THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; nine mile ride extension; works at material day; appeal dismissed.

RE: Units 1 & 2 Rowanwood & 12, Ivanhoe Road, Finchampstead, Wokingham RG40 4QQ

APPEAL NUMBER: CHG100773300

BETWEEN:	Nicholson Mclaren Engines Ltd (represented by Altus Group Ltd)	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL: Mr K Sutch (Presiding Senior Member)
Mrs A E Fielder (Senior Member)

CLERK: Ms S Hodgson

ON: 15 August 2023

REMOTE HEARING

APPEARANCES: Mr B Buchkov for the appellant
Mrs P Rowntree for the respondent

Summary of decision

1. Appeal dismissed. The panel confirmed that the 5% allowance that had been awarded on the appeal property was reasonable.

Introduction

2. This was a 2017 rating list appeal made in respect of Units 1& 2 Rowanwood & 12, Ivanhoe Road, Finchampstead, Wokingham RG40 4QQ, (the ‘appeal property’). The challenge proposal was submitted by Altus Group on behalf of the appellant, Nicholson Mclaren Engines Ltd, on 8

February 2022. It had been made on the grounds of an MCC and requested a 7.5% temporary allowance in respect of the construction of the Nine Mile Ride extension. A revised rateable value (RV) of £119,000 was proposed against the post-check RV of £129,000.

3. The Valuation Officer issued a challenge case decision notice on 6 December 2022 which disagreed with the proposed alteration of the list but stated that the rating list entry was unreasonable based on the evidence and information available. The revised RV of £122,000 reflected a 5% temporary allowance.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 3 March 2023 and requested a revised RV of £119,000 based upon a 7.5% temporary allowance. At the hearing Mr Buchkov amended his request to a 10% temporary allowance with a revised RV of £116,000.

5. Mr Buchkov 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. 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. The appeal property was an industrial workshop with ancillary office accommodation that was in the rating list as 'workshop and premises'. It was located on the Hogwood Industrial Estate which was made up of 50 mixed age units of industrial and office use, four miles away from Wokingham.

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

Issue

10. The issue to be determined was the appropriate level of temporary allowance to be awarded in respect of the construction of the Nine Mile Ride extension.

Evidence and submissions

11. 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.

Decision and reasons

12. The Local Government Finance Act 1988 makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act.

13. Briefly, the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

14. The material day (the date by which physical factors have to be taken into account) for an MCC 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 is 25 November 2021.

15. The issue for determination was the level of temporary allowance warranted as a result of the cited MCC. As outlined by the parties, the MCC in question was the construction of the Nine Mile Road Extension new road. The development scheme described by the Wokingham Borough Council comprised:

    - A new 1.25km extension to the existing road
    - A shared footway/cycleway
    - Construction of verges and drainage channels
    - The new extension would be the primary road in and out of the area

16. Mr Buchkov contended that an increased temporary allowance of 10% was reasonable, given the severity and duration of the construction works. He provided an MCC grid which listed the categories of MCC from R1 being the most severe to R4 being the least severe and argued that the MCC in question was akin to an R1/R2 event.

17. The panel heard from Mr Buchkov that the most comparable works to the appeal property were at Pincents Lane and Loverock Road. Temporary allowances of 5% were awarded for the Pincents Lane work which was a two-year scheme for the construction of the IKEA store and multi-storey carpark in Reading. Temporary allowance of 2.5% and 10% were awarded for the Loverock Road work which was due to a railway redevelopment. The allowances at Loverock

Road were awarded after trade figures had been supplied and were directly related to the downturn in trade.

18. Google map images had been provided that were dated June 2019, April 2021, and May 2023. The panel gave limited weight to these images as there was no context provided and none of them indicated the work that was ongoing at the material day.

19. At the material day, the panel heard from both parties that the only outstanding works was the road diversion that had been left in place. This meant that when approaching the Hogwood Industrial Estate from the South a diversion of approximately 6.5 miles was in place. The estate was still accessible from the North and access was available at all points throughout the works.

20. Mrs Rowntree argued that the current 5% allowance was reasonable as access had always been available to the site. She contended, as above, that at the material day the only part of the works remaining in place was the diversion, and that at the material day the hypothetical tenant and landlord would have known the works were at their end and no concessions would be likely.

21. It was the panel's opinion that while the works may have been more severe earlier in the construction process, at the material day only a diversion was left in place. No evidence had been provided to demonstrate if trade was affected at the material day. The panel did not find that the Lovelock Road comparable site was comparable to the appeal property due to the nature of the works and the fact that allowances were only granted after trade figures were supplied. The Pincents Lane site was more comparable as it involved roadworks at a junction due to the construction of the IKEA.

22. Having considered the evidence presented by the parties, the panel determined that at the material day, the current 5% temporary allowance was reasonable for the works that remained.

23. In view of the foregoing the appeal was dismissed.

Date: 8 September 2023

Appeal number: CHG100773300

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.