THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; warehouses; whether one hereditament or two; appeal allowed.

RE: Units 1 and 4 Clearwater Business Park, Welsh Road East, Southam, Warwickshire CV47 1NA

APPEAL NUMBER: CHG100248858

BETWEEN:	Shield Engineering (Syston) Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr F Stuart (Chairman)
Mr P Phelps

CLERK: Mr D Mulgrew

HEARING: Remote hearing No.2 on 15 December 2021

APPEARANCES: Mr R Howes (Bird and Howes LLP) (Appellant's representative)
Mr D Murphy (Respondent's representative)

Summary of decision

1. Appeal allowed. The panel decided that the 2017 rating list entries must be merged from 1 October 2018.

Introduction

2. This appeal has been brought in respect of Units 1 and 4 Clearwater Business Park, Southam, Warwickshire CV47 1NA.

3. The challenge process began when the appellant, Shield Engineering (Syston) Ltd, made a proposal to the Valuation Officer (VO) on the grounds

that entries in the 2017 rating list for Units 1 and 4 should be merged from 1 October 2018 at rateable value (RV) £111,000.

4. The VO has not merged the entries and an appeal was made to the Valuation Tribunal for England (VTE).

5. The VO had changed the entries in the rating list following the challenge proposal. Those entries were currently:

   - Unit 1 – warehouse and premises, RV £39,000 from 1 October 2018

   - Unit 2 – warehouse and premises, RV £77,500 from 29 September 2018

6. The President of the 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 relevant legislation[1]. The VTE may determine the form of any hearing.

7. Therefore, in pursuance of the relevant regulation[2] 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.

8. The hearing was held using a Microsoft Teams conference call and both parties joined using the full video and audio link. There was no technological disruption to the hearing and both parties were able to fully present their respective arguments.

9. 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 item of evidence, should not be construed as it having been overlooked.

Issues

10. The issue considered was whether Units 1 and 4 formed a single hereditament.

Evidence and submissions

11. The panel was presented with the correspondence exchanged between the parties which included the check documentation, the challenge proposal, the VO's initial response and final decision. The documentation included plans,

[1] 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).
[2] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

photographs and a letter dated 1 October 2018 regarding the access arrangements on site.

12. Reference was made to the VOA Rating Manual Section 3 – “part 2 – identification of the hereditament” which included amongst other things commentary on:

- The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018

- *Woolway (VO) v Mazars* [2015] RA 373

- *Johnson (VO) v H&B Foods Ltd* [2014] UKUT 0458 (LC)

13. Mr Howes stated that he was appointed on a contingency fee basis. In giving expert evidence, he 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 his client’s case.

14. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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).

15. It was therefore appropriate for the panel hearing the evidence to consider the ‘expert’ evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

16. Mr Howes asked the panel to merge the two rating list entries into a single entry at RV £111,000 from 1 October 2018.

17. Mr Murphy was a late replacement for the VO and had not previously been involved in the appeal. He confirmed that if the panel allowed the appeal the VO was satisfied that the RV should be £111,000 from 1 October 2018. However, he asked the panel to dismiss the appeal on the grounds that insufficient evidence had been provided to show that the area between Units 1 and 4 was not an estate road.

Decision and reasons

18. The panel wished to thank the representatives for both parties for the clear way in which they presented their arguments and evidence.

19. Units 1 and 4 are detached units on a small industrial estate in a rural location. The appellant is the freehold owner of the whole estate. There are

two other units on the estate (Units 2 and 3) which are let by the appellant. Those units were already let when the appellant acquired the freehold.

20. The parking for Units 2 and 3 was to the south of those units.

21. The satellite image of the estate provided by Mr Howes has shown that a line could be drawn around Units 1 and 4.

22. The VO had resisted the appeal arguing that Units 1 and 4 were separated by an access road used by the occupiers of numbers 2 and 3. The VO believed that there may be an easement which entitled the occupier of Units 2 and 3 to use the area between Units 1 and 4 as access. However, Mr Murphy accepted that no evidence had been presented to support that view.

23. The panel found the letter from Mr C Shield to the occupier of Units 2 and 3 to be persuasive. This was dated 1 October 2018 and referred to their meeting in which they agreed that access to the site for Units 2 and 3 would be limited to the western side of the property, so that they could operate safely on site. The access on the western side appeared from the satellite image to be sufficient to meet the needs of the occupier(s) of Units 2 and 3.

24. The panel also had regard to Mr Howes's statement that products were moved by the appellant between Units 1 and 4.

25. The panel did not find the VO evidence to be sufficient; in particular the panel noted that the VO had made assumptions and had not contacted the occupier of Units 2 and 3 to verify the arrangements, either through a site visit or by a telephone call.

26. Taking all of the foregoing into account, the panel was satisfied that the geographical test had been met and that Units 1 and 4 were contiguous. The appeal was thus allowed.

Order

27. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to merge the entries in the rating list at rateable value £111,000 with effect from 1 October 2018.

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

Refund of appeal fee

29. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date: 22 December 2021 **Appeal number:** CHG100248858