THE VALUATION TRIBUNAL FOR ENGLAND

2010 rating list appeal; non-domestic property; factory and premises; state of repair; beneficial occupation; material day; ratification of an agreement.

Re: 90 Denington Road, Wellingborough, Northants, NN8 2RB

APPEAL NUMBER: 283524455067/541N10

BETWEEN:	Ashtene Industrial Fund Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mr S Chappell (Senior Member)
Mr L Booth

SITTING AT: NSPCC Training Centre, 3 Gilmour Close, Beaumont Leys, Leicester

On: Thursday 13 February 2020

APPEARANCES: Mr Morrish of Alder King, on behalf of the appellant
Mr C Burdon on behalf of the respondent, accompanied by Ms Burns as expert witness

RECONVENED HEARING: Remote hearing Wednesday 16 December 2020

APPEARANCES: No parties were present

CLERK: Mrs A Keohane

Summary of decision

1. The agreement reached between the parties was ratified.

Introduction

2. This appeal has been brought in respect of the following: Factory and Premises, 90 Denington Road, Wellingborough, (the appeal property) rateable value (RV) £206,000 with effect from 1 September 2011. The proposal, received by the Valuation Officer on 11 September 2014 (the material day in this appeal), was submitted by Alder King on behalf of the appellant and sought a reduction in the appeal property's assessment to £0 with effect from 31 August 2013. The grounds of the proposal were that a material change of circumstances had occurred when the building was vandalised and stripped by scrap metal thieves.

3. In brief, the appeal property was constructed in the late 1960's as a single storey factory with attached two storey offices, located at the edge of an established industrial estate with good links to the A45. The property was of a steel portal frame construction with brick infill to 1.25m, a line of glazing in steel frames followed by steel sheeting with plasterboard lining. The factory section had an insulated felt roof with glazed lights giving good natural light. The attached two storey office block was of similar construction, with an extension being added to the rear in the early 1970s. The property was heated, and the offices and high-tech workshop areas benefitted from air conditioning. It was subsequently occupied as a call centre, for which data cabling was added. The valuation did not change at that time; it remained valued as an industrial property with a 20% uplift for the office areas.

4. The original hearing took place via a public face to face meeting. The panel adjourned the hearing and the date fixed for its continuation was 16 April 2020. However, due to the Covid 19 pandemic, the revised date was cancelled.

5. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

6. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of the definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

7. In light of the above, and to avoid justice being further delayed, a remote hearing was set up to conclude the hearing of this appeal on 16 December 2020.

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

9. Mr Morrish declared that he was not instructed under a conditional or success related fee arrangement. He confirmed that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

10. Mr Burdon had not prepared the bundle of evidence he was presenting; however, it had been prepared by Ms Burn, who was in attendance at the hearing as expert witness.

11. 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 before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

12. In all, the following cases were referred to:

- *David Jackson (VO) v Canary Wharf Ltd* [2019] UKUT 0136 (LC)
- *Barber v Cerep III TW Sarl* [2015] UKUT 0521 (LC)
- *Newbigin (VO) v S J & J Monk (a firm)* [2017] UKSC14
- *Rank Audio Visual v Houndslow Borough Council* [1970] RA 535
- *Mouland (VO) v Gatwick Airport [2012]* UKUT 32 (LC)
- *Reeves (VO)* RA 74 2005
- VTE Case No. 283526378710/541N10*, 30-50 Sinclair Drive, Wellingborough*
- VTE Case Nos.503027611140/053N10 & 503027611258/053N10, *Pt Bst & Sbst Curzons, 5-11 Fetter lane, London.*

Issue

13. Whether the appeal property's assessment should be reduced to reflect its state of repair, due to vandalism.

Evidence and submissions

14. Mr Morrish provided a bundle, which comprised his full argument: a report on the state of the property prepared by GVA; photographs of the appeal property taken in August 2013: sales/letting details; a planning application dated 2015 setting out a proposed change of use: extracts from case law and previous VTE decisions; an extract of the speech made by Baroness Farrington on the enactment of the Rating (Valuation) Act 1999; background information from Hansteen Holdings PLC, given the appeal property was owned by Ashtenne Industrial Fund Ltd Partnership, a fund held by Hansteen plc and the agreed and disputed issues.

15. The appeal property had been occupied by Siemens as a data centre and it had been extensively fitted out for this use. In October 2011, Siemens vacated after triggering a break clause in the lease; the property was then marketed as a disaster recovery/call/data centre. By the end of August 2013, parts of the building had been stripped out by scrap metal thieves, leaving it incapable of beneficial occupation due to the extent of the vandalism. The cost of works to enable beneficial occupation for the same use was at least £700,000, based on construction costs as at the antecedent valuation date (AVD). These costs were deemed uneconomic for a landlord to undertake, particularly as the building was at the end of its economic life as a first-generation computer centre.

16. Mr Morrish referred the panel to various decisions by higher authorities in which the issue of repair/beneficial occupation had been addressed. He argued that, in accordance with the *Monk*, *Canary Wharf* and *Barber* cases, a valuer had to have regard to the known facts rather than just applying a generalised approach. In the subject case, at the material day, the appeal property was incapable of beneficial occupation within its mode and category due to damage caused by external forces. In the real world, the property had been sold for re-development and the works undertaken thereafter were so significant they required planning consent for a change of use. These works could not be regarded as repair works, as they comprehensively redeveloped the building.

17. Having regard to the above, Mr Morrish sought a reduction in the appeal property's assessment to £0, with effect from 31 August 2013.

18. Mr Burdon provided documentation, which comprised: the purpose and basis of valuation; an appeal history; the agreed and disputed issues; description of, photographs and location plans for the appeal property; a breakdown of the current valuation; his grounds for resisting the appeal; an extract from VOA practice note 1 part 6 4.3, giving guidance on how to deal with cases of this nature for valuation purposes, and a summary of the decision sought.

19. Mr Burdon quoted the definition of rateable value, as set out in the Rating (Valuation) Act 1999; referring particularly to the second assumption covering state of repair. He expressed the view that the repair costs of £700,000 as at the AVD, being less than four times the rateable value, would not be uneconomic for a reasonable landlord to undertake.

20. Mr Burdon contended that in accordance with the VOA practice note, buildings damaged by vandalism warranted no exceptional treatment. The statutory assumption in relation to repair was applicable, irrespective of the reasons why a property was in a particular state. He argued that, at the material day, the appeal property was empty, not undergoing a scheme of redevelopment works as outlined in the *Monk* and *Canary Wharf* cases, therefore, it had to be assumed to be in a reasonable state of repair. He therefore sought dismissal of the appeal.

21. Mr Morrish referred to several Lands Tribunal/Upper Tribunal decisions that Mr Burdon was unaware would be presented and the clerk also provided a previous VTE decision (283526378710/541N10). The panel adjourned the hearing to allow time for consideration to be given to these and responses to be submitted should the parties wish to do so.

22. Following consideration, the parties provided further evidence and revised valuations for the appeal property. The panel decided that the hearing should be re-convened to allow this new information to be presented; however, due to the pandemic, a face to face hearing was not possible; thus, a remote hearing was arranged for the case to be concluded. Mr Burdon was no longer available, but Ms Burns was appointed as the Valuation Officer's representative for the remote hearing.

23. Ms Burns had carefully re-examined the case prior to the remote hearing and as a consequence, submitted a further revised valuation. Mr Morrish confirmed that his client was prepared to accept this, and agreement forms were completed, together with an application for a Consent Order. The new occupier of the appeal property was made aware of the agreement and after taking professional advice, also signed the agreement form. As the appeal was still under judicial consideration, the signed documentation was forwarded to the tribunal and the panel was asked to give effect to the agreement reached.

Decision and reasons

24. In view of the aforementioned, the panel decided to ratify the agreement reached between the parties and issued an order as set out below:

Order

25. Under the provisions of Regulation 38(4), (7) and (10) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Valuation Officer to alter the 2010 Rating List entry in respect of 90 Denington Road, Wellingborough, Northants, NN8 2RB to show an entry of Data Centre and Premises at £91,000 RV. This temporary description and reduction is for the period from 31 August 2013 until 31 March 2016 only, reverting to its original description and rateable value after this date.

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

Date: 11 January 2021

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