THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; scheme of road works; comparable schemes; appeals dismissed.

RE: 6 Beacon Way, Hull HU3 4AE
69A Scarborough Street, Hull HU3 4TG
Unit E, Venture Business Park, Witty Street, Hull, HU3 4EL
Unit B Link 63, Liverpool Street, Hull HU3 4XT
Unit 3, Venture Business Park, Witty Street, Hull, HU3 4TT

APPEAL NUMBERS: CHG100773855, CHG100773704, CHG100773710, CHG100791772 & CHG100773960

BETWEEN:

Rradar Limited, RMC Digital Print,
Ventilation Centre Ltd, Arco Limited
& Humberside G.E.S Ltd — Appellants

and

J Moore — Respondent
(Valuation Officer)

PANEL: Mr A Ramsay (Senior Member)

Dr P Thomson

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 26 June 2023

APPEARANCES:
Mr Jon Abbott of Altus Group Ltd (appellants representative)
Mr Liam McNaughton (respondent's representative)

Summary of decisions

1. Appeals dismissed; no change was made to the entries in the 2017 rating list.

Introduction

2. This hearing related to five appeals, all of which were made following a challenge against the 2017 rating list entries on the basis that the rateable values (RV's) were inaccurate by reason of a material change of circumstances (MCC). The MCC in question was in respect of the A63 Castle Street Road improvement scheme.

3. The appeal properties are currently shown in the 2017 rating list as follows:

   - Rradar Limited, 6 Beacon Way, Hull HU3 4AE
     'Office and Premises'
     £188,000 RV with effect from 10 July 2017

   - RMC Digital Print, 69A Scarborough Street, Hull HU3 4TG
     'Warehouse and Premises'
     £8,800 RV with effect from 1 April 2017

   - Ventilation Centre Ltd, Unit E, Venture Business Park, Witty Street, Hull, HU3 4EL
     'Workshop and Premises'
     £8,700 RV with effect from 1 April 2017

   - Arco Limited, Unit B Link 63, Liverpool Street, Hull HU3 4XT
     'Workshop and Premises'
     £24,250 with effect from 1 April 2017

   - Humberside G.E.S Ltd, Unit 3, Venture Business Park, Witty Street, Hull, HU3 4TT
     'Warehouse and Premises'
     £13,500 with effect from 1 April 2017

4. Challenges had been submitted by the appellants' representative. An end adjustment of 2.5% was proposed for each property to account for the MCC. The effective date was initially disputed between the parties, however, following further discussions in advance of the hearing, it was agreed as 1 October 2020.

5. The Valuation Officer (VO) made the decision that a reduction in rateable value was not warranted and consequently, the challenge decisions were appealed to this Tribunal.

6. This hearing was held remotely via Microsoft Teams. Both parties provided the Tribunal with a statement/declaration of truth, and both appeared before the panel in a dual capacity as Advocate and Expert Witness. The statement of truth signed by Mr Abbott indicated that he was instructed on a contingency based fee. He did, however, accept that first his duty was to the Tribunal and that he would comply with this duty, regardless of whether or not the evidence supported each of the appellants' cases. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), 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 in England). The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

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

Issue

8. The issue concerned the RV of the appeal properties and, specifically, the extent, if any, to which their assessments were affected by the roadworks scheme within the locality. Mr Abbott sought a reduction of 2.5% with effect from 1 October 2020 on the basis that the assessments had been adversely affected by the MCC. Mr McNaughton argued that no reduction was warranted and defended the current RV's.

Evidence and submissions

9. To comply with the evidential restrictions imposed on such appeals, in accordance with regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (referred to hereafter as the VTE procedure regulations), the parties agreed, in writing, for the five appeals to be consolidated and the evidence held for each appeal to be admissible.

10. In advance of the hearing, the panel was provided with a copy of the challenge decision for each appeal and the appellants supporting evidence statement.

11. In addition, on 19 May 2023, Mr Abbott made an application to include new evidence in the form of settlements agreed at challenge following an MCC. This was submitted late under regulation 17A(1)(iii) of the VTE procedure regulations on the basis that it w*as not known to the party and could not reasonably have been acquired by the party before the proposal was determined*. No objection to its admission was raised by Mr McNaughton.

12. On 26 May 2023, Mr McNaughton provided a map which was exchanged at the challenge stage but was omitted from the appeal submission. No objection to its admission was raised by Mr Abbott.

13. In accordance with regulation 17A(1)(b) of the VTE procedure regulations, as both parties agreed to the admission, both the map and details of the challenge settlements were admitted into evidence.

Decision and reasons

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

15. When valuing having regard to the material day, the valuation arrived to had 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 –
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> > 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.

16. 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 all five appeals, the parties agreed that the material date was 23 April 2021.

17. The MCC relates to the A63 Castle Street Road and Improvement scheme. The submissions provided that the Highways England described the works as:

> 'We're planning to create a new junction by lowering the level of the A63 at the Mytongate junction. Ferensway and Commercial Road would cross the A63 creating a split-level junction. Between Princes Dock Street and Market Place we propose to widen the eastbound carriageway to three lanes. We also plan to construct a new bridge over the A63 at Porter Street. These improvements will improve access to the port, congestion, safety and connections between the city centre and the tourist and recreational facilities.'

18. It was Mr Abbott's submission that the works will result in numerous road/lane closures and subsequent diversions throughout the timeline of the works, as well as temporary speed limits and traffic lights on the A63 resulting in significant delays and congestion. As the A63 is the main access road in and out of Hull, it can be reasonably expected that the works will have an impact over a wide area. He submitted that the main impacts of the works include road closures and lane narrowing; redirections; temporary traffic lights; temporary speed limits and an increase in traffic/severe disruption.

19. In support of the 2.5% discount being sought, Mr Abbott referred to various schemes of work throughout the country which he submitted were comparable in terms of the works being carried out. He referred to the fact that allowances were agreed for different types of business within the immediate and surrounding areas, some of which were allowed by the Valuation Tribunal. It was argued that the comparable allowances awarded nationally for very similar circumstances should suffice in showing the appropriate level of allowance that should be applied to the subject assessments.

20. In respect of the MCC in question, both parties referred to the three appeals for properties situated on English Street which had been agreed in advance of the hearing. A 5% allowance was agreed. Mr Abbott submitted that it was therefore reasonable that the appeal properties were also impacted, albeit to a lesser degree, due to their location, hence the request for 2.5%. Mr McNaughton submitted that those on English Street were situated

within the work scheme area as demonstrated on the map provided and were impacted by the closure of St James Street.

21. 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. Furthermore, the proximity to the works carried out may have been different, for example, those agreed by the Valuation Tribunal for A414 Edinburgh Way- Cambridge Road junction improvement scheme appeared to be situated more within the immediate vicinity of the scheme of works.

22. Ultimately, the awarding of an allowance will depend on the particular facts surrounding the impact on the appeal properties 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 appeal properties 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 these assessments had been impacted by the MCC to the extent that a reduction would be warranted.

23. Whilst Mr Abbott had submitted that it would be difficult to conceive that such works would not impact the properties and the rental bid, the panel found that there was little evidence to support this. The appeal properties were situated approximately 0.6 miles to 1.44 miles 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 were within the scheme boundaries. The panel was not presented with photographs or other supporting evidence which would demonstrate that, on the material day, the disturbances or works had any impact on the appeal properties which were situated further from the scheme.

24. In such appeals the burden of proof rests with the appellant and, for the reasons provided, the panel found that the appellants had not sufficiently demonstrated that an allowance was reasonable.

25. In view of the foregoing, the five appeals were dismissed.

Date: 3 July 2023

Appeal numbers: CHG100773855, CHG100773704, CHG100773710, CHG100791772 & CHG100773960

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.