a tone, no longer exists. Mr Watson has explained that several of the comparable assessments will need to be revisited. I do not consider that Mr Watson has impugned the compiled list in saying this; the VO has a statutory duty to maintain an accurate list and if the measurement and/or description of a hereditament is inaccurate then it is incumbent on the VO to correct it once he becomes aware of it, even in the absence of a material change of circumstances.

63.
Mr Waterman argued that due to the new SBRR regulations there was unlikely to be any challenge to an assessment under £12,000 since the ratepayer would benefit from 100% rates relief in any event. He said this might explain, at least in part, why there had been so few challenges to the assessment of open land sites to date. 15 of the rental comparables have rateable values of less than £12,000 and a further two sites had rateable values of between £12,000 and £15,000 where partial rates relief was available. Only one of the assessment comparables had a rateable value below £12,000 but, as noted above, these sites were generally considerably larger than those constituting the rental evidence. I think Mr Waterman's point is valid but I do not consider that it is decisive in establishing a tone of the list. The majority of the sites comprising the evidence in this case are larger than 15,000m^2 and there does not appear to be any discernible difference in the rate at which the assessments of such larger sites have been challenged. Indeed the only one of the rental and assessment comparables to be challenged on the grounds of incorrect rental value appears to be Lubards Farm (£24,000 rateable value).

64.
I place no weight on the assessment of the HBC depot on Canvey Island which at 87,570m^2 is nearly 50 times larger than the appeal site. The sites are not comparable in size or location and the assessment of £2.00 per m^2 for the LFG element of the site is less than one third of the average assessment for LFG ELV sites. It is a value outlier and of no assistance in this appeal.

65.
The G8 Export Limited site at Hullbridge was designed as an ELV site by Mr Waterman. It is over three and a half times as large as the appeal site and it is further away from main roads, although access still appears to be reasonable and it is only 3km east of the appeal site. It has immunity from planning enforcement. Mr Watson argued that size, access and planning were all factors that would impact on its value, but I am not persuaded that they would justify Mr Watson applying a rate to the appeal site (£12.50 per m^2) that is nearly three times that at which the G8 site is assessed (£4.51 per m^2).

66.
Mr Watson said the site at 16 Brunel Road, Benfleet had the potential to be an important transaction. It was one of his rental comparables and one of Mr Waterman's assessment comparables. He distinguished it from the appeal site on the grounds of size (it was nearly five times as large) and a worse access (disputed by Mr Waterman, see paragraph 27 above). At the time of writing his expert report Mr Watson was awaiting the results of a VOA referencing check as he considered there to be an issue of under-assessment. Shortly before the hearing Mr Watson provided details of that check which showed (i) all the site should be categorised as LFH; (ii) the open yard was 1,874m^2 (29%) larger than shown in the original compiled list assessment; and (iii) the assessment was amended to £10 per m^2, based on a rental value of £10.20 per m^2. The compiled list assessment was based on £7.50 per m^2 for LFH and £5.00 per m^2 for LFG.

67.
Mr Watson thought the site at Lubards Farm was in a worse location than the appeal site, albeit the two sites were relatively close. He said that his three LFG comparables at Rawreth Farm and Dollyman's Farm were also relatively close and of similar size to the appeal site. Their rental values ranged from £7.10 per m^2 to £11.05 per m^2 and they were assessed at £8.00 - £8.50 m^2. Although these comparables are higher than the assessment of Lubards Farm (£6.00 per m^2 LFG) they do not support Mr Watson's figure of £12.50 per m^2.

68.
The site known as Essex Ford at 58/60 Hambro Hill was a larger site which Mr Watson considered had poor accessibility. He said a referencing check would need to be undertaken but that, in any event, the assessment of £7.50 per m^2 (LFH) did not support Mr Waterman's figure of £6.50 per m^2. But a differential of £1 between LFH and LFG sites, i.e. a discount of some 15%, is in line with other allowances contained in the evidence.

69.
The assessment of those nine LFG sites for which rental evidence is available range from £6.00 per m^2 to £12.50 per m^2, with an average of £9.33 per m^2. The comparable of £12.50 per m^2 (the only one above £10 per m^2) was a very small site (325m^2) at Yard D, Bonvilles Farm, Arterial Road, North Benfleet. This is one of two sites at Bonvilles Farm, the other being an LFH site of 504m^2 which let for £20.62 per m^2 in 2013 and was assessed at £20 per m^2. Access to the sites is good and they are only some 3km south of the appeal site. But as Mr Watson recognises both these sites, being assessed at under £12,000, benefit from 100% SBRR and therefore the ratepayer had no pecuniary reason to challenge the assessments.

70.
The only other LFG assessment at £12.50 per m^2 (unsupported by a rent) was an ELV site of 1,244m^2 at Patricia Drive, Stanford-Le-Hope. Its accessibility was comparable to the appeal site but differed from it in having a substantial number of buildings on site.

71.
I do not think the evidence supports Mr Waterman's figure of £6.50 per m^2, which can only be justified, if at all, by considering a fraction of the available evidence and by ignoring the actual rent fixed in 2007. Although it may be a coincidence, it is striking that Mr Waterman's resultant assessment of £12,000 is precisely the figure that would benefit from 100% rates relief under SBRR. Even allowing for the possibility that the appellant thought the rent he agreed to pay for the appeal site included rates, in which case Mr Watson said the adjusted rent would be £19,513, this would imply a rental growth of 63% in the two years from the AVD until the letting and there is no evidential support for such a sharp increase in rental value.

72.
In my opinion, and in the light of much more evidence than was available to the VTE, I consider that the rateable value of the appeal hereditament is greater than the VTE's determined figure of £16,500 (£9.00 per m^2). But I am not satisfied that Mr Watson's figure of £22,500 (£12.50 per m^2) is justified. This is at the top of the range for any of the LFG comparables, whether ELV sites or in other open storage use (and which had higher average assessments). I do not think Mr Watson's figure properly reflects the difficulties of getting to the site from the Chelmsford Road, through a shared access, its lack of drainage, mains water and toilet facilities and poor visibility from the road. I accept that it enjoys a good location for its mode or category of occupation and that the 2017 letting of the site should carry some weight. It is difficult to discern any clear pattern of rental or assessment evidence from the large number of comparables submitted in this case, but looking at the evidence as a whole I consider the appropriate rateable value to be £19,575 or £11.00 per m^2. To this must be added the agreed rateable value of £600 for the two containers. This gives a total of £20,175 which I round down to £20,000.

New evidence

73.

I mentioned above that both parties introduced new evidence that was not available to the VTE. The question was raised as to whether, in the light of the Check, Challenge, Appeal procedure now in place under the 2017 list, the Tribunal was entitled to take such new evidence into account. In particular it was queried whether the Tribunal was bound by regulation 17A (admission of new evidence on NDR appeal) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 inserted by Regulation 9 of SI 2017/156 as from 1 April 2017. In my judgment the Tribunal is not bound by Regulation 17A. The 2009 procedure regulations only apply to the VTE and not to this Tribunal which is governed by its own procedure rules [8] and in particular Rule 16 (evidence and submissions). There is no equivalent rule to regulation 17A although rule 16(2)(b)(iii) provides that the Tribunal may exclude evidence that would otherwise be admissible where it would otherwise be unfair to admit it. That is not the case here. Both parties disclosed the new evidence in either their statement of case or in their response. Mr Watson did submit late evidence about amendments to some of his comparables, but he had given notice that they were being reviewed in his expert report. I do not think the appellant was disadvantaged or prejudiced by the admission of such evidence which sought to appraise the Tribunal of the current situation with respect to each comparable relied on.

Determination

74.
I refuse the appeal and determine the rateable value of the appeal site at £20,000 with effect from 1 April 2017.

75.
The appeal was heard under the Tribunal's simplified procedure which is not a procedure under which costs are normally awarded unless either party has behaved unreasonably or the circumstances are in some other respect exceptional. Neither party acted unreasonably and there are no exceptional circumstances. I therefore make no order as to costs.

Dated: 6 March 2020

A J Trott FRICS

Member, Upper Tribunal (Lands Chamber)

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[1] The respondent showed the unit price of this site as £4.75 per m^2 together with a LFG site of 446m^2 at £4.51 per m^2

[2] From 1 April 2017 the SBRR scheme, introduced in 2005, set new rateable value thresholds. Tapered relief is now available from £12,000 (100%) to £15,000 (0%).

[3] The date of his response to the VO's statement of case.

[4] 2000/53/EC

[5] Combined rent + rates = £28,600

Let rates = rateable value (£x) x rates multiplier (0.466)

Let rent = £x

Rent (£x) + rates (£0.466 x) = £28,600

So £1.466x = £28,600

So £x = £28,600/1.466 = £19,509, say £19,500

[6] Some of the lettings were sub-divided according to surface type, giving 29 rental figures in total.

[7] On 11 sites.

[8] The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010