THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; secondary aggregate processing plant and premises; recycling centre; scope of proposal; evidence to be considered; split of assessment; rental evidence; moveable plant and machinery; Decision: appeal dismissed.

RE: Nelsons Yard, Homestead Farm, Penton Corner, Andover, Hampshire SP11 0QX

APPEAL NUMBER: CHG100147184

BETWEEN:	Nelson Plant Hire Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mrs L Bryning (Presiding Senior Member) Miss S Ballentine (Senior Member)
CLERK:	Mrs A Sloan
HEARING:	Remote hearing No.3 on 25 January 2022
APPEARANCES:	Mr S Nelson (for the Appellant company) Ms K Young (for the Respondent)

Summary of decision

1. Appeal dismissed. The rateable value at £28,750 was confirmed with effect from 12 March 2018.

Introduction

2. This appeal had been brought in respect of Nelsons Yard, Homestead Farm, Penton Corner, Andover, Hampshire SP11 0QX (the “appeal property”) which was entered in the 2017 rating list as a ‘Secondary aggregate processing plant and premises’ at a rateable value of £28,750, effective from 12 March 2018.

3. The challenge process began when the Appellant's agent made a proposal to the Valuation Officer (VO) on 26 November 2019 disputing the accuracy of the rateable value shown in the 2017 rating list. The VO decided that the proposal was not well founded and issued a decision on 3 August 2020 maintaining the existing entry in the rating list. Appeals to the Tribunal must be made within four months of the decision notice to comply with regulations. Mr Nelson lodged his appeal with the Tribunal on 1 March 2021. As the VO's Challenge decision notice did not set out the appeal process and associated deadlines for the Appellant, he was granted permission to lodge a late appeal by Mr A Clark, Vice President of the Tribunal.

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 ("the Procedure Regulations"). 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. This hearing was conducted via video conference using Microsoft Teams.

6. With the agreement of the parties, the panel decided to vary normal procedure and invite the Respondent to present her case first as it was felt that this would assist the Appellant and the panel.

7. 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 issue

8. Before the hearing began, Mr Nelson asked the panel to clarify what matters could be considered in this appeal as the VO had lodged an objection in October 2021, after the appeal was registered, asking for the appeal to be struck out. Mr Nelson wanted the panel to consider a split of the existing assessment to reflect different companies operating on the site. The panel was aware, from the email exchanges in October, that the VO had highlighted that Mr Nelson sought in his appeal to the Tribunal to raise issues that were not contained in his proposal (Challenge) to the VO.

9. The grounds under which an appeal can be made to the Tribunal are set out in the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268). Regulation 13a states –

   13A Making an appeal to the VTE

   > *(1) A proposer may appeal to the VTE on either or both of the grounds set out in paragraph (2) if—*
   >
   > *(a) the VO has decided under regulation 13 not to alter the list;*

(b) the VO has decided under regulation 13 to alter the list otherwise than in accordance with the proposal; or

(c) the VO has not made a decision under regulation 10 or 13 and—

(i) the proposal is not withdrawn under regulation 11;

(ii) there is no agreement under regulation 12; and

(iii) the period of 18 months beginning with the date on which the proposal was made (or any longer period agreed in writing by the VO and the proposer) has elapsed.

(2) The grounds are—

(a) the valuation for the hereditament is not reasonable;

(b) the list is inaccurate in relation to the hereditament (other than in relation to the valuation).

10. The VO had argued that the proposal made by the Appellant's agent was on ground (2)(a) and made no reference to a split of the assessment but instead argued that the rateable value should reflect the rent of £14,956 agreed on the appeal property in 2015. Accordingly, a Challenge Decision Notice was issued addressing that point and the VO objected to new arguments being brought forward at appeal stage. Ms Young confirmed that this remained the VO's position.

11. The panel agreed with the VO that the only evidence to be considered in this appeal is that which was exchanged between the parties at the Challenge stage of the process. The decision under appeal is the Decision Notice dated 3 August 2020 and it was open to the Appellant to make a new proposal to the VO regarding his request to split the site. If that proposal were unsuccessful, he would have a further right of appeal to this Tribunal. The panel therefore determined that only evidence exchanged prior to the Challenge Decision could be considered in this appeal.

Issue

12. The dispute concerned the correct valuation for the appeal property in the compiled 2017 rating list.

Evidence and submissions

13. The appeal to the Tribunal was made by Mr Nelson as a lay Appellant because he was unable to contact his agent, who he understood was no longer trading. The documentation provided with the appeal consisted of the grounds of appeal, the Challenge Decision Notice, the VO's valuation itemising the different parts to the assessment, a site plan and some email exchanges between the parties after the Challenge Decision had been issued. The clerk asked the parties at the beginning of the hearing if they agreed that all evidence exchanged was in the appeal submission or if any was missing. Both parties confirmed nothing was missing.

14. However, as the hearing progressed, the parties referred to the lease on the appeal property and it became apparent that this had not been provided with the appeal submission by Mr Nelson. The Tribunal's standard directions state –

    Appeal Information and evidence

    1. The appeal will be decided on the basis of the documentation provided at the time the appeal is made (unless new evidence is allowed by the Tribunal). It is therefore important *that evidence and information that either party wishes to rely on when the appeal is decided is provided with the appeal. As the respondent does not submit his own evidence and information to the Tribunal but relies on copies provided by the appellant, it is important that the respondent has an opportunity to examine what has been submitted.*

2. *Where the respondent considers information and evidence he provided when the proposal was being considered is missing from the appeal documentation, or that evidence or information has been included with the appeal that was not provided by the parties when the proposal was being considered, he has an opportunity to point this out to the Tribunal and the appellant within four weeks of receiving the appeal details.*
3. *If the appellant objects to missing documentation being provided then it is important that they do so within two weeks of being notified by the respondent. They must explain why they object, with any supporting evidence. If the appellant does not object within two weeks the Tribunal and respondent can assume the material is not disputed and forms part of the appeal documentation.*

15. The Tribunal's records showed that, although the VO had raised an objection to the Appellant introducing new grounds to his appeal in October 2021, no missing documents were provided. The clerk displayed the evidence on screen that had been received by the Tribunal with the appeal submission and provided to the panel. Both Ms Young and Mr Nelson agreed that there were documents missing.

16. The panel was aware that Regulation 17a of the Tribunal's Procedure Regulations places restrictions on new evidence not submitted with the appeal as follows -

17A. Admission of new evidence on NDR appeal

(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—

(a) that evidence—

(i) is provided by a party to the appeal;
(ii) relates to the ground on which the proposal was made; and
(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence.

17. The panel briefly adjourned while both parties provided, by way of email to the clerk, written confirmation that they agreed to the admission of additional documentation that should have been included in the appeal submission and formed part of the Challenge. As this fulfilled part (b) of the above regulations, Ms Young then provided copies of the Challenge form and the lease for the appeal property.

Decision and reasons

18. The appeal property is valued as a secondary aggregate recycling plant using a contractors basis valuation. The proposal made by the Appellant's agent argued that the appeal property should be valued by reference to the rent agreed from 1 June 2015 for £14,956.

19. Ms Young explained that although she had considered the lease provided, which was dated 27 September 2013 but effective from 1 June 2015, she placed less weight on it because the information supplied on the Form of Return (FOR) contradicted its contents. She stated that the FOR stated that the rent included non-domestic rates and insurance. Mr Nelson highlighted to the panel the relevant clauses in the lease, where it was confirmed that rates and insurance were not included in the rent and stated that his agent had completed the FOR on his behalf so he could not clarify why that document contradicted the terms of the lease.

20. The panel understood from Ms Young that all similar recycling centres nationally are valued using the contractor's basis of valuation. She explained that the lease on the appeal property could not be tested by comparison with other similar sites as rental evidence was not available in the locality on which to compare. She therefore felt that the appeal property should be valued consistently with other similar sites nationally as that one rent did not demonstrate the open market.

21. After considering the lease, the panel noted that it was effective from 1 June 2015 but the rent was negotiated and the agreement signed nearly two years earlier in September 2013. The Antecedent Valuation Date (AVD) for all 2017 rating list appeals is 1 April 2015 and the panel concluded that a rent negotiated in 2013 would have limited use in demonstrating the market in 2015. The panel also noted that clause 9 showed that the landlord was responsible for arranging insurance but the tenant would pay the cost of that by way of 'insurance rent'. This suggested that the lease was not in line with the statutory definition of rateable value and the rent would require some adjustment. In the absence of any rental evidence on similar sites in the locality with which to compare the rent on the appeal property, the panel found that a valuation using contractors' basis was consistent with other similar sites and it was not unreasonable to use the same method for Nelsons Yard.

22. Mr Nelson also raised concerns with the buildings and items of plant and machinery included in the valuation. Reference was made to planning permission from Hampshire County Council that concern the demolition and replacement of buildings on the site. The planning consents were not provided to the panel but it noted from the Challenge decision that these were granted after the lease was agreed between landlord and tenant, so the relevant buildings were unlikely to be included in the rent. Ms Young explained that this meant that the buildings must be included as an addition to the land value when calculating the hypothetical rental bid.

23. It was Mr Nelson's contention that many of the buildings, plant and machinery included in the valuation are temporary in nature and should not attract a value. He stated that the site had been inspected by the VO but that would only provide a 'snapshot in time' of the site and items of plant and machinery were moved on occasion. Ms Young contended that the buildings and civil plant (i.e., aggregate bays and surfacing etc.) had been in situ for a number of years and are designed to be in place for a significant duration. She referred to the Upper Tribunal case of *Elliott's Bricks Ltd v Hartley (VO)* [1990] which found that "*a thing which is not permanently in one place is not a structure but it may be 'in the nature of a structure' if it has a permanent site and has all the qualities of a structure, save that it is on occasion moved on or from a site*". Ms Young felt that items such as storage containers would therefore be considered 'in the nature of a structure' and should be included in the valuation.

24. The panel was aware that very little evidence had been provided in this appeal. There were no photographs of the site and no evidence had been provided to demonstrate that the items

of plant and machinery disputed were moved with any frequency. Mr Nelson highlighted the problems he had faced in getting the VO to engage with him and the difficulty of navigating the appeal process without professional representation. Whilst the panel had some sympathy with the Appellant, it could only consider the evidence provided by the parties in this appeal.

25. After considering the evidence submitted by the parties, the panel placed little weight on the rent agreed on the subject property. The rent had been negotiated some time before the AVD and, without other rents on similar sites to compare, it could not be taken in isolation to demonstrate the open market value of the site at the statutory valuation date. The VO's position on moveable plant and machinery was supported by case law and the Valuation for Rating (Plant and Machinery) (England) Regulations 2000. Mr Nelson had provided no detail of the items he considered to be moveable plant and machinery and their use for the panel to consider.

26. In appeals of this nature, the burden of proof lies with the Appellant to demonstrate that the valuation is inaccurate. On the limited evidence presented, the panel was satisfied that the existing entry in the valuation list was not unreasonable or inaccurate and the appeal was therefore dismissed.

Date: 8 February 2022

Appeal number: CHG100147184