THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; quarry and premises; scope of proposal; evidence to be considered; royalties and allowances agreed on 2010 list appeal; rental evidence; moveable plant and machinery; Decision: appeal dismissed.

RE: Glebe Quarry, Wilsford Heath, Ancaster, Grantham, Lincolnshire, NG34 7SF

APPEAL NUMBER: CHG100413910

BETWEEN:	Glebe Stone Sales Ltd	Appellant
	and	
	Jo Moore (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 T Smith (owner of the Appellant company) Ms K Young (for the Respondent)

Summary of decision

1. Appeal dismissed. The rateable value at £14,000 was confirmed with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of Glebe Quarry, Wilsford Heath, Ancaster, Grantham, Lincolnshire, NG34 7SF (the “appeal property”) which was entered in the 2017 rating list as ‘quarry and premises’ at a rateable value of £17,250, effective from 1 April 2017. Following an annual revision, this figure was reduced on 23 August 2017 to £14,000 rateable value from 1 April 2017.

3. The challenge process began when the Appellant made a proposal on 21 September 2020 to the Valuation Officer (VO) on the grounds that the accuracy of the rateable value shown in the 2017 rating list was disputed. The challenge proposed a rateable value of £14,420 from 1 April 2017. The VO decided that the proposal was not well founded and issued a decision on 16 June 2021 maintaining the existing entry in the rating list, at £14,000 with effect from 1 April 2017 following the annual revision. An appeal against that decision was lodged with this Tribunal on 16 September 2021.

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. 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. There was some background noise experienced, but this was identified during the hearing and resolved. The panel was satisfied that both parties were able to participate in the hearing.

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

Evidence and submissions

8. The documentation provided with the appeal included the grounds of appeal, a copy of the Challenge submission, the VO's existing valuation and the Appellant's proposed valuation submitted under the Challenge at a rateable value of £11,935, the Challenge Decision Notice, email exchanges between the parties, extracts from relevant legislation and case law and photographs taken on site.

Decision and reasons

9. The appeal property is a quarry that works Ancaster limestone and is valued using the Hybrid Contractors Basis. The valuation is based on the royalties applied to the output from the quarry. The proposal made by the Appellant stated that the rateable value in the 2017 list was wrong by reason of a decision of a tribunal or court. The Appellant referred to the Lands Tribunal decision on Moneymore Farm, Sutton Coldfield and stated that the Tribunal had given a 25% allowance to the mineral royalty because it was accepted there was not a balance of bargaining power between the parties. Mr Smith pointed out that there are no comparable hereditaments showing similar levels of royalty payments in Lincolnshire and he felt that the actual royalty rents on the subject property are higher than open market and

should be adjusted with allowances. He argued that the VO had accepted that some adjustment was required by applying a 12.5% allowance in her valuation on some categories of stone. He considered that the circumstances at Moneymore Farm were similar to those at the appeal property and therefore 25% allowance should be given on all royalties.

10. Ms Young stated that in the Moneymore Farm case, *Hodgkinson (VO) v ARC Limited* [1996] RA 1, the Tribunal applied a 25% allowance to the mineral royalty to reflect the fact that there was not a balance of bargaining power between the occupier and landlord when the lease was negotiated. She stated that the current lease on the subject property dates from 2016 and is therefore significantly after the antecedent valuation date (AVD) of 1 April 2015. Ms Young explained that, although the lease was the starting point, the current valuation is based on the allowances agreed under the Consent Order for the Upper Tribunal appeal against the 2010 rating list entry. The same royalty values had been used as those in the 2010 list but with a 2.5% uplift to reflect an increase between the AVD for the 2010 list (1 April 2008) and the 2017 list (1 April 2015).

11. The panel understood from Mr Smith's submission that a previous occupier, The Rare Stone Group Limited, fell into financial difficulties and the landlord agreed to assign the lease to Glebe Stone Sales Ltd, the Appellant company. He contended that the Appellant's lease was therefore the result of the surrender of an existing lease and the royalties were doubled. He stated that none of the assignments at the appeal property were subject to the open market and no third-party bidding was involved. He questioned why a landlord would not advertise the lease on the open market to achieve the best rent, unless he could get a higher amount from an assignment of the lease. Mr Smith stated that it was imperative that the ratepayer purchase plant in order to continue business and this placed the landlord in a far stronger negotiating position than if the property had been placed on the open market. He therefore considered that a 25% allowance should be applied on all output in line with the *Arc Limited* case.

12. Mr Smith also highlighted that no rental evidence had been provided by the VO to demonstrate that the royalties on the appeal property were representative of the open market. He stated that there is a quarry adjacent to the appeal property and two other quarries in the locality around a mile away. He was of the opinion that the VO should consider leases on those assessments. Ms Young explained to the panel that the proposal (Challenge) made by the Appellant had not mentioned any dispute on the level of royalties but instead sought an increased allowance of 25% on all output. The only other point mentioned on the proposal concerned the valuation of a Portaloo on site, which Mr Smith stated should not be valued. Ms Young stated that her decision notice had addressed these points and she did not consider it was necessary or appropriate to disclose rental evidence on other sites when the royalty level had not formed part of the proposal.

13. The panel noted that the lease on the appeal property was assigned rather than negotiated as an open market rent and that Mr Smith had contended no increase was made to the royalties despite three yearly reviews. It seemed to be common ground that the royalties had increased considerably when the lease was assigned, and both parties were contending that an allowance should be given in the valuation. However, the parties could not agree on the level of allowance. Mr Smith contended that a 25% allowance should be given on all output. Ms Young pointed out that, although in theory there is nothing to prevent allowances on all output, she was not aware of any other quarries in the 2017 list where this was the case, and this was not agreed under the consent order from the 2010 list appeal. She therefore considered 12.5% on just the Ancaster stone was appropriate.

14. After considering the evidence presented, the panel found that the level of royalties had not been questioned in the proposal and no evidence had been exchanged between the parties on rental evidence from other nearby quarries. Therefore, the panel could only examine the allowances in dispute.

15. Mr Smith relied upon the *Arc Limited* case and suggested that a similar imbalance between landlord and tenant was demonstrated by the circumstances in the subject appeal. However, the panel had little evidence before it to support the Appellant's case on this point. No copy of the decision in *Arc Limited* had been provided and no copy of the appeal property's lease or evidence of negotiations between the landlord and tenant were available to the panel. Mr Smith contended that the landlord was in a far stronger position in assigning the lease and this resulted in higher royalties. Ms Young countered this argument by highlighting that an assigned lease may be of value to the landlord as there was no disruption in cash flow with a tenant ready to take over immediately from a failing business. Therefore, it did not necessarily follow that the royalties would be increased above the open market value in this situation.

16. As the level of royalties had not been raised in the proposal, the panel found that the royalties shown in the valuation reflected the rent agreed on the appeal property. It then considered the allowances proposed by the parties and found that the 12.5% in the VO's valuation was not unreasonable. It understood that this allowance had been agreed between the parties for the 2010 list with the issue of a consent order. Although comparison between lists is not generally useful, as the valuation at the AVD is considered afresh with each list, the panel noted that the VO had made adjustments to the royalties to reflect a Retail Price Index (RPI) increase between the AVD dates. The allowance agreed previously to reflect any imbalance in negotiating power between landlord and tenant was considered by the parties to be fair at 12.5% in the earlier list and, if the situation had not changed, it was reasonable to carry this over to the 2017 list.

17. The second issue disputed in the Challenge was the Portaloo on site. Mr Smith argued that this was a moveable structure, with no services attached and should not be included in the valuation as an item of Plant and Machinery. Ms Young contended that the Portaloo had been on site during the life of the 2010 list and its inclusion had not been challenged. She highlighted that The Valuation for Rating (Plant and Machinery) (England) Regulation 2000 states, under Class 2 Table 2 (D) – Draining, that plant and machinery in relation to sewerage treatment should be included as part of the valuation. Ms Young also pointed out that the Portaloo is the only toilet facility on site so it should not be moved from the site without replacement. 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 Portaloos would therefore be considered 'in the nature of a structure' and should be included in the valuation.

18. The panel found that, although Mr Smith had stated that the Portaloo was moved from time to time in his Challenge submission, no detail or evidence of this was presented to the panel so that the degree of permanence or transience could be considered. It was therefore satisfied, based on the abovementioned Regulations and case law, that the Portaloo was rateable.

19. 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: CHG100413910