VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Material Change in Circumstances, Scheme of road works, Comparable Schemes; appeal dismissed.

APPEAL NUMBER:	CHG100653948	
RE:	Units 1 & 2 Hillman Way, Ryton-on-Dunsmore, Coventry CV8 3ED (the “subject property”)	
BETWEEN:	DHL Parcel	Appellant
	and	
	Lucy Formela-Osborne (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	24 May 2024	
BEFORE:	Mrs F Rahman-Cook, Presiding Senior Member Mrs FER Duggan, Member	
CLERK:	Ms R Muller	
APPEARANCES:	Mr D Bullimore, Lambert Smith Hampton, Representative for the Appellant Mr C Skerratt, representative for the Respondent	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. No change was made to the entry in the 2017 Rating List for Units 1 & 2 Hillman Way, Ryton-on-Dunsmore, Coventry CV8 3ED (hereafter, known as the subject property).

Introduction

3. The hearing related to an appeal which was made following a Challenge against the 2017 Rating List entry on the basis that the Rateable Value (RV) was inaccurate by reason of a

material change of circumstances (MCC). The MCC in question was in respect of works that had been carried out on the A45 and A46 Coventry roads.

4. The Valuation Officer (VO) made the decision that a reduction in RV was not warranted and consequently, the Challenge decision was appealed to this Tribunal.

5. Mr Bullimore appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC) Mr Bullimore's declaration of truth included a statement that he was instructed on a conditional fee arrangement. 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 the client's case.

6. Mr Skerratt, the representative for the respondent appeared as both expert witness and advocate. However, he stated that he had not inspected the subject property, therefore, he will present most of his evidence as advocate.

7. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

8. The subject property comprised a modern warehouse on an established warehouse park on the outskirts of Coventry. The building is located on Prologis Park Ryton, close to Coventry Airport and at the junction of the A45 and A46 dual carriageways.

9. A Challenge had been submitted on 12 March 2021 due to a Material Change in Circumstances. The effective date for this appeal was documented as 7 October 2019, the date the roadworks commenced within the local area.

Relevant Law

10. Matters which constitute an MCC are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988.

11. The subject property 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 for from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988).

12. Therefore, having regard to the above, in reaching its decision, the panel considered, would the MCC affect the hypothetical tenant's bid? In doing so, economic factors must be considered as at the antecedent valuation date of 1 April 2015, whereas the physical factors are as they existed on the material date. 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 check. For this appeal, the parties agreed that the material date was 4 December 2019, the date the check was completed.

Discussion

13. The panel noted that the MCC related to roadworks being carried out on the A45 and A46 Coventry roads. Mr Bullimore had stated that works had commenced on the A45 from 7 October 2019, which included overnight road closures, daytime lane closures, additional traffic and waiting times. There had been a new bridge over the A45 and works to put in a new road system for a new industrial estate of the A45. Works on the A46 was between the Tollbar Island to Bingley and onto Walsgrave. Ongoing works between Stonebridge Island on the A45 through to the A46 Walsgrave. The A46 works at the Bingley junction began in March 2020 and was due to completion in 2022. Mr Bullimore informed the panel that the works would result in significant delays and congestion. It would, therefore, be reasonably expected that the works would have an impact over a wider area, including where the subject property was located.

14. Mr Bullimore stated that as the subject property was a distribution warehouse, access to the major road networks was key to its use and operation. However, the panel noted that Mr Bullimore had not provided any evidence from the appellant to show that the roadworks had impacted the operation of the subject property, even though he had stated that there had been significant delays in the operation of the business.

15. Mr Bullimore stated that previously, works on the A45 and A46 around Coventry Airport, Middlemarch Business Park and Prologis Park Ryton had an MCC allowance of 13.75% agreed between 1 April 2015 and 1 February 2017 after extensive discussions between the Valuation Office Agency and rating agents. In support of the 13.5% discount being sought, Mr Bullimore referred to various schemes of works throughout the country which he submitted were comparable in terms of the works being carried out. He also submitted that with an MCC allowance being granted within the 2010 Rating List for roadworks on the A45 and A46, the respondence should grant the same MCC allowance for the works being carried within the 2017 Rating List, as the works being carried out are an extension of the works that had taken place between 2015 and 2017.

16. The panel did not place great weight on the comparable schemes provided. Although the tables demonstrated that different levels of allowance had been awarded, the panel did not know what evidence this was based on or how the properties concerned had been impacted by the relevant schemes of work.

17. Ultimately, the awarding of an allowance would depend on the particular facts surrounding the impact of the subject property and the panel found it could not rely solely on the evidence of allowances for other schemes. There would need to be evidence to demonstrate that the subject property had been impacted to an extent that it would affect the hypothetical tenant’s rental bid. In this case, the panel found that insufficient evidence had been provided to demonstrate that the assessment had been impacted by the MCC to the extent that a reduction would be warranted.

18. Mr Skerratt informed the panel that the roadworks were situated further away than the scheme under the 2010 Rating List and it had been of a greater severity than the scheme under discussion. The issues with regards to this appeal were a few overnight closures with diversion routes in operation. The panel noted that with regards to the previous Rating List, some neighbouring properties had provided financial documentation, and this had been used to establish the basis of the allowances. However, none had been provided with regards to this scheme of works.

19. The subject properties operation would be that the small vehicles would be able to use the diversion routes but not the larger vehicles. However, the alternative routes did have a 30-mile speed limit unlike the motorway speed limit of 70. The panel noted that even though the diversion routes would take longer for the smaller vehicles to reach their destinations, the larger vehicles had had a restriction placed upon them that they could not go through another access of an industrial estate. The villages had been annoyed that the larger vehicles went through the area, as such, a restriction had been issued to prevent the larger vehicles from accessing the diversion route through the industrial estate. Even though the larger vehicles may be impacted by delays when using the main roads, the panel noted that no evidence had been provided to support these delays had impacted the subject property's business operations.

20. The panel had adjourned to discuss the matter of the diversion routes set in place. It had been informed that the local council had put in restrictions with regards to the Middlemarch Industrial Estate. The panel returned to the main hearing room to ask the parties how long these restrictions had been set in place that did not allow for the larger vehicles to go through the local village. However, Mr Skerratt stated that this restriction had been set in place with regards to the roadworks in 2015 and that there were different diversions for the roadworks that had been carried out with regards to this appeal. He stated that the details of these restrictions were not relevant to this appeal. Mr Bullimore stated that the larger vehicles are still not allowed to go through the estate as a consequence of the roadworks that took place in 2015 and therefore, do cause delays with regards to the operation of the subject property.

21. Whilst it was noted that it would be difficult to conceive that such works would not impact the subject property, the panel found that there was little evidence to support this. The subject property was situated approximately one mile from the scheme itself. Both parties agreed that it was a busy congested area prior to the scheme commencing, hence the improvements being made. The photographs which had been provided showed the extent of the disruptions for the traffic using the roads. However, the panel did not consider that the photographs demonstrated that, on the material day, the disturbances or works had any impact on the subject property, which was situated further away from the scheme.

Disposal

22. In such appeals, the burden of proof rests with the appellant to provide evidence to show that the MCC had affected the subject property to an extent that an allowance was reasonable. In view of the above findings and conclusions, the panel held that the appellant had not done so and dismissed the appeal.

Date issued to parties: 21 June 2024

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.
