THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeals; workshop and premises; offices and premises; proposals to delete; no supporting evidence to show that the appeal properties were incapable of beneficial occupation at the material day; appeals dismissed.

RE: Unit 3 and Unit 9 Conyers Trading Estate, Station Drive, Lye, Stourbridge, DY9 8EH

APPEAL NUMBERS: CHG100820119 and CHG100820106

BETWEEN Fortis Accommodation Worldwide Limited Appellant

and

Ms A Morley
Respondent
Valuation Officer

PANEL: Mrs A O Adeola (Presiding Senior Member)
Mr R Cheriyan (Senior Member)

CLERK: Mrs L Horne

REMOTE HEARING: Monday 11 December 2023

APPEARANCES: Mr B Johnston from Bonner & Partners representing the appellant
Mr M Latif representing the Valuation Officer

Summary of decision

1 Appeals dismissed. The panel upheld the Valuation Officer’s decision that Unit 3 and Unit 9 Conyers Trading Estate, Station Drive, Lye, Stourbridge, DY9 8EH (the appeal properties) should not be deleted from the rating list for the period from 1 April 2018 to 31 December 2019.

Introduction

2 These are 2017 rating list appeals. Unit 3 Conyers Trading Estate, Station Drive, Lye, Stourbridge, DY9 8EH 71-73 had been entered in the 2017 rating list as ‘workshop and premises’ at a rateable value (RV) of £24,500 with effect from 1 April 2017.

3 Unit 9 Conyers Trading Estate, Station Drive, Lye, Stourbridge, DY9 8EH had been entered in the 2017 rating list as ‘offices and premises’ at a RV of £4,250 with effect from 1 April 2017.

4 The challenge proposals were submitted by the appellant owner, Fortis Accommodation Worldwide Limited, and were received by the Valuation Officer on 21 June 2022. They had been made on the grounds that the appeal properties should be deleted from the rating list for the period from 14 February 2018 to 31 December 2019. It was stated that there was extensive flooding throughout the units making them unoccupiable due to raw sewage throughout the site.

5 The Valuation Officer issued challenge case decision notices on 23 June 2022 which disagreed with the proposed deletions and stated that the rating list entries were reasonable based on the evidence and information available.

6 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuations for the hereditaments are not reasonable. The appeals were lodged by Mr Johnston from Bonner & Partners on behalf of the appellant, and registered by the Tribunal on 17 March 2023.

7 The appeals had been made in respect of the following:

1. Deletion of Units 3 and 9 due to severe flooding of sewerage from the spill of the mains sewerage pipes on adjoining land.
2. Disrepair of Unit 3 going beyond that which would ordinarily be expected as part of the assumption that the premises were in full repair at the antecedent valuation date (AVD).

8 This was a remote hearing conducted using Microsoft Teams. Mr Johnston joined by mobile phone as he was unable to connect by audio and video. This connection was lost on several occasions, and so the hearing was paused each time until Mr Johnston was able to rejoin. The panel was satisfied that despite the interruptions, the parties were able to participate fully.

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

Preliminary issue

10 Prior to the hearing and in response to a supplemental document provided by Mr Johnston on 1 December 2023, Mr Latif sent an email to the Tribunal Clerk on 7 December 2023. He raised that there were two issues cited by Mr Johnston which were subject to two separate material days. The challenges that had led to the appeals had been raised on the basis that the appellant was seeking a deletion of the appeal properties (originally from 1 April 2018 to 31 December 2019). In terms of the general repair contention, Mr Latif stated that this was a separate issue, and a separate challenge should be raised.

11 The clerk had advised the parties in advance of the hearing that the only issue for consideration by the panel was that of deletion. The challenge proposal for Unit 3 had been made on the grounds of a deletion, and therefore reference to the state of repair at the AVD was both outside the scope of the proposal and subject to a different material day. No objections had been raised and therefore the panel proceeded to hear the sole issue under appeal, that of deletion.

Issue

12 Whether the appeal properties should be deleted from the rating list.

13 The appellant's challenge proposals had sought deletion of the appeal properties for the period from 1 April 2018 to 31 December 2019. Mr Johnston sought a revised period of deletion from 1 January 2018 to 15 April 2020, based upon research he had undertaken following the issue of the challenge decision.

Evidence and submissions

14 The bundle comprised all of the documents exchanged between the parties as part of the challenge process. Mr Johnston's supplemental document was added with the agreement of the Valuation Officer. It contained Mr Johnston's revised period for deletion of Units 3 and 9, photographs, correspondence from Severn Trent Water, and invoices relating to site clearance, drainage work and sewage removal.

15 On behalf of the appellant, Mr Johnston contended that the appeal properties could not be occupied as there was raw sewage throughout the site, caused by a blockage of the mains sewer. He cited the following cases:

- *John Laing & Son Ltd v Kingswood AC Thornbury RDC & Gloucestershire CVC* [1948] which held that there are four necessary ingredients for rateable occupation: actual, exclusive, beneficial and not too transient.
- *Tower Hamlets LBC v St Katharine's by the Tower Ltd* [1982] RA 261 which held that no rates are payable for any period during which (a) the

owner is prohibited by law from occupying the hereditament or allowing it to be occupied.

16 In summarising the case for the Valuation Officer, Mr Latif contended that the evidence and information provided was not coherent and there were inconsistencies between the evidence that had provided. As such, it had not been demonstrated that the appeal properties should be deleted from the rating list.

Decision and reasons

17 When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

(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 the 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.

18 Of particular relevance in the subject appeals is the second assumption. It had to be assumed that the property was in a state of reasonable repair even if this was not the actual case; the only exception was a situation when the required repairs were uneconomic to undertake.

19 The date of the hypothetical rent is 1 April 2015, the AVD for the 2017 rating list.

20 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. Mr Johnston sought revised dates for the deletion of the appeal properties, however, as the subject appeals sought a deletion with effect from 1 April 2018, the material day for consideration in the subject appeals is 1 April 2018.

21 In his appeal submission, Mr Johnston stated that the premises were under flood due to the breakdown of a sewer on neighbouring land, and had to be vacated in their entirety. However, the panel noted that the photographs provided only depicted the inside of Unit 3 in disrepair. A schedule of costs amounting to £313,185 was provided; Mr Johnston clarified that around £100,000 related to clean up costs and the rest related to refurbishment.

22 Mr Johnston provided two photographs in his supplemental document to demonstrate the impact of the flood. It was a point made by Mr Latif that there were no photographs of the interior of either Unit 3 or Unit 9 to show surface level flood damage or rubbish inside the respective hereditaments. Furthermore, it was not clear where the photographs had been taken and where the rubbish was located. Mr Johnston explained that the appellant did not have photographs of the sewage in situ and the photographs showed the contents of the units emptied after the flood. He further stated that even if the yard looked clear with no surface sewage, there was a stagnant sewage system with backed up pipes, which meant that the units could not be occupied.

23 The documentary evidence provided in support of the appellant's case comprised:

- Invoices from Willmar Hire Limited: 8 March 2018 (investigation and installation of new foul drainage) and 1 April 2018 for drainage work in "Conyers Yard".
- A report from Severn Trent Water dated 16 January 2019 which confirmed a blockage 80 metres beyond the boundary into the railway area.
- Invoices from Kidderminster Septic Services dated from 5 October 2018 to 1 January 2019 for removal of sewage.
- An email from Severn Trent Water which confirmed their final attendance on 15 April 2020. The specific location was not identified.

24 While it was acknowledged by Mr Latif that there had been a drainage issue, he submitted that there had been no evidence presented to show the extent to which the properties had been affected by flooding. He disputed that blocked drainage would leave a property in a state of uneconomic repair or render a property incapable of beneficial occupation for longer than a few weeks, especially when Severn Trent Water had been notified.

25 Particular reference was drawn to an extract of an email dated 24 January 2018 in which a future tenant stated that rubbish needed to be removed, the drains were still blocked, and further improvements were required, but they would be able to run the boiler. Mr Latif submitted that this conflicted with Mr Johnston's statement that the properties were incapable of beneficial occupation from 1 January 2018. He further submitted that there were conflicting dates in respect of the invoices for cleaning "Conyers Yard". There were multiple invoices dated from November 2018, however no explanation had been provided as to why the work did not commence earlier. This was significant as Mr Johnston contended that the appeal properties had been unoccupiable due to the sewage with effect from 1 January 2018.

26 Mr Latif confirmed that no other challenges had been raised as a result of the sewage pipe flood, despite it being a mains pipe, and the presence of multiple properties within the estate.

27 In appeals of this nature, the burden is on the appellant to demonstrate that the property is not capable of rateable occupation on the material day. In the absence of any compelling evidence, and for the reasons outlined by Mr Latif, the panel determined that the appellant's representative had failed to support his contention that the appeal properties should be deleted from the rating list, as at the material day of 1 April 2018.

28 The present assessments of £24,500 RV (Unit 3) and £4,250 RV (Unit 9) with effect from 1 April 2017 were confirmed by the panel and the appeals were dismissed.

Date: 9 January 2024

Appeal Numbers: CHG100820119 and CHG100820106

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.