THE VALUATION TRIBUNAL FOR ENGLAND

Summary of decision: non-domestic rates; 2017 rating list appeal; factory and premises; end allowance; flooding; appeal dismissed because the evidence showed that the existing valuation was reasonable.

RE: British Bung Manufacturing Co. Ltd, Lowland Works, West Yorkshire WF14 8LY

APPEAL NO: CHG100623013

BETWEEN:	British Bung Manufacturing Company Limited	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Miss E Antrobus (Senior Member) and Mr Nwosu

CLERK: Mrs H Beresford

REMOTE HEARING: 21 October 2021

APPEARANCES: Mr J Abbott of Altus Group (on behalf of the Appellant)
Mr H Hussain (Respondent's representative)

Summary of decision

1. The appeal was dismissed; the appeal property's assessment remained unaltered at £158,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: British Bung Manufacturing Co. Ltd, Lowland Works, West Yorkshire WF14 8LY (the appeal property), which was entered in the 2017 Rating List as factory and premises at £158,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 18 February 2021. The appeal to this Tribunal was made on 21 May 2021, following the VO's

Decision Notice of 7 May 2021, in respect of the appeal property. This is a compiled list appeal, so the material day is 1 April 2017.

4. The subject property is situated in Mirfield adjacent to the River Calder. The property is an industrial building built in 1981 with a total area of 7567.30m^2 in terms of main space (ITMS) and is valued at £25/m^2.

5. The appeal was made on the grounds that the subject property is, "prone to extensive flooding which has devalued the site to the point where it's now completely unsellable as it had been reduced in value from £12 million to £1.5 million". On this basis the appellant sought a 10% end allowance to reflect the effect of flooding.

6. 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.

7. 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.

8. Mr Abbott was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

9. Mr Abbott explained that Altus Group was representing the appellant in this appeal on a contingency fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

10. The panel has 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 Procedure regulations 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). 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 when 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.

Issue

12. Was a 10% end allowance warranted to reflect the continued risk of flooding?

Evidence and submissions

13. In a statement which accompanied the Challenge, together with his oral presentation at the hearing, Mr Abbott argued that the 2017 assessment was incorrect and excessive, and should be reduced by way of an end allowance for the following reasons:

i) The appeal property's assessment was not in line with the assessments placed on comparable properties in the locality, taking into account the differences in the physical attributes between the properties.

ii) There have been flooding occurrences dating back to the year 2000, and the subject property was directly affected in 2008 and 2015. The site is prone to flooding during heavy rainfall and has been identified by the Environment Agency and Kirklees Borough Council as high risk. Mr Abbott contended that a 10% end allowance should be adopted to reflect the impact of this flooding, and the ongoing risk, in line with comparable properties with similar allowances. He believed that this would be reflected by the hypothetical tenant in making his rental bid.

iii) The appellant had been in negotiation to sell the site for £12 million to a development company prior to the 2015 flood. After the flood, the developer pulled out of the deal, and the property's estimated worth is now considered to be approximately £1.5 million.

iv) A flood defence was in place at the compiled list date; however, the appellant has been unable to find an insurance company willing to reinsure the property against risk of flood. As a result of this, a hypothetical tenant coming fresh to the scene would be unable to obtain insurance for the site and would, therefore, be unlikely to take a tenancy on the subject property.

v) The comparable properties cited by the VO and other properties in the same schemewere not at risk of flooding.

vi) In support of his application for an end allowance, Mr Abbott referred to a schedule of seven comparable properties as evidence that allowances of 5% and 10% had been allowed on properties due to the risk of flooding. In particular, Mr Abbott argued that the valuation of Firm Mills, Grove Street, Huddersfield, HD3 5TH, which is situated eight miles from the subject property, had been agreed between the VO and CVS (now Altus Group) for the 2010 Rating List. He contended that this site is highly comparable, and a 10% end allowance had been placed on the valuation.

vii) To conclude, Mr Abbott sought a 10% end allowance for the continued risk of flooding to the appeal property, which resulted in an assessment of £142,000 RV, with effect from 1 April 2017.

14. In the VO's Challenge case decision notice and in oral presentation at the hearing, Mr Hussain argued that:

i) The Rating Manual Section 3 Valuation Principles Part 2 Practice Note 1 states that; "Where flooding is a periodical occurrence the AVD rental evidence will already reflect the flooding risk. Where flooding has not previously occurred or has not happened for many years, the attitude of prospective tenants in the real world may be altered by the now perceived higher risk of flooding. Providing the flooding occurs before the AVD, this attitude should be reflected in valuations for the next revaluation".

ii) The floods which affected the subject property occurred in January 2008 and then December 2015. The 2008 flood event occurred before the AVD for the 2010 list and therefore any impact of flooding would have been considered for the 2010 list. Mr Hussain noted that no such allowance had been included in the 2010 List, and any appeals regarding flooding had been withdrawn or dismissed with no allowance.

iii) The flooding which had occurred in December 2015 was after the AVD for the 2017 rating list and would not be considered in respect of the value for the 2017 list. Mr Hussain stated that this approach is in line with the guidance as set out in the rating manual. He also referred to the Upper Tribunal decision *Moore (VO) (2018) UKUT* 0324 (LC).

> "*The VO submits that had the flooding caused damage sufficient to render the property incapable of beneficial occupation, it would be regarded as having no rateable value. But that is not the case. Where flooding is a periodic occurrence, this would be reflected in the rental evidence available at the antecedent valuation date ("AVD" - 1 April 2008 for the 2010 rating list). If it had not happened for many years, where flooding occurs before the AVD, a perceived higher risk would be reflected in the subsequent rating list at revaluation*".

iv) Mr Hussain contended that flood defences were in place in September 2016 and the VO had to consider the subject property as it stood on the material day of 1 April 2017. On the 1 April 2017, flood defences were in place which mitigated the risk of flooding. Mr Hussain also pointed out that the flood defences had prevented the subject property from being flooded in 2020 which suggested that no allowance should be given for risk of flooding considering the property as it stood (rebus sic stantibus) at the material day.

v) Mr Hussain referred to evidence of three comparable properties which had been agreed on similar properties, contained within the same scheme as the subject property and he contended that based on this evidence the current unadjusted rate of £25 per square metre is fair and reasonable.

vi) The comparable properties cited by Mr Abbott were from various different locations and different schemes, but none were close to the same locality as the subject property. Furthermore, no history of the dates of flooding had been provided, it was not clear whether the properties had invested in flood defences similar to the subject property which, in the case of the subject property, had prevented further flooding even after a highest ever recorded river level. Accordingly, Mr Hussain sought dismissal of the appeal.

Decision and reasons

15. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

16. The panel noted that there was no rent passing on the appeal property as it was held on a freehold basis.

17. The panel had to determine whether an end allowance was warranted to reflect the continued risk of flooding to the appeal property. The panel turned to the Rating Manual Section 3 Valuation Principles Part 2 Practice Note 1 it noted that the appropriate way to deal with floods had been outlined in this manual and that floods which had occurred, and the continued risk of flooding should be reflected in AVD rental analysis at the time of revaluation.

18. Mr Hussain had cited the authority in *Jo Moore (VO)* [2018] UKUT 0324 (LC) 19 December 2018. The panel noted that this was an unopposed appeal regarding an invalid proposal. The judgment discussed whether a flood or the continued risk of flooding amounted to a material change of circumstances (MCC) and found that it did not. Mr Abbott had questioned the relevance of the case and argued that it had been suggested that; '*one can speculate as to whether the outcome would have been different had the ratepayer been represented in a contested hearing*', however the panel found that this was an obiter comment which did not form part of the judgement in this case.

19. With respect to the comparable properties referred to by Mr Abbott, the panel was unable to attach significant weight to the key comparable 'Firm Bank' as it was unclear whether the allowance given was for flooding caused by a collapsed culvert at the appeal property, as contested by Mr Hussain, or due to general flooding issues. With respect to the other comparable properties the panel found that insufficient information had been provided as to the history and cause of flooding, the extent of the damage, and the dates, the panel also noted that these properties were some distance from the subject property. The panel was also aware that none of the properties located adjacent to the subject property at the side of the River Calder had been given allowances for flooding.

20. The panel had to consider the appeal property based on its own merits and having regard to its physical characteristics, in comparison to those of the comparable properties and examine if an allowance was truly justified.

21. Both parties agreed that the flood which occurred after AVD in December 2015 had to be ignored for the purposes of the 2017 rating list. The panel was also aware that when floods had occurred in 2020 the flood defence was in place and prevented any flooding of the subject property. The flood defence had been in place at the material day of 1 April 2017 and no flooding had occurred since then which suggested to the panel that no allowance was appropriate. It was also noted that in accordance with the guidance manual any flooding which occurred after the AVD for the 2017 list should be considered at the next valuation.

22. Mr Abbott pointed out that the property could no longer be insured, and this would suggest that in effect the property is worthless. However, the panel were not persuaded that the property was worthless as Mr Abbott also seemed to be arguing that an RV of £142,000 should be adopted. However, Schedule 6 assumption the tenant is responsible to insure the premises would be important, as the insurance premiums are likely to be higher and thus a lower rental bid would be expected, the panel found that this matter should be addressed at revaluation.

23. In appeals of this nature the burden of proof rests on the appellant to provide evidence to confirm that the appeal property is over-assessed. In the appeal before it, the panel concluded that it had not been provided with sufficient evidence to justify an end allowance.

Accordingly, the panel confirmed that the current assessment of £158,000 RV, with effect from 1 April 2017 was not excessive.

24. In view of the above findings, the panel dismissed the appeal.

Appeal Number: CHG100623013

Dated: 9 November 2021