THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; End allowance for access issues; Factory and premises; Appeal dismissed.

RE: 33 Kitchener Road, Leicester LE5 4AU

APPEAL NUMBER: CHG100096166

BETWEEN: Mak Toor Appellant
(represented by FHP Property Consultants)

And

Jo Moore Respondent
(Valuation Officer)

PANEL: Ms J Routledge (Senior Member)
Mr A Wheeler

CLERK: Ms S Hodgson

ON: 17 February 2021

APPEARANCES: Mr M Toor, the appellant
Mr I Mitchell of FHP Property Consultants for the appellant
Mr M Payne of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal dismissed. No further allowance was awarded for access.

Introduction

2. This was a 2017 rating list appeal. The rateable value (RV) of the appeal hereditament had been £15,750, but following the challenge proposal that sought a reduction to £12,000, the

Valuation Officer had reduced the list entry to £14,750 with effect 1 April 2017 by way of increasing the allowance for access from 5% to 10%.

3. The appeal hereditament was an industrial unit comprised of two floors, with a factory on the ground floor and ancillary offices on the ground and first floor. The unit was located in a residential area, next door to a primary school and measured 725.50m^2.

4. 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.

5. 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.

6. 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.

Issue

7. The issue for the panel to consider was whether the allowance for access issues at the appeal property should be increased from 10% to 25%.

Evidence and submissions

8. Mr Mitchell appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgement in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Mitchell declared he was instructed on a contingency fee basis. 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 the client's case.

9. Mr Payne appeared on behalf of the respondent as both advocate and expert witness and declared he was not instructed under any conditional fee arrangement. He understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the case.

10. The panel 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).

11. The panel therefore considered the 'expert' evidence and attached such weight to it as it saw fit.

12. Mr Mitchell explained the history of the appeal property with the appellant as the occupier and described the location of the industrial unit. He then called Mr Toor, the appellant, as a witness to further describe the access issues he was facing and how these were affecting his business. Mr Mitchell provided comparable properties that received between 15% and 30% allowances for access and advised, in his opinion, the comparable properties did not have the same level of access issues as the appeal hereditament. He sought an increase in the allowance for access from 10% to 25%, resulting in a reduction of the RV to £12,000 with effect from 1 April 2017.

13. Mr Payne advised the panel that the appeal hereditament already has an end allowance of 7.5% for being located in a non-estate area and that the allowance for the access issues was increased to 10% following the challenge proposal. He provided one comparable unit, Unit 17 Faraday Works, that was located 1 mile from the appeal property in a mixed residential and industrial street and had an allowance of 5% for shared access. Mr Payne did not believe the access issues at the appeal property warranted an increase in the end allowances that were already at a total of 17.5% and asked the panel to dismiss the appeal.

Decision and reasons

14. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> *2(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –*
>
> *(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
>
> *(b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;*
>
> *(c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.*

15. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No.2841).

16. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

17. The panel heard from the appellant that while the factory had always been located next to a school, the access issues were exacerbated eight years ago when the school changed its drop off and pick up procedure. The change that occurred was the gate parents were to pick their children up from changed to the gate on Kitchener Road, next to the appeal property.

18. The appellant described to the panel that during the times parents dropped their children off at school and picked their children up after school, cars would park across the entrance to the appeal property which blocked the access. The access to the road was also reduced during these times due to the number of cars that meant large lorries could not drive down the road.

19. The panel heard that prior to this change in the school's procedure, lorries delivering or collecting goods from the appeal property could park directly outside the factory doors and park across the front of the school. The school now placed cones in front of its gates between 8am and 10:30am and 2pm and 4:30pm so there is no longer room for lorries to easily access the factory during these times.

20. The panel considered the above information from the appellant and agreed that there is disruption to the access of the appeal property, however it is limited to certain periods on weekdays and only during school terms.

21. It is the panel's view that as the school changed its procedure in 2013, this would have been accounted for in the current rating list. It is of the opinion that the Valuation Officer considered this change when she increased the allowance for access from 5% to 10% for the current rating list.

22. The panel reviewed the comparable properties provided by Mr Mitchell. The evidence provided for the comparable properties were the current valuations showing the level of allowance each had been awarded. Mr Mitchell advised the panel that, in his opinion, they do not have the same level of access issues as the subject property.

23. The panel held that with no further descriptions or photos of the comparable properties to compare against the appeal property, little weight could be given to them. It could only note the level of allowance each property received.

24. The appeal property already had an allowance of 7.5% for being located in a non-estate area, therefore the panel did not find that any further allowance should be awarded for access due to the property being in a residential street.

25. The panel heard from the respondent that the allowance for access had been increased to 10% following the challenge proposal, resulting in total allowances of 17.5%. The panel considered the comparable properties provided by the appellant had permanent access issues which resulted in higher end allowances. Those at the appeal property were limited to specific times and weeks during the school year therefore the end allowance of 10% was not an unreasonable level of allowance for the appeal property.

26. Consequently, based on the evidence before them, the panel found that the current entry in the 2017 list was not unreasonable and therefore, the appeal is dismissed.

Date: 5 March 2021

Appeal number: CHG100096166