THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of Compiled List RV in 2010 Rating List; argument put forward for deletion from the List; Land Used for Storage and Premises; whether appeal building used for personal equestrian purposes; whether it was an appurtenance enjoyed with the house; section 66 (1)(b) Local Government Finance Act 1988; Corkish (VO) v Bigwood [2019] UKUT 191 (LC). Appeal partly allowed.

Re: Office At Sunnyside, High Street, Holmer End, Stoke-On-Trent ST7 8AG

APPEAL NUMBER: 342025370246/541N10

BETWEEN: Graham Heath Construction Ltd Appellant

and

Valuation Officer Respondent

PANEL: Dr J Johnson (Senior Member)

CLERK: Mechile Hempton

REMOTE HEARING on 05 November 2020

APPEARANCES: Mr M Shapcott of Evans and Payne represented the appellant

The Respondent VO was represented by Mr D Byrne and Ms A Pratt

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Summary of decision

1. The appeal is partly allowed, and the Tribunal confirms a revised rateable value (RV) of £5,900 with effect from 1 April 2010.

Introduction

2. This was a 2010 Rating List appeal. The RV of the appeal hereditament was £6,500 from 1 April 2010, with a description of Land Used for Storage and Premises. Two different material days were presented by the parties and they had provided no explanation why: the representative gave 27 March 2015 in his submission which is the date the proposal was made to the Valuation Office Agency (VOA) and the VO gave 1 April 2010.

3. The grounds of the proposal read that the rating list entry should be altered to £1 with effect from 1 April 2010 as the RV shown in the Rating List on 1 April 2010

was inaccurate, and “that the entry should describe the correct extent of the hereditament and the entry is excessive, unfair, incorrect and/or bad in law.” Argument was put forward by Mr Shapcott in his submission and at the hearing that the appeal property should be deleted from the list on the basis that building works to render the appeal property an agricultural building were completed on 1 February 2009, and that there were many aspects of the ratepayer’s appeal which mirrored the findings of the President of the Valuation Tribunal for England’s decision in the hearing of *Bigwood v Valuation Officer* [2017] VTE (382525090009/537N10). In that case, the proposal had sought a RV of £1 but the President had taken the property out of the list.

4. As the proposal seeks to challenge the RV in the list on the day the list was compiled, I find that the proposal has been made under Regulation 4 (1) (a) of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended)(the “Alterations and Appeals Regulations”). Regulation 3 (2) of The Non-Domestic (Material Day for List Alterations) Regulations 1992 (the “Material Day Regulations”) provides-

   “Where the determination is with a view to making an alteration to correct an inaccuracy in the list on the day on which it was compiled, the material day is the day on which the list was compiled.”

5. But even if the proposal was made to challenge the existence of the hereditament in the list, being made under Reg 4 (1) (h) of the Alterations and Appeals Regulations, it would still have the same material day under Regulation 3 (2) of Material Day Regulations.

6. Accordingly, I find that the material day in this appeal must be 1 April 2010.

7. The appeal property comprised a workshop, mezzanine floor with office space, kitchen with storage at the end of the unit and attached, an open hay barn. It is situated on storage land and is approximately 65 metres from the main house, Sunnyside Farm.

8. Mr Shapcott appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal’s (UT) judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Shapcott’s declaration of truth included a statement that he was instructed under a conditional fee arrangement.

9. I accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal’s rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

10. I therefore considered the “expert” evidence and attached such weight to it as I saw fit.

11. 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.

12. 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.

13. The Senior Member sat alone to hear this case. This procedural action is covered in paragraph 11 of The Tribunal Business Arrangements in the Consolidated Practice Statement.

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

Preliminary Issue

15. This appeal had been subject to a Direction at a previous hearing on 21 October 2019. The parties were to arrange an inspection of the appeal property and to provide their respective valuations and areas by 10 January 2020. This did not happen. It was not until the end of September 2020 that the VO carried out an inspection of the appeal property. Additional evidence was received from the parties from 26 October 2020 until the day before the hearing.

16. Mr Shapcott's explanation was that the original submissions had been lodged for a hearing on 26 February 2018 but subsequent to that the appeal had to be stayed pending the outcome of the *Bigwood* case which dealt with similar matters and was due to be heard at the Upper Tribunal. His additional evidence was based on the findings of the Upper Tribunal in *Corkish (VO) v Bigwood* [2019] UKUT 191 (LC); an appeal from the President's decision referred to in paragraph 3, above. Mr Byrne advanced his reasons for his provision of additional information - the *Bigwood* case had caused him to rework his submission to include the VOA's interpretation of the facts and to apply them to the appeal property, and to take account of his inspection of the appeal property. He added that he had no objection to the representative's additional evidence; I have no record of Mr Shapcott opposing the VO's additional evidence.

17. I informed the parties that I would allow their respective additional submissions and evidence to be heard by me. The hearing proceeded.

Issues

18. The matter before me to decide was whether there was a non-domestic element to the appeal property or whether it fell to be considered as an appurtenance to the main house and therefore, with regard to section 66 to the 1988 Act, should be properly defined as domestic property.

Decision and reasons

19. Mr Shapcott's case for why the appeal property should be taken out of the list spoke to the fact that a retrospective planning application in 2009 gave consent for the appeal property to be used as an agricultural building but with planning restrictions on the site preventing it from being used commercially. His client had used the appeal site commercially until 2007 when he relocated elsewhere (that other site entered the Rating List in 2007) but he did not vacate the appeal units until 2009. The building work to convert the appeal property to its current agricultural use was completed on 1 February 2009.

20. He had made close study of the *Bigwood* case with reference to the appeal property and from his remarks I have highlighted the following paragraphs which I will return to later as the VO also relied on them:

    "Paragraph 52. ..for any premises to be an "appurtenance" belonging to or enjoyed with property used wholly for living accommodation they had to satisfy two requirements. First, the premises must fall within the curtilage of the living accommodation, and secondly the use of the premises "must not be essentially non-domestic.

    Paragraph 61. We do not consider that these characteristics {size/quality] prevent the stable block and indoor arena…from being "intimately associated" with Bourne Hill House so as reasonably to be regarded as "part and parcel" with the house and as constituting an integral whole with it and the other buildings around it…we have reached the conclusion that...these stables and other equestrian facilities are appurtenances for the following reasons.

    Paragraph 62. No fence or other barrier separates the equestrian buildings from the house, and together with the barn and groom's accommodation they are all grouped around the lawn. They are not divided from each other by the trees which grow between them, and the visual impression we formed was rather that the whole group is enclosed within a wider boundary of trees, including behind the house and on the far side of the stable building…"

21. Mr Shapcott's reading of paragraphs 61 and 62 as applied to the Sunnyside site was that we were examining a geographical unit and that the fences on the property were no different from walls within any other commercial property; they were only there to keep animals on the land. He also provided on 3 November 2020 a revised area calculation of the unsurfaced storage land which, deploying two different models, showed a reduction from the original 600 m^2 to 200 m^2.

22. The VO opened his presentation by saying that no dispute had been raised over the area of unsurfaced storage land previously and this had only become a recent issue with Mr Shapcott providing a new plan and calculations. The property had been inspected by the VOA on 29 April 2013 and a report made that the building was unused but there was no change to domestic use. Photographs of the interior were also taken at that time.

23. Mr Byrne said that the appeal asked for consideration of the rateable value as £1, and that it was no longer in commercial use. The hereditament comprised of storage land, office space and a workshop, and the question to ask was whether this could be regarded as an appurtenance, whether it could be classed as domestic if situated within the domestic curtilage of the main house, Sunnyside.

If it constituted one parcel of land, it would fall within one curtilage. If there were two or more parcels of land conveyed together or occupied together, or with full agreement for one to be used with another so as to establish an intimate connection, that connection had to lead to the conclusion that one piece of land formed part and parcel with the other.

24. Mr Byrne referred me to the site plan for the subject property and set out that there were three identifiable parcels of land: there was the main house, Sunnyside, which had a boundary wall, there was fenced in grazing land, and there were gates and a wall around a stables block and the appeal property. His assessment was that the circumstances present in paragraph 62 of the *Bigwood* UT decision were not present at the appeal property in that there were barriers in place which allowed the subject property and the stables to be separately ringfenced from the domestic element, Sunnyside.

25. His inspection of the property at the end of September 2020 had found a stables block that had not been in the rating list and, as the 2010 list was now closed, could not be retrospectively brought into the list. He had also taken photographs of the interior of the appeal property which showed no material change as a matter of fact had been made to the site since 2013, the time of the last VOA inspection. Therefore, his request was for the current RV of £6,500 to be confirmed.

26. My conclusions are that the appeal property falls to remain in the non-domestic list. I am in agreement with the VOs argument that it is not a matter of the commerciality of the appeal property – Mr Shapcott emphasised in his submission that if the site were used for commercial purposes that it would be in contravention of the planning permission and that the Council would take enforcement action to stop it – but rather the test of whether there are identifiable boundaries between the appeal property and the main house which prevent it being an appurtenance to be enjoyed within the residential curtilage of the main house. Mr Shapcott considered boundary walls to act like an internal wall or doors in a domestic property but I am not persuaded by this argument. I am confident in my reading of the *Bigwood* UT decision that it dealt with the meaning that fences and barriers would form a boundary if present by dint of the writing in paragraph 62 of these words “No fence or other barrier separates the equestrian buildings from the house…” *Bigwood* went on to consider that trees and a road did not form boundaries. It is clear to me that a fence or a barrier is a boundary in this case, making it a non-domestic property and therefore rateable.

27. Turning to the office and workshop within the appeal property, the interior photographs the VO took in 2013 and in September 2020 show no evidence of wholesale change of these parts to agricultural use. There is evidence that the building is capable of occupation as an office and workshop and no evidence that it has been changed over to anything else; it simply looks unused.

28. I have not placed weight on Mr Heath’s Statutory Declaration as it is unsigned. Similarly, I can find no reason to accept two days before the hearing an area calculation which reduces by two-thirds the storage land. The original measurements had been accepted before and no explanation was offered why this information was not brought to the VO’s attention, or indeed the Valuation Tribunal, when the direction was issued or much earlier in the appeal process.

29. I will allow for Plant and Machinery £593 to be removed from the valuation as this was not present when the VO inspected and Mr Shapcott in his presentation had referred to the fact that its removal had been consistent with his client's intentions to relocate his business, which predated the material day for the appeal. This alters the valuation of the appeal property to RV £5,995, say £5,900 with effect from 1 April 2010. Therefore, the appeal succeeds in so far as this alteration is given effect.

Order

30. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the appeal property's entry in the Rating List to £5,900 Rateable Value with effect from 1 April 2010. The Valuation Officer must comply with this Order within two weeks of its making.

Date: 26 November 2020

Appeal number: 342025370246/541N10