THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating appeals; 2010 Rating List; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2268; Mineral Processing Plant; Land Value; Building Cost; Contractors Test; Appeals allowed in part.

RE: Minelco Ltd, Superfine Carbonate Works, Lund, Driffield, East Yorkshire YO25 9TS

APPEAL NUMBERS: 200125115970/539N10 (appeal 1) and 200125131469/539N10 (appeal 2)

BETWEEN:	Lkab Minerals Limited	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mrs X Holt (Senior Member)

CLERK: Mrs Rachel James IRRV (Hons)

REMOTE HEARING 1: Friday 26 March 2021

APPEARANCES: Mr S Turton of BNP Paribas Real Estate (on behalf of the Appellant)
Mr R Teagle (Valuation Officer's Representative)

Summary of decision

1. The appeals were allowed in part; the appeal property's entry was reduced to £106,000 Rateable Value, with effect from 1 April 2010 (appeal 1) and £127,000 Rateable Value, with effect from 1 August 2012 (appeal 2).

Introduction

2. 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.

3. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that 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.

4. These appeals have been brought in respect of the following:

   Appeal (1) a proposal was submitted on 20 February 2015, against a Valuation Officer's Notice (VON) dated 5 August 2013, which altered the appeal property's assessment to £116,000 Rateable Value (RV), with effect from 1 April 2010.

   Appeal (2) a proposal was submitted on 24 February 2015, against a VON dated 6 August 2013, which increased the appeal property's assessment to £146,000 RV, with effect from 1 August 2012.

   The proposals sought the respective rating list entries be altered to £1 RV as they were incorrect, excessive and bad in law.

5. The appeal property was a mineral processing plant and premises. It took chalk and similar minerals and milled them down to fine powders for use as white fillers in paints and plastics. Minelco specialised in producing material for individual specifications rather than large scale bulk products. Chalk was sourced from a nearby quarry leased but operated on their behalf by Fenstone. The chalk was worked on a campaign basis and stocked on site for use as required. The material was soft and flint free but some had iron contamination and poor colour. Some chalk was imported from Fenstone's Huggate site where the colour was better.

6. The appeal property comprised a collection of industrial and associated office and support facilities, which had been developed over a number of years from the 1940s/1950s. It was situated in a rural location, originally adjoining a quarry.

7. The appeal property was occupied freehold by the ratepayer.

8. As permitted within the Tribunal's Business Arrangements, due to unforeseen circumstances, I heard this appeal alone.

9. Mr Turton was appearing on behalf of the appellant, as both advocate and expert witness. In his declaration he explained that he was not instructed under a conditional fee arrangement. He also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case. This point was important in view of the

Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the arguments and submissions were fully considered by myself when coming to a decision. Consequently, the absence of a reference to any statement, argument or submission, should not be construed as it having been overlooked.

Preliminary issue

11. Mr Teagle raised a preliminary issue. He wished for Mr L Jackson, a Chartered Quantity Surveyor, to take part in the hearing as expert witness. Prior to the hearing, Mr Turton had objected to this request. However, at the hearing, Mr Turton no longer objected on the condition that he was able to produce additional evidence to that already provided. Mr Teagle had no objection to Mr Turton's additional evidence. Accordingly, I proceeded to hear the appeal having regard to all the evidence provided.

Arguments and submissions

12. Mr Turton provided a copy of his submissions, which comprised his written statement, a photograph and details in relation to the appeal property, a location plan, a schedule detailing the £/m^2 applied to the main production and storage buildings and breakdown of the buildings costs used in the valuation. Prior to the tribunal hearing, Mr Turton also provided photographs of the appeal property that had been taken on 15 March 2021, revised valuations for each appeal, a revised buildings cost analysis, building costs schedule, cost guide in relation to foundations - ground floor slab and a quotation letter dated 19 September 2011 from Kim Barker Construction Ltd regarding the construction of a new storage building. Having regard to the evidence he had presented, Mr Turton asked the panel to determine his proposed valuations of

    i) £96,000, with effect from 1 April 2010 (appeal 1); and
    ii) £117,000, with effect from 1 August 2012 (appeal 2).

13. Mr Teagle provided his submissions, which comprised his written statement, the appeal history, the current valuation, a breakdown of the buildings, plant and machinery schedule used in the valuation, a photograph and details in relation to the appeal property, a copy of the proposal, a location plan, and a referencing plan. Prior to the hearing, Mr Teagle also provided a building cost analysis. Having regard to the evidence he had presented, Mr Teagle asked the panel to determine his revised valuations of:

    i) £113,000, with effect from 1 April 2010 (appeal 1); and
    ii) £139,000, with effect from 1 August 2012 (appeal 2).

Decision and reasons

14. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 as amended. The value was required to reflect an annual rent on the property, assuming a new open market letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of an appeal against an entry in the 2010 rating list, the Rating Lists (Valuation Date)

(England) Order 2008 (SI 2008 No.216) required the rental levels to be taken as at the antecedent valuation date; 1 April 2008.

15. The material date in respect of (appeal 1) was 1 April 2010 and in respect of (appeal 2), it was 1 August 2012.

16. The appeal property comprised basic industrial storage buildings that aged from 1940 to 2012. The buildings stored raw materials and the finished goods in bags or in bulk ready to be delivered by tankers. Inspections of the appeal property had been carried out by Mr Teagle on 10 January 2020 and Mr Turton on 15 March 2021.

17. I note that (appeal 2) related to a VON served to reflect the addition of 'building 22', the chalk store. At the hearing, Mr Turton highlighted a difference in the parties' measurements for 'building 22'; the VO had recorded it to be 2,640 m^2, whereas he recorded it to be 2,470 m^2. At the end of the hearing, as there was an apparent difference in measurements for 'building 22', I asked that the parties provide me with the following, no later than 5 pm on Friday 2 April 2021:

i) a breakdown of the Valuation Officer's (VO's) revised valuations at £113,000, with effect from 1 April 2010 and £139,000, with effect from 1 August 2012;
ii) a copy of the VO's valuation if it was accepted that Mr Turton's revised area for 'building 22' was correct;
iii) guidance from the RICS code of measuring practice as to how 'building 22' should be measured; and
iv) a copy of the written statement that Mr Teagle read from.

18. On 29 March 2021, Mr Teagle provided the valuations requested and a copy of his written statement. He confirmed that both parties had measured 'building 22' on the same basis in accordance with the RICS Code of Measuring Practice. He was unsure why there was a difference in measurement. However, in order for the matter to be resolved, Mr Teagle was prepared to accept Mr Turton's measurement of 2,470 m^2 for 'building 22'.

19. Whilst Mr Turton was no longer required to provide any additional evidence, he was given until 5 pm on Friday 9 April 2021, should he wish to comment on Mr Teagle's revised valuation.

20. Having accepted Mr Turton's area for 'building 22', Mr Teagle's revised valuation was £137,000 Rateable Value, with effect from 1 August 2012; his proposed valuation of £113,000 Rateable Value, with effect from 1 April 2010, remained the same.

21. The parties were in agreement that the appeal property should be valued by reference to a hybrid cost and contractors method. Most of the valuation had been agreed. Within the representative's statement of case, the following issues in dispute were quoted:

i) the correct £/m^2 to be applied to the main production and storage buildings;
ii) addition for standby generator; and
iii) land value addition.

22. At the hearing, it was explained that the dispute regarding the standby generator had since been resolved.

23. In arriving at my decision, I turned to each matter in dispute separately. Firstly, considering the correct £/m^2 to be applied to the main production and storage buildings. Mr Turton considered the VO's proposed building replacement cost was excessive after having regard to the quality of the construction of the buildings and the level of service provision. He had regard to the actual cost of the newly erected 'building 22' in 2012 and adjusted the value back to 2008 levels of value.

24. Mr Turton explained that 'building 22' had been constructed in 2012 at a cost of £458,000. He considered that this was the best available evidence to determine the unit cost to be applied in the valuation. To the actual cost of £458,000, he had adjusted the figure for fees, location factor, contract size and had toned the value back to the AVD, which equated to £157/m^2. Mr Turton had further adjusted his proposed building cost rate to £187/m^2. This revised analysis reflected his measurement of 'building 22' and his revised indexation reflecting the VOA Cost Guide indices. Furthermore, after reflecting that 'building 22' had been constructed on an existing concrete base, he had applied an additional £51/m^2, which equated to a buildings cost of £235/m^2. Mr Turton had adopted his analysed cost of £235/m^2 as a baseline and applied it to similar storage/production buildings on site, making adjustments for factors such as height.

25. In support of his proposed building costs, Mr Turton referred me to a quotation letter from Kim Barker Construction Ltd dated 19 September 2011, together with a buildings costs schedule. Whilst the letter was a quotation, the appellant's Finance Director had confirmed to Mr Turton that the quote from Kim Barker Construction Ltd had been accepted and the work was undertaken in accordance with the quote. The work was subsequently invoiced in stages by Flixborough Fabrication (a 'sister' company) as was highlighted in the buildings cost schedule. This schedule had been supplied by the appellant and included all the payments for construction of the building, including Kim Barker Construction Ltd and other contractors for items such as electrical work and planning. Mr Turton explained that the schedule covered the total construction cost, albeit the fact that 'building 22' had been constructed on an existing concrete base.

26. In the absence of building costs in respect of those buildings present at the AVD, Mr Teagle had used the VOA Cost Guide. Costs within the guide were established from building experts on generic building types at the AVD. Appropriate adjustments could be made by the valuer to reflect differences from the generic, and also for age, condition and functional obsolescence where appropriate.

27. Mr Turton explained that the building costs of the earlier buildings had not been provided as they predated the AVD to such a degree that there would be of no assistance in these appeals. The most recent building (building 15) having been constructed in 1995, some 13 years prior to the AVD. Mr Turton explained that for the 2000 and 2005 Rating List appeals, the valuation was based on actual costs which showed a discount of 40% and 33.7% on the cost guide unit costs.

28. Mr Teagle referred to the quotation letter from Kim Barker Construction Ltd for the construction of 'building 22' as provided by Mr Turton. Mr Teagle considered

that the quotation letter was not evidence of actual spend. Furthermore, he did not believe that Kim Barker Construction Ltd had carried out the work; no actual invoice had been provided, nor had a detailed breakdown of the costs or any other evidence of actual spend. He found it unusual for there to be just one quote for a building of this size. However, as this was the only evidence available, Mr Teagle had asked Mr Jackson, Chartered Quantity Surveyor, to analyse the quote, together with the costs adopted by the VOA, so that they could be compared. Mr Teagle explained that the Quantity Surveyor had used detailed photographs and measurements and considered how the actual building differed from a generic building set out in the VOA Cost Guide. He had used industry-approved building cost information, together with his own extensive building experience, then adjusted the costs to take account of the location in East Yorkshire, contract size and adjusted back to the AVD.

29. Mr Teagle explained that 'building 22' had not been 'built on top of' an existing slab, as the slab would not support such a building; specialist foundations were required to support such a large steel structure. It was also important to note that the VOA Cost Guide was based on a 150 mm thick slab, the slab in this case was 200 mm thick and took heavy mining equipment like loading shovels with reinforced concrete that would cost more. The cost quoted by Mr Turton of £51/m^2 was actually based on a concrete road, not a concrete building floor. A concrete building floor was arrived at differently and included shuttering and other factors which increased the cost.

30. Mr Turton referred to the VOA Cost Guide and highlighted that the £51/m^2 was not for a concrete road. It was described as 'Foundations – Ground Floor Slabs – Reinforced Concrete –Inc Hardcore, blinding and dpm – 200 mm thick - £51/sqm^2. This description accorded with what was understood to be the foundation/base for 'building 22'.

31. Mr Teagle explained that the existing valuation had adopted a buildings cost of £281/m^2, the quote from Kim Barker Construction Ltd equated to a figure of £288/m^2 (which was revised at the hearing to £269/m^2) and the Quantity Surveyor had proposed a buildings cost of £262/m^2; which was the figure that he had adopted in his proposed valuation. This was in contrast to Mr Turton's proposed buildings cost of £184/m^2, plus £51/m^2 for the existing concrete slab, which equated to £235/m^2.

32. Having considered all the evidence in relation to the buildings cost, I am more persuaded by the evidence presented by Mr Turton. Mr Turton had provided the actual building costs of 'building 22' and toned it back to AVD levels. I am satisfied by Mr Turton's explanation that Kim Barker Construction Ltd carried out the work under its sister company's name, Flixborough Fabrication. As could be seen from the schedule of payments, Flixborough Fabrication received several instalments for the construction of 'building 22'. Despite an actual invoice not having been provided, I accept that the costs detailed were the true costs as detailed in the schedule. I consider that where actual costs are available, these should be used rather that the VOA Cost Guide. I am satisfied that Mr Turton had fairly adjusted the buildings costs back to AVD levels and had taken account of factors such as fees, location and contract size. I am satisfied that Mr Turton had made adjustments to the buildings cost, where applicable, to the other buildings on site to reflect factors such as size, age and quality.

33. I also accept that it would have been unhelpful in this appeal for Mr Turton to have provided the buildings cost for the buildings already on site as at the AVD. With the most recent building having been constructed 13 years prior to the AVD. I also note Mr Turton's statement that for both the appeal property's 2000 and 2005 Rating List assessments, the valuation was based on actual costs which showed a discount of 40% and 33.7% on the cost guide unit costs.

34. I paid close regard to the expert witness evidence as provided by Mr Jackson, Quantity Chartered Surveyor. However, I note that he had not actually visited the appeal property. Furthermore, when questioned on his analysed building cost in relation to the quotation letter from Kim Barker Construction Ltd of £288/m^2, this was subsequently revised to £269/m^2.

35. I am satisfied that the existing concrete slab had been truly reflected in the valuation with the addition of £51/m^2. Mr Turton had provided Cost Guide Code 30006A, which detailed that £51/m^2 was the correct value to be applied to Foundations – Ground Floor Slabs – Reinforced Concrete –Inc Hardcore, blinding and dpm – 200 mm thick. Accordingly, on the issue of buildings costs, I determine the correct cost to be £235/m^2 as proposed by Mr Turton.

36. I then turned to the issue of the land value. The site area was now agreed at 2.1 hectares. Mr Teagle detailed how the appeal property was a very specialist property containing heavy, specialist mining processing equipment, such as dall mill crushers and blending equipment. The land part of a mineral processing plant was valued as bare land without buildings. The VO had considered evidence from the same class of properties and adopted a 'site rent' for the bare land.

37. In common with other mineral processing plants, the site blends, crushes and processes minerals for industrial uses. It took chalk and similar rocks and crushed them down to fine powders for use as white fillers in paints, plastic and specialist fire retardants. Chalk was originally sourced from the on-site quarry, and more recently from a quarry 1km away across the road (this accounted to 25%). The chalk was worked on a campaign basis and stocked on site for use as required. A further 25% of the chalk was supplied from nearby Huggate Quarry, with 50% being imported. As with many other mineral processing plants and premises, this site was closely associated with a quarry or former quarry.

38. Mr Teagle considered that mineral processing plants were a very distinct class of properties with their own characteristics. As such, they should be valued together as a single class or 'mode and category of occupation'. In support of this contention, Mr Teagle referred to the Court of Appeal judgment of *Scottish & Newcastle Retail Ltd & another v Williams (VO)* RA/480/1993, when it was held that the property should be valued only within the mode and category of its current occupation and that all other possible uses must be ignored.

39. Mr Teagle considered that the evidence pointed very clearly to a site rent approach to valuing the land. He had therefore adopted a valuation methodology using site rent for the bare land plus the addition of construction costs.

40. During the course of the 2010 Rating List, Mr Teagle stated that there were 91 mineral processing sites in the country. Of these 32% had been the subject of discussion. Of those discussed, 42% resulted in agreements with well-known rating representatives in the minerals field and 58% had been withdrawn. He

added that the 2010 Rating List was now closed and no successful challenge had been made against the site rent approach. Of the 91 sites in this class of property, this was the only one where the site rent approach was being challenged.

41. Mr Teagle had adopted a site rent of £17,500 for the appeal property. In support of this value, he referred to the following three comparable properties:

i) WBB Limited, Brigg Road, Messingham, Scunthorpe DN17 3RF;
ii) Cadeby Quarry Plant Site, Conisborough, Doncaster DN12 3AP; and
iii) Greenwick Quarry Processing Plat, Huggate, York YO42 1YR.

42. On the issue of land value, Mr Turton referred me to the assessment placed on E B Bradshaw & Sons Ltd, Bell Mills, Skerne Road, Driffield. This property was a flour mill, its assessment had been agreed on the contractors method at £147,500 Rateable Value, with effect from 30 April 2010. The land element in this valuation had been valued at £110,000 per hectare for 1.4 hectares before an 'Ebdon Allowance'. Mr Turton considered that this property was in the same mode or category of occupation as the appeal property. Having regard to the fact that this was a similar sized site but in a better location, Mr Turton had proposed a site value of £82,500 per hectare for the appeal property.

43. On the issue of land value, I was more persuaded by the argument put forward by Mr Teagle. I accept that the appeal property being a mineral processing plant was a specialist property, which should be valued in line with other mineral processing plants. I heard how out of 91 mineral processing plants in the England, this was the only challenge to the site rent approach. I am of the opinion that there should be consistency in the approach adopted and I did not find that I had been presented with any evidence to suggest that the appeal property should be valued out of line with the other mineral processing plants. I was not convinced that the appeal property was in the same mode of category of occupation as a flour mill. The appeal property being a specialist mineral processing plant, which should be valued in line with other such quarry-associated processing plants.

44. I found the evidence of the three comparable properties presented by Mr Teagle to be compelling evidence that the site rent he had adopted of £17,500 was fair and reasonable and in line with that adopted for similar properties. The three comparable properties presented were all mineral processing plants that were all located within rural settings. The same site rent of £17,500 had been consistently applied to each of the three comparable properties. WBB Limited was of a similar size to the appeal property. Appeals lodged in respect of Cadeby Quarry Plant Site and Greenwick Quarry Processing Plant had both been withdrawn. Accordingly, I determined that the land value should be valued on a site rent approach at a site rent of £17,500.

45. Finally, I note that there was a difference in the approach adopted for the end allowance applied of 5.5%. An allowance had been applied to reflect the layout of the site and the fact that the buildings had been constructed over a number of years and in a somewhat piecemeal fashion. Mr Teagle had applied the allowance to the buildings, plant and machinery only, whereas Mr Turton had applied the allowance to the whole site. I find the approach adopted by Mr Teagle to be the correct one. The end allowance should only be applied to the buildings, plant and machinery.

46. Accordingly, having regard to the above conclusions, the appeals are allowed in part. Having determined that the correct building cost to be £235/m^2, the land value at £17,500 and the 5.5% allowance should be applied to the buildings, plant and machinery element. Therefore, I determine the valuations as reproduced below:

(appeal 1)	
Buildings, Plant and Machinery	£94,462
Less 5.5% end allowance	£5,195
Sub Total	£89,267
Plus Land Value	£17,500
	£106,767
Say £106,000 Rateable Value, with effect from 1 April 2010	

(appeal 2)	
Buildings, Plant and Machinery	£116,016
Less 5.5% end allowance	£6,381
Sub Total	£109,635
Plus Land Value	£17,500
	£127,135
Say £127,000 Rateable Value, with effect from 1 August 2012	

Order

47. Under the provisions of Regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the appeal property's entry to £106,000 Rateable Value, with effect from 1 April 2010 (appeal 1) and £127,000 Rateable Value, with effect from 1 August 2012 (appeal 2).

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

Date: 20 April 2021
Appeal Numbers: 200125115970/539N10 and 200125131469/539N10