THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating appeal; 2017 rating list; land used for storage and premises; whether property should be shown as more than one assessment; four separate companies; appeal allowed.

RE: Bob Wilson & Sons Limited, Shipway Road, Birmingham B25 8DS

APPEAL NUMBER: CHG100739919

BETWEEN: Bob Wilson Funfairs Limited (represented by Rabbette Chartered Surveyors) — Appellant

and

Alexandra Morley (Valuation Officer) — Respondent

PANEL: Mr C M Taylor (Presiding Senior Member)
Mrs N Salh (Senior Member)

CLERK: Ms S Hodgson

ON: 14 July 2023

REMOTE HEARING

APPEARANCES: Mr K Rabbette for the appellant
Mr J Griffin of the Valuation Office Agency for the respondent

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Summary of decision

1. Appeal allowed; the subject hereditament is to be split into four separate hereditaments as detailed in the Order section below.

Introduction

2. This was a 2017 rating list appeal. The subject hereditament had been entered in the 2017 rating list as ‘land used for storage and premises’ at a rateable value (RV) of £40,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by Rabbette Chartered Surveyors on behalf of Bob Wilson Funfairs Ltd and was received by the Valuation Officer (VO) on 15 October 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. The agent proposed that the hereditament was split into four separate hereditaments with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 21 October 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available. This was then appealed to the Tribunal on 16 January 2023.

5. Mr Rabbette 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) he confirmed that he was instructed under a contingency fee basis for his advocacy, and a fixed fee basis as an expert witness. 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 supported the client's case.

6. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was 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).

7. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

8. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

9. The issues for the panel to determine was how many hereditaments there were, and whether the warehouse was a permanent structure.

Evidence and submissions

10. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, VO's challenge case decision notice, and appellant's challenge submission.

11. Mr Rabbette, on behalf of the appellant, argued that there were four different leases for four plots of the subject hereditament. He stated that the leases had been in place since 2015 and provided a map which outlined the separate areas. Mr Rabbette also referred to a residential dwelling on the site with the only access being directly across the common areas, he contended this showed the site could not be considered as one assessment due to this division. In relation to the warehouse, Mr Rabbette contended that it was a temporary structure and therefore could not be rateable.

12. Mr Griffin, on behalf of the respondent, was acting as advocate only. He stated the VO was not disputing the existence of the four separate legal entities but was looking at the occupation of the site. It was the VO's opinion that the same piece of land was being used for the same purpose and therefore it constituted a single hereditament. In relation to the warehouse the VO was of the opinion that it was a permanent structure and no evidence had been provided to demonstrate otherwise.

Decision and reasons

13. In order for there to be separate valuations for rating purposes, it had to be established that there were four hereditaments.

14. The definition of a hereditament is referred to in section 64 of the Local Government Finance Act, as anything which, by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act:

    “property which is, or may be liable to a rate, being a unit of such property which is, or would fall to be shown as a separate item in the Valuation List.”

15. Establishing the hereditament is inextricably linked with rateable occupation. The leading case of *Laing & Sons v Kingswood Assessment Committee* [1949], identified four necessary ingredients for rateable occupation:

    “First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and fourthly, the possession must be for not too transient a period.”

16. If any of the four essential ingredients were missing, then the occupier cannot be in rateable occupation.

17. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day was 1 April 2017.

18. Mr Griffin stated that no evidence had been provided to show there were separate hereditaments at the material day. The panel did not agree with this view. The panel reviewed the evidence and found that the leases provided for all four plots in question were dated April 2021, however they all included the acknowledgement of the existence of the previous which was dated 1 July 2015.

19. It was the panel’s opinion that there was no evidence provided to bring the legality of the leases into question, and it was clear that with the existence of four separate leases, each company had exclusive rights over their respective plots.

20. The panel had regard to the Companies House information included in the evidence bundle which identified all four companies as separate corporate identities. Mr Griffin stated at the hearing that the existence of the entities was not being challenged.

21. It was the panel’s opinion, that based on the evidence provided, there were clearly four separate corporate entities, and each held a valid lease for an identifiable area. Therefore, the panel found that there were four separate hereditaments as identified on the plan provided by Mr Rabbette.

22. The panel then had to consider whether the structure that was currently in the rating list as a warehouse with a value of £5,390 should be included in the valuation. The panel heard from Mr Rabbette that the structure was not solid and was supported by hot air being blown into it to keep it upright. He stated that the structure was not useable without these blowers. He further confirmed that the structure was moved at multiple points throughout the year and was easily dismantled, taking approximately half a day to do so.

23. The panel made a finding of fact having heard Mr Rabbette’s expert evidence and observing the photographs in the evidence bundle, that the structure was not permanent. The roof was as

described and there was a definite distinction between the structure’s roof and one which was permanent.

24. Finally, the panel had to consider the RVs for the four hereditaments. Mr Rabbette had proposed four valuations which listed the land as unfenced at the unadjusted base rate of £8 per square metre (psm). The panel noted that the original valuation included the land as fenced, however it was satisfied that as the hereditament was being split, each individual hereditament was no longer fenced. As no alternative valuation was proposed by the respondent in the event the appeal was allowed, the panel was satisfied to accept Mr Rabbette’s proposed valuations.

25. The panel therefore allowed the appeal, and the appellant was entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended). The refund may take up to six weeks to process.

Order

26. Under the provisions of regulation 38(4) & (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list, with effect from 1 April 2017, as per the attached page, within two weeks.

Date: 10 August 2023

Appeal number: CHG100739919

Right of 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.

Bob Wilson Funfairs Limited, Shipway Road, Birmingham B25 8DS

FLOOR	DESCRIPTION	AREA (m^2)	UNADJUSTED RATE (m^2)	RELATIVITY	ADJUSTED RATE ($m^{2)}$	VALUE
Ground	Hard surfaced, unfenced land	616	£8.00	0.75	£6.00	£3,696.00
Ground	Open fronted store/canopy	624.60	£10.00	1.00	£10.00	£6,246.00
					Subtotal	**£9,942.00**
					Total	**£9,942.00**
					Rounded	**£9,900.00**

Bob Wilson & Sons Limited, Shipway Road, Birmingham B25 8DS

FLOOR	DESCRIPTION	AREA (m^2)	UNADJUSTED RATE (m^2)	RELATIVITY	ADJUSTED RATE ($m^{2)}$	VALUE
Ground	Rough surfaced, unfenced land	1,695	£8.00	0.50	£4.00	£6,780.00
					Subtotal	**£6,780.00**
					Total	**£6,780.00**
					Rounded	**£6,700.00**

The Big Wheel Company Ltd, Shipway Road, Birmingham B25 8DS

FLOOR	DESCRIPTION	AREA (m^2)	UNADJUSTED RATE (m^2)	RELATIVITY	ADJUSTED RATE ($m^{2)}$	VALUE
Ground	Rough surfaced, unfenced land	1,093	£8.00	0.50	£4.00	£4,372.00
					Subtotal	**£4,372.00**
					Total	**£4,372.00**
					Rounded	**£4,350.00**

21st Century (Funfairs) Limited, Shipway Road, Birmingham B25 8DS

FLOOR	DESCRIPTION	AREA (m^2)	UNADJUSTED RATE (m^2)	RELATIVITY	ADJUSTED RATE ($m^{2)}$	VALUE
Ground	Rough surfaced, unfenced land	1,201	£8.00	0.50	£4.00	£4,804.00
					Subtotal	**£4,804.00**
					Total	**£4,804.00**
					Rounded	**£4,800.00**