THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; roadworks in locality; comparable properties; appeals allowed in part.

RE: European Watercare Limited, Regal House, South Road, Harlow CM20 2BD
Greenbrook Electrical PLC, Building 62, West Road, Harlow, Essex CM20 2BG
Hoddesdon Distribution Ltd, Unit F1, River Way, Harlow, Essex CM20 2DP
Smart A V (U K) Limited, 5 Central Road, Harlow, Essex CM20 2ST
Morplan Ltd, River Way, Harlow, Essex CM20 2TS
4 Aces Ltd, Unit G2, River Way, Harlow, Essex CM20 2DZ

APPEAL NUMBERS: CHG100115334, CHG100115322, CHG100115311, CHG100115305, CHG100115287 & CHG100121054

BETWEEN: European Watercare Limited, Greenbrook Electrical PLC, Hoddesdon Distribution Ltd, Smart A V (U K) Limited, Morplan Ltd & 4 Aces Ltd — Appellant

and

Ms J Moore (Valuation Officer) — Respondent

PANEL: Mrs X Holt (Chairman)

Mr P Hickson

CLERK: Mrs C McAvoy

REMOTE HEARING No.3 on 12 May 2021

APPEARANCES:
Mr M Clayton of Altus Group on behalf of the appellant as advocate and expert witness.
Mr D Walker on behalf of the respondent as advocate.
Mr A Singh on behalf of the respondent as expert witness.

Summary of decisions

1. Appeals allowed in part; an end allowance of 2.5% was awarded for the period of 1 January 2018 until 12 October 2020.

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. This hearing related to six appeals, all of which were made following a challenge against the 2017 rating list entries, on the basis that the assessments had been adversely affected by roadworks caused by the A414 Edinburgh Way/Cambridge Road junction improvement scheme.

5. Challenges had been submitted by the appellants representative. An end adjustment of 10% was originally proposed to account for the material change of circumstances (MCC), but the proposal was later reduced to 5%.

6. The appeal properties are all located within an industrial area of Harlow. The properties are currently shown in the list at:

   - European Watercare Limited, Regal House, South Road- £101,000 RV
   - Greenbrook Electrical PLC, Building 62, West Road- £142,000 RV
   - Hoddesdon Distribution Ltd, Unit F1, River Way- £234,000 RV
   - Smart A V (U K) Limited, 5 Central Road- £126,000 RV
   - Morplan Ltd, River Way- £187,000 RV
   - 4 Aces Ltd- Unit G2, River Way- £207,000 RV

7. Mr Clayton appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration included a statement that he was instructed under a contingency based fee.

8. Within his written statement, Mr Clayton also declared 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 the client's case.

9. 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).

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

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.

Preliminary Matter

12. The Valuation officer (VO) raised an objection to the inclusion of photographs within the expert witness report provided by Mr Clayton. Mr Singh submitted that the photographs had not been included within the check or challenge exchange.

13. The panel had regard to the VTE’s consolidated practice statement, in particular Part 2 PS2(b) in which paragraph 16 states,

    ‘….. Similarly, there is no need to include photographs and plans within the submission to the Tribunal, but these can be provided at the hearing if the parties agree that they represent a true reflection of the circumstances at the material day. Any disputes over the plans or photographs will be decided by the panel at the hearing’

14. The VO confirmed that he was not disputing the fact that the photographs represented a true reflection as at the material date.

15. In accordance with the practice statement and considering its requirement to place a value on the property as at the material date, the panel allowed the photographs to be included.

Issues

16. The issue concerned the RV of the appeal properties and, specifically, the extent, if any, to which their assessments were affected by roadworks caused by the A414 Edinburgh Way/Cambridge Road junction improvement scheme. The appellant sought an allowance of 5% for each assessment. The VO believed the current rating list entries to be reasonable.

Evidence and submissions

17. To comply with the evidential restrictions imposed on such appeals, in accordance with regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the parties agreed, in writing, for the six appeals to be consolidated and for the evidence held for each appeal to be admissible.

18. Prior to the hearing, the Clerk to the Tribunal sought clarification of the material date. In accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268), the material day is the date on which the ratepayer confirms the accuracy of the information included in check.

19. The VO stated that the accuracy was confirmed by the ratepayer on the same date in which the check was submitted. The VO provided both; a copy of the letters issued to the ratepayer and an email confirming the material date was agreed by both parties.

20. For property Unit G2, River Way, the material date is 20 August 2019. For the other five listed appeals the material date is 8 May 2019.

21. A bundle of evidence was provided for each of these appeals, which comprised the reasons for the challenge to the appeal property's rating assessment and subsequent appeal. It also included the information exchanged between the parties during the challenge stage of the process; details of the roadwork scheme; comparable properties; client testimonial; location plans; photographs; reference to caselaw and the definition of rateable value.

22. At the hearing, the appellant's representative sought a reduction of 5% as he considered that the appeal properties had been negatively affected by the roadworks. He proposed the following revised rateable values:

    - European Watercare Limited, Regal House, South Road- £96,500 RV
    - Greenbrook Electrical PLC, Building 62, West Road- £135,000 RV
    - Hoddesdon Distribution Ltd, Unit F1, River Way- £222,000 RV
    - Smart A V (U K) Limited, 5 Central Road- £120,000 RV
    - Morplan Ltd, River Way- £178,000 RV
    - 4 Aces Ltd, Unit G2, River Way- £196,000 RV

23. The VO submitted that, in his opinion, the appeal properties are too remote from the works and that the disruption caused by the congestion is not severe enough to warrant an allowance. He sought dismissal of the appeals.

Decision and reasons

24. Matters which constitute a material change of circumstances are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988.

25. When valuing having regard to the material day, the valuation arrived to, has to conform with the rateable value definition provided in paragraph 2(1) to Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999:

> “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.

26. Therefore, having regard to the above, in reaching its decision, the panel considered, would the material change in circumstances affect the hypothetical tenants bid? In doing so, economic factors must be considered as at the antecedent valuation date of 1 April 2015, whereas the physical factors are as they existed on the material date.

27. The panel considered the intensity of the roadworks. Details of the works being undertaken was provided by way of an extract from Essex County Council. This stated the following:

> ‘Essex County Council is developing a series of improvements in Harlow and funding has been secured to improve the A414 Edinburgh Way/Cambridge Road Roundabout. Main works include: - Dual carriageway for Edinburgh Way between Cambridge Road and River Way Roundabouts. - Upgrade of the A414 Cambridge Road Roundabout. - Improve traffic signals at the East Road junction with Edinburgh Way, maintaining a crossing point on the A414 for pedestrians and cyclists. - With the exception of East Road, vehicles that access premises on Edinburgh Way will be prohibited from turning right due to the new central reservation. Vehicles at the East Road junction will be able to turn in both directions at the traffic signals on completion of works.’

28. The works commenced on 1 January 2018 (this being the effective date for the appeals) and concluded on 12 October 2020. Having regard to the works described, the panel found the roadworks to be substantial both in duration and intensity.

29. The VO argued that at the material date, as the works had been in progress for over 16 months, in his opinion the hypothetical tenant and landlord

negotiation would have considered that the works were coming to an end. Through questioning, it was established that the VO had not visited the locality on or around the material date. He visited in July 2020, when the work was within its final phase. The panel was not persuaded by this contention, given that, as at the material dates, (8 May 2019 and 20 August 2019), the roadworks continued for over a year.

30. The panel was presented with, what the appellant argued was, two key comparable properties; Formula Once Autocentre, Edinburgh Way, Harlow, Essex, CM20 2DH and 2/3, North Place, Edinburgh Way, Harlow, Essex, CM20 2SL. Following a challenge made to the VO, the VO reached an agreement with Altus group, altering the assessments to account for the disruption caused by this MCC. An allowance was applied of 10% and 7.5% respectively.

31. Formula One Autocentre is situated on Edinburgh Way. The appeal properties are located off Edinburgh way, as is 2/3 North place. The subject properties and 2/3 North place are accessed via River Way roundabout and were all affected by the same diversions. The diversions put in place were of approximately 2 miles. Mr Clayton accepted that properties off Edinburgh Way would be impacted to a lesser degree, stating that this was the reason he sought a 5% allowance.

32. Formula One Autocentre's trade figures for 2017, 2018 and 2019 were provided showing a decrease in trade each year. Mr Clayton argued that this demonstrated a fall in trade caused by the MCC. He was not able to provide trade figures for the subject properties, as due to the nature of the businesses, there is no walk-in trade. Mr Clayton stated that no trade figures or rent reductions had been submitted for 2/3 North Place; this was not rebutted by the VO. The panel attached little weight to the trade figures, preferring the client testimony provided by European Watercare Limited, which outlined the affect the MCC had on the business. The panel found the issues described would clearly have had an impact on the day-to-day running of the business, it impacted staff and visitors; resulted in late starts and early finishes, meaning less sales time.

33. The panel did not accept the VO's comparison to general congestion typical to industrial areas, the substantial roadworks would cause greater congestion and inconvenience. The panel agreed that the congestion would have been more considerable at peak times, however, the roadworks were not limited to this time.

34. The VO asked if rent reductions had been conceded by the landlords in the locality. The panel was not presented with details of any rent reductions, however, the panel found that this was not decisive. Three of the appeal properties were freehold, and the panel accepted Mr Claytons view, that existing landlords were not compelled to reduce rent. Therefore, existing tenants would have less bargaining power than a hypothetical tenant fresh to the scene.

35. For the reasons stated, the panel found that the substantial road works would have adversely affected the appeal properties. The panel considered that, as at the material dates, the impact caused would affect the hypothetical tenant/landlord rental negotiations. However, due to the location, the extent of the disruption was reduced and therefore, the panel was not persuaded that a 5% allowance would be appropriate.

36. In view of the foregoing, the panel found that a 2.5% allowance was reasonable and determined the assessments as follows:

    European Watercare Limited, Regal House, South Road, Harlow CM20 2BD
    Rateable Value £99,000 for the period of 1 January 2018 to 12 October 2020

    Greenbrook Electrical PLC, Building 62, West Road, Harlow, Essex CM20 2BG
    Rateable Value £139,000 for the period of 1 January 2018 to 12 October 2020

    Hoddesdon Distribution Ltd, Unit F1, River Way, Harlow, Essex CM20 2DP
    Rateable Value £228,000 for the period of 1 January 2018 to 12 October 2020

    Smart A V (U K) Limited, 5 Central Road, Harlow, Essex CM20 2ST
    Rateable Value £123,000 for the period of 1 January 2018 to 12 October 2020

    Morplan Ltd, River Way, Harlow, Essex CM20 2TS
    Rateable Value £182,000 for the period of 1 January 2018 to 12 October 2020

    Aces Ltd- Unit G2, River Way, Harlow, Essex CM20 2DZ
    Rateable Value £202,000 for the period of 1 January 2018 to 12 October 2020

37. The appeal was therefore allowed in part.

Order

38. Under the provisions of regulations 38(4) and 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entries in the rating list to show the following:

    European Watercare Limited, Regal House, South Road, Harlow CM20 2BD
    Rateable Value £99,000 for the period of 1 January 2018 to 12 October 2020

    Greenbrook Electrical PLC, Building 62, West Road, Harlow, Essex CM20 2BG
    Rateable Value £139,000 for the period of 1 January 2018 to 12 October 2020

    Hoddesdon Distribution Ltd, Unit F1, River Way, Harlow, Essex CM20 2DP
    Rateable Value £228,000 for the period of 1 January 2018 to 12 October 2020

    Smart A V (U K) Limited, 5 Central Road, Harlow, Essex CM20 2ST

Rateable Value £123,000 for the period of 1 January 2018 to 12 October 2020

Morplan Ltd, River Way, Harlow, Essex CM20 2TS
Rateable Value £182,000 for the period of 1 January 2018 to 12 October 2020

Aces Ltd- Unit G2, River Way, Harlow, Essex CM20 2DZ
Rateable Value £202,000 for the period of 1 January 2018 to 12 October 2020

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

40. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal’s decision. The refund will take around six weeks to process.

Date: 18 May 2021

Appeal numbers: CHG100115334, CHG100115322, CHG100115311, CHG100115305, CHG100115287 & CHG10012105