THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; land used for storage and premises; accuracy of rateable value in list; end adjustment for quality in dispute; comparable assessments; Barnard & Barnard v Walker (VO) [1975] RA 383 LT; appeal allowed.

RE: Compounds 12 & 17, Pound Lane, Exmouth EX8 4NP

APPEAL NUMBER: CHG100799920

BETWEEN:	JMJ Trio Ltd	Appellant
	and	
	Lucy Formela-Osbourne (Valuation Officer)	Respondent

PANEL:	Mr S Levy, (Presiding Senior Member) Miss K Marsden (Senior Member)
CLERK:	Ms R Muller
HEARING:	Remote Hearing No. 2: 29 January 2024
APPEARANCES:	Mr M Sanders, representative for the Appellant Mr A Durrant, representative for the Respondent

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Summary of decision

1. Appeal allowed. The panel determined a revised Rateable Value (RV) at £10,500 for Compounds 12 & 17, Pound Lane, Exmouth EX8 4NP (hereafter known as the subject hereditament) to reflect an end adjustment for quality.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament entered the Rating List at £23,500, with effect from 28 October 2021; therefore, the material day was 28 October 2021. A Check had been completed on 21 March 2022 and a Challenge submitted on 22 April 2022. The Challenge stage was completed on 17 March 2023 with no change to the RV of the appeal hereditament. An appeal was received by the Tribunal on 15 July 2023 against the Challenge decision.

3. Mr Sanders appeared on behalf of the Appellant as advocate only. Mr Durrant appeared on behalf of the Respondent as both expert witness with regards to Rating Procedures and advocate with regards to the subject hereditament.

4. The subject hereditament was described in the 2017 Rating List as Land used for Storage and Premises. The subject hereditament was a parcel of land contained within a fenced compound, adjacent to Pound Lane in Exmouth. It contained eleven 10 foot containers, and twenty four 20 foot containers.

5. The hearing was held using the Teams platform. At the start of the hearing the Senior Member lost her connection, but the connection was quickly re-stored, and she experienced no further issues. Following a brief adjournment of the hearing the Senior Member was unable to see the other participants on camera but was able to hear all the participants. All participants were able to see and hear the Senior Member. The parties were happy to proceed with the hearing.

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

Preliminary matter

7. Prior to the hearing there had been an objection made by the VO to the introduction of, what he contended was, new evidence by Mr Sanders. It consisted of two tables, which showed details of historic landfill dataset dated December 2021 and an excel spreadsheet of assessments of similar compounds on the same site as the subject hereditament. Mr Sanders informed the panel that the compounds on the same site have already been referred to in previous submissions, which had been submitted in July 2023. He referred the panel to the page within the bundle where the details of the compounds had been documented.

8. The panel adjourned to discuss this matter. Consideration had been given and the panel held that the ‘new evidence’ provided by Mr Sanders was to be allowed, as it was not considered to be ‘new evidence’. It was a clarification of the details which had already been provided by Vickery Holman (the previous agent) in the original challenge.

9. It was also noted that Mr Sanders, the day prior to the hearing, had wanted to discuss the valuation of the Land. As the valuation of the land had not been raised as an issue at any point prior to the hearing at either the Check or Challenge stage, the panel did not consider this as part of the appeal and disallowed any discussions with regards to this matter. It considered the only issue to be determined was the end allowance / adjustment.

Issue

10. The issue for the panel to consider was whether an end adjustment for quality was warranted with regards to the subject hereditament.

Evidence and submissions

11. The evidence bundle submitted to the Tribunal comprised all of the documents exchanged between the parties as part of the challenge process, the Valuation Officer's (VO's) decision notice and the Appellant's challenge submission.

12. As the case of *Barnard & Barnard v Walker (VO)* [1975] RA 383 LT was mentioned within the evidence, the clerk provided a copy to the parties prior to the hearing.

Decisions and reasons

13. The subject 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).

14. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841), the date of the hypothetical rent was 1 April 2015 (the AVD). This common date was used to ensure that every property was treated in a consistent way.

15. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined 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 28 October 2021 when the subject hereditament had been entered into the Rating List.

16. Mr Sanders, the Appellant's representative proposed that a 55% allowance be awarded to the assessment to reflect the fact that the subject hereditament is situated within the boundary of a former landfill site. The challenge was based on the fact that compound 6, which was on the same former landfill site had been awarded an 'adjustment for quality' end allowance of 55%.

17. In support of 55% end allowance as an adjustment for quality, Mr Sanders had referred the panel to the site plan provided which showed where each of the compounds were located within the landfill site. He stated that it should not make a difference if the Compounds were in the middle of the landfill site or located around the edge in order to qualify for a discount.

18. Therefore, Mr Sanders requested that the panel allow the appeal and grant an allowance of 55% which would amend the assessment of the subject hereditament to £10,500 RV.

19. Mr Durrant, the VO's representative informed the panel that originally, the information provided showed that an allowance should be granted to reflect the nature of the site, due to land contamination and planning restrictions highlighted within the initial response. Therefore, he had offered an allowance of 35% as a survey unit adjustment and not as an end allowance as applied to Compound 6, as the allowance for the subject hereditament should not apply to the containers, only the land they were situated on.

20. However, Mr Durrant had been provided with further information from the Environmental Health Department at East Devon District Council with regards to the issue of uniformity of contamination throughout the site and the planning restrictions in place:

"We do have the site as identified as potential contaminated land from an old Clay and Tile Manufacture & Historic landfill. However, the site has not been declared as contaminated under Part 2A of the Environmental Protection Act 1990 and no Notices have been issued relating to contaminated land. East Devon District Council are not considering any further action against the study site or any surrounding sites under Part 2A of the EPA 1990. East Devon District Council are not aware of any issues relating to contaminated land, past site investigations or subsequent remediation work carried out at this site. No priority has been given to the status of this site. Only through further investigation would any level of contamination become relevant. Therefore, it is not possible to confirm any uniformity across the site without any further investigation.

The only type of planning condition that would be attached to an application would be a 'watching condition' i.e., should any contamination of soil and/or ground or surface water be discovered during excavation of the site or development, the Local Planning Authority should be contacted immediately. Site activities in the area affected shall be temporarily suspended until such time as a method and procedure for addressing the contamination is agreed upon in writing with the Local Planning Authority and/or other regulating bodies."

21. Mr Durrant, having considered the above, withdrew the offer of the 35% end adjustment for quality, as he considered that no allowance should be made. Therefore, he requested that the panel dismiss the appeal and confirm the current RV of £23,500.

22. Mr Durrant did not consider that the landfill site suffered with the disadvantages that were suggested in connection with land contamination or planning restrictions as submitted by the previous agent, Vickery Holman Property Consultants. He also stated that the allowances granted to the other Compounds would be reviewed and possibly removed from the 2023 Rating List.

23. The panel noted that there were 18 Compounds located on the landfill site of which only five had an allowance of 55% granted. However, when considering the layout of the landfill site, the panel noted that Compound 6 was located on the edge of the site and had been granted the 55% allowance. The panel also noted that Compound 2B was also located towards the edge of the landfill site and had been granted an end quality adjustment of 55%. Therefore, the panel found that the reason provided by the VO of which Compounds would be granted an allowance due to being located further within the landfill site was inconsistent. The panel noted that other Compounds that had been granted a 55% allowance or end quality adjustment were located either at the edge or close to the edge of the landfill site, as shown on the site plan which had been provided.

24. The fact that the VO had stated that the allowances would be reviewed with regards to the 2023 Rating List was not for the panel to consider.

25. The panel considered the details of *Barnard & Barnard v. Walker (VO)* [1976], and the fact that each list was to be considered separately. It was noted that the VO had looked at the subject hereditament afresh with regards to the 2017 rating list. It had been established that new allowances or adjustments should not be introduced unless there was good evidence. The panel was informed that the allowances / adjustments had applied during the 2010 Rating List as well as the 2017 and 2023 Rating Lists.

26. The reason provided by Mr Durrant was that, as the land was not considered to be contaminated, the allowances or adjustments already granted on some of the other Compounds were to be reviewed with regards to the 2023 Rating List and possibly removed. The panel placed less weight on this statement by Mr Durrant as the reviews had yet to be carried out and the VO should not impugn his list.

27. The panel held that Mr Sanders had provided sufficient evidence to show that the subject hereditament should be granted an end quality adjustment of 55%, as it was located on the landfill site. The panel held that it did not consider the location of where a Compound was located within the landfill site should be a factor to disregard.

28. Therefore, the panel allowed the appeal.

Order

29. As a consequence of the above decision, the VO is ordered to amend the RV of Compounds 12 & 17, Pound Lane, Exmouth EX8 4NP to £10,500 to include a 55% end adjustment for quality with effect from 28 October 2021. This should be completed within two weeks of the date of this order.

30. The Appellant is also 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).

Date: 26 February 2024

Appeal number: CHG100799920

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.