THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; Schedule 6 to the Local Government Finance Act 1988; proposed regeneration of the locality; appeal dismissed.

Re: Unit 1 Block A, 2-3 Lammas Road, Leyton E10 7QT

APPEAL NUMBER: CHG100423597

BETWEEN:	TLB International Ltd	Appellant
	and	
	M D Bunyan	Respondent
	(Valuation Officer)	

PANEL: Ms N E Talbot-Hadley (Senior Member)
Mr C J Sanford

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 7 April 2022

APPEARANCES:

Mr J P Brunas for the appellant company
Ms A Earl on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal dismissed; the panel made no change to the assessment in the rating list for Unit 1 Block A, 2-3 Lammas Road, Leyton E10 7QT.

Introduction

2. This appeal has been brought in respect of the following: Unit 1 Block A, 2-3 Lammas Road, Leyton E10 7QT which was entered in the 2017 Rating List (following a split) at £67,000 rateable value (RV), effective from 30 August 2019.

3. The appeal property was shown in the list as Warehouse and Premises. It was a two-storey single detached unit of steel portal construction located on an industrial estate in London Borough of Waltham Forest. The property was located within walking distance of Lea Bridge train station.

4. A proposal was made on the grounds that the appeal property had been adversely affected by the uncertainty caused by the proposed regeneration of the locality. Mr Brunas sought a reduction to £50,000 RV. The VO considered that there had been no physically manifest material change of circumstance and made the decision not to alter the assessment. A challenge decision notice was issued on 17 August 2021 to this effect.

5. Mr Brunas did not agree with the decision and consequently made an appeal to this Tribunal which was received on 11 November 2021.

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 concerned the RV of the appeal property and, specifically, the extent, if any, to which the assessment was affected by the proposed regeneration of the locality.

Evidence and submissions

8. The evidence bundle provided comprised of all the submissions exchanged between the parties as part of the challenge process. Mr Brunas had provided documents since the challenge decision which Ms Earl agreed to the admission of. As such, the evidence was admitted under regulation 17A (1)(b) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended). In summary, the bundle included the VO's decision; a Tenancy at Will; a memorandum of proposed letting; London Borough of Waltham Forest Lea Valley Eastside Vision document; a Feasibility Study; links to Waltham Forest's website to show planning and audit reports; and planning committee notes.

9. Mr Brunas sought a reduction to £50,000 RV on the grounds of a material change in circumstances to the locality. The proposal sought a reduction with effect from 15 November 2018, however, it was clarified that the property unit had been split. The property in which the check and challenge had been made was Unit 1 Block A, 2-3 Lammas Road, Leyton E10 7QT; this was shown in the rating list from 30 August 2019.

10. Ms Earl submitted that it was the VO's case that there was no physically manifest change in circumstances and therefore she sought a dismissal of the appeal.

Decision and reasons

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

'(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.

(7) The matters are—

(a) matters affecting the physical state or physical enjoyment of the hereditament,

…….

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and

…..'

12. When 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.

13. Therefore, having regard to the above, in reaching its decision, the panel considered, had there been a material change of circumstances and if so, would the material change in circumstances affect the hypothetical tenant's rental bid? In doing so, economic factors must be considered as at the antecedent valuation date (AVD) of 1 April 2015, whereas the physical factors are as they existed on the material date.

14. 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 the check. The material date for this appeal was 11 June 2020.

15. Mr Brunas, as landlord of the appeal property, submitted that since the launch of the Feasibility Study and London Borough of Waltham Forest Vision there has been much uncertainty surrounding the area. The panel was provided with copies of the Council's literature detailing the plans within his submission.

16. He stated that businesses do not like uncertainty and therefore this has impacted the rental value. He agreed with the £67,000 ratable value assessment (under usual circumstances) but submitted that the changes in the locality have impacted the rents which can be achieved. In support of his contention, he provided that the property was advertised at £67,000 in line with the RV, but he was unable to find tenants willing to take this on. He had provided a Tenancy at Will dated 4 August 2020, which was for £4,166.67 per month. He submitted that this was the maximum rent he could achieve and ordinarily he would be able to provide a long lease as opposed to agreeing a month-to-month tenancy. He stated that the term and rent in which he could achieve was due to the specific circumstances surrounding the locality. He considered that this rent supported his proposed RV of £50,000 as this demonstrated that this was the maximum annual rent which could be achieved.

17. In response to there being a physical change, he submitted that a commercial property at 97 Lea Bridge Road, diagonally opposite the appeal property's site, had been redeveloped into a mixed-use scheme of commercial at ground floor and flats above. He also submitted that there were physical changes as there were posters and signs put up regarding the Council's plans.

18. Ms Earl submitted that there a limited circumstances in which a proposal can be made which includes the right to make a proposal if the RV is considered inaccurate by reason of a material change in circumstances. The proposal was made on the grounds that the locality had been adversely affected by uncertainty caused by the proposed regeneration to the locality, this was agreed by Mr Brunas. As such, she stated, that the decision was limited to consideration of this change.

19. Ms Earl referred the panel to specific pages within London Borough of Waltham Forest's literature, expressing that it was a positive development for the area, that a key asset for Lea Bridge was 'strategic industrial location' and the plan for a mixed-use centre. It stated that the vision seeks to inspire and inform the growing developer and investor interest in the area and to accommodate the economic and residential growth envisaged for the area. These were all proposed plans and therefore her view was that at the material day there had been nothing physically manifest within the locality.

20. Furthermore, she submitted that the proposed regeneration incorporated continued industrial plans, and the industrial area where the appeal property is situated would be unaffected. She referred to the local plan provided which demonstrated that area would remain an industrial site and that there was no net loss of industrial space.

21. She submitted that this was a positive vision for the locality and the grounds of the proposal was based on the 'uncertainty', but she considers that there is no uncertainty as the plans were clear as to the proposed development and the continued industrial use.

22. The panel considered that the redevelopment across the railway line was clearly physical but noted that this had been done prior to the council's plans (2016). It was therefore complete as at the material date and did not fall under the scope of this appeal, which was based on the local Council's future vision.

23. Ms Earl was asked if there was a consideration for property blight due to proposed development, but she did not consider that this was relevant here. She submitted that all the plans and visions presented were theoretical. In her opinion, there was no tangible evidence to show that there had been a physically manifest change to the property or the locality.

24. The panel, having thoroughly considered the submissions, found that there was no compelling evidence presented to persuade it that there had been a material change in circumstances which had a significant or direct impact to the value of the appeal property. There had been no physical change to the locality at the relevant time and in the panel's view, posters and advertisements of future plans were not significant enough to support a reduction. The panel acknowledged that there was a degree of uncertainty concerning the details of the regeneration of this locality, but the overall plan was for a future beneficial change for the locality. It was stated that there were still discussions to be had and plans to be agreed and there had been no schedule of works provided or no details of any disruption to the appeal property. In any case, having regard to the grounds on which this proposal was made, the impact of the 'uncertainty' surrounding the locality, the panel found that it had been demonstrated that if the proposed plans do emerge, there was little uncertainty about the industrial area in which the appeal property sat. On the contrary, it was provided that this would remain industrial with surrounding areas being improved. As such, it was not persuaded that

the proposed plans would have affected the hypothetical tenant's bid as at the AVD.

25. In respect of the tenancy at will which had been agreed, the panel was aware that there can be multiple factors impacting the modern rental market, and the fact that a lesser rent can be achieved to what may have been achieved at the AVD, is not a sole reason to reduce the RV. The RV is set by looking at a basket of rents as at the AVD and economic factors must be considered as they existed at this time. The panel accepted that Mr Brunas has now rented the property for less, but rental markets can change and therefore the panel accepted Ms Earl's contention that this could be a true market rent based on the 2020 market, which had other factors impacting it, for example, it was during the COVID-19 pandemic. Mr Brunas had submitted that COVID-19 was not a major consideration here as the space is used for food distribution so was largely unaffected.

26. In conclusion, the panel considered that there could be many factors at play in respect of the 2020 agreement and for this appeal to be successful, the legal or persuasive burden rests with the appellant to prove that there has been a material change in circumstances and that this had adversely impacted the value of the appeal property. The panel was limited to the scope of the proposal and in the panel's view, the challenge made was premature. Only physical matters can be taken into account on this type of appeal. Ultimately, there were no obvious changes to the person on the street; there was not anything one could point a finger at to say something was changing in the locality, such as the commencement of a programme of works. As Ms Earl stated during the hearing, a proposal can be made on each material change of circumstances, consequently, Mr Brunas does have the option to submit further challenges, if for example, the redevelopment works commenced and were adversely impacting the appeal property.

27. In view of the forgoing, the panel dismissed the appeal.

Date: 29 April 2022

Appeal number: CHG100423597