THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; Invalidity; Office and premises: Warehouse and Premises; The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268); Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018; Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; Libra Textiles Ltd t/as Boundary Mills and Centric Assets Ltd v Ritchie Roberts and David Alford (Valuation Officers) [2020] UKUT 0237 (LC); Proposal was made outside of the legal time frame; Proposal held invalid.

Re: Ardo Offices at Kent Food park, Smarden Road, Headcorn, Ashford, Kent TN27 9TA and Unit 9 and stores, adj unit 9 Kent Food Park, Smarden Road, Headcorn, Ashford, Kent TN27 9TA.

APPEAL NUMBER:223533922542/285N10

BETWEEN:	Kent Food Parks Ltd	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

BEFORE: Mr M Heslop-Mullens (Senior Member)

CLERK: Mrs S Morgan

REMOTE HEARING: Thursday 25 February 2021

PARTIES PRESENT: Mr T Gage – Appellant's representative

Mr S Kelly – Valuation Officer's representative

Summary of decision

1. Proposal held invalid.

Introduction

2. This appeal has been brought in respect of the following: Ardo Offices at Kent Food Park, Smarden Road, Headcorn, Ashford, Kent TN27 9TA, Unit 9 and Stores, adj Unit 9 Kent Food Park, Smarden Road, Headcorn, Ashford, Kent TN27 9TA and Chalet at Kent Food Park, Smarden Road, Headcorn, Ashford, Kent TN27 9TA (the 'appeal properties'), which were entered in the 2010 rating list as 'office and premises' at £13,500 rateable value (RV), with effect from 1 April 2015, 'warehouse and premises' at £5,500 RV with effect from 1 April 2015 and 'stores and premises' at £7,200 RV, respectively.

3. The appeal arose following a proposal received by the Valuation Officer on 10 January 2019, on the grounds that under regulation 4(1)(h), the hereditaments shown in the list ought not to be shown in that list. The three hereditaments should have been removed from the list earlier than 1 April 2015. The proposal states that the Ardo offices, which comprised a portacabin, was removed from site on 15.4.14 leaving bare land which was not rateable. The warehouse and premises at Unit 9 and stores adj unit 9 were demolished in December 2013 leaving bare land which was not rateable and the chalet was no longer occupied for non-domestic from 1.9.2013.

4. The Valuation Officer had decided that the proposal was invalid. No Invalidity Notice was submitted therefore under regulation 33 of the procedure regulations, the senior member has to determine validity as a preliminary issue if the respondent contends that the proposal is invalid.

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 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.

7. In accordance with the tribunal's business arrangements, I have been authorised to consider and determine this appeal alone.

8. 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.

Issue

9. The preliminary issue for me to determine was whether or not the proposal has been validly made. If I find the proposal invalid, the case will begin and end there. If, however, I find it valid I will go on to look into the substantive matters raised in the proposal providing both parties are willing to proceed at that point.

Evidence and submissions

10. Both parties addressed me on the preliminary issue of validity. The Valuation Officer argued that the proposal was invalid, and the appellant's representative responded and argued to the contrary.

Decision and reasons

11. The appeal arose, following a proposal served on the Valuation Officer on 10 January 2019 which sought a deletion of three hereditaments, currently shown in the 2010 rating list. The proposal was therefore made in accordance with regulation 4 (1)(h) of the Non-Domestic Rating (alteration of Lists and Appeals) (England) Regulations 2009.

12. The appellant's representative explained that the reason for this appeal was due to the appellant having to pay rates on properties that were shown in the 2010 Rating List but did not exist as they had either been demolished, removed from site or were no longer in non-domestic use. He believed that all the properties below should have been deleted from the list from the following dates.

13. The hereditaments concerned were as follows:

    Unit 9 and adjoining store was demolished December 2013.
    Ardo office portacabin was removed from site on 18 April 2014; and
    Chalet bungalow reverted to residential use on 1 September 2013.

14. Originally, the site was a single assessment used for processing frozen foods. During the planning period, when it became vacant, various parts of the site were demolished to make way for the new facilities. A series of reduced rateable values took place over time, but the appellant's representative contended that they were never fully implemented by the Valuation Officer, who then used the back stop of 1 April 2015, as a reason for not properly altering the rating list. When Unit 9 was demolished in 2013, it remained in the list until 2015, as did the office portacabin.

15. The appellant's representative argued that there had been 5 years of rates liability, which seemed unfair when the properties no longer existed. He contended that it was not right that the back-stop date of 1 April 2015 was used to prevent the removal from the list of properties which ceased to exist. Although not raised in the proposal, the appellant's representative argued that the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018, provided a means to correct the list to cover the dates of deletion, so that no rates liability arose.

16. I note that the three hereditaments which the appellant's representative proposed be deleted from the Rating List ceased to exist on different material and effective dates.

17. Having examined the evidence submitted by the parties, I find that the proposal was invalid because it was served on the Valuation Officer after 31 March 2017 and was therefore made outside the statutory time period.

18. I note that both parties referred to *Mazars* and the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. However, the issues raised in the proposal were not affected by the Supreme Court's judgment in *Mazars*. Consequently, the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 is not relevant as the 2018 Act sought to reverse some of the effects of *Mazars.* The 2018 Act did not therefore afford the appellant the right to make a proposal outside the statutory time period.

19. It is unfortunate that erroneous entries remain shown in the Rating List, however, the ratepayer had the opportunity to make a proposal when or soon after the disputed hereditament(s) ceased to exist, as opposed to relying on the VO to alter the list retrospectively of his own volition, which by the time of alteration(s), were effective date restricted.

20. In view of the foregoing, I upheld the Valuation Officer's contention that this proposal has not been validly made. The case begins and ends there. As a result, I was unable to give consideration to the substantive issues raised in the proposal.

Date: Wednesday 24 March 2021

Appeal number: 223533922542/285N10