VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal : exemption from rating; Schedule 5 of the Local Government Finance Act 1988; former paintball site used for agricultural purposes; appeal dismissed.

APPEAL NUMBER:	CHG100894181
RE:	Whyndyke Farm, Preston New Road, Westby With Plumptons, FY4 4XQ (the "subject property")
BETWEEN:	Closelink Limited — Appellant and Amanda Hitchings (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	10 May 2024
BEFORE:	Ms R Sharma (Presiding Senior Member) Ms A Verma (Senior Member)
CLERK:	Mrs J Smith IRRV(Tech)
APPEARANCES:	Mr Joseph Chiffers of JSC Chambers - on behalf of the appellant Mr John Richardson – on behalf of the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that the entry for the subject property should remain in the rating list with an RV £12,500 with effect from 1 April 2017.

Introduction

3. This appeal has been brought under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]. The appeal challenges

the respondent’s decision that the appellant’s proposal (also known as a “challenge” under the “check, challenge, appeal” framework) was not well-founded.

4. The appellant’s proposal had sought an exemption for the subject property under section 51 of the Local Government Finance Act 1988 with effect from 31 August 2019, as comprising an agricultural building within Schedule 5 to that Act.

5. Mr Chiffers appeared on behalf of the appellant as advocate only. Mr Richardson was representing the VO in the dual role of advocate and expert witness.

6. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

7. The subject property consists of a collection of farm buildings surrounded by a yard. They were previously leased by a company providing a paintballing experience. The tenants had vacated the premises on 31 August 2019.

8. The appellant’s representative had argued that since the paintball business had vacated the site had reverted back to its former agricultural status and was in a derelict state. He sought a deletion from the rating list on the basis that it is entitled to exemption as an agricultural building.

9. The valuation officer maintained that the subject property did not meet the relevant criteria as an agricultural building and defended the present entry in the rating list of RV £12,500 with effect from1 April 2017.

Preliminary issue

10. Mr Chiffers, the appellant’s representative, had submitted a 101-page bundle to the Tribunal and the respondent on 2 May 2024. He explained that he had mistakenly believed that this had already been circulated.

11. Mr Richardson, for the Valuation Officer, had no objection to the inclusion of this material since most of the relevant documents had already been served during the check/challenge stage. The remaining documents related to the previous tenancy agreement and the proposed future development of the site and were therefore not relevant to this appeal.

12. Having regard to this situation, the panel considered the matter in accordance with Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended), the Valuation Tribunal for England may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if -

(a) that evidence—
(i) is provided by a party to the appeal;
(ii) relates to the ground on which the proposal was made; and
(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence.

13. Whilst late submissions should always be discouraged, as they do not comply with the Tribunal's standard directions (Which require a minimum of four weeks notice before the hearing), the panel nonetheless allowed its inclusion because the Valuation Officer had no objection to this new evidence.

Relevant Law

14. Paragraph 3, Schedule 5 to the Local Government Finance Act 1988 states that:

"A building is an agricultural building if it is not a dwelling and-

a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on that or other agricultural land….

b) it is or forms part of a market garden and is used solely in connection with agricultural operations at the market garden, or

c) it is or forms part of a nursery ground and is used solely in connection with agricultural operations at the nursery ground."

Discussion

15. The appellant company, Closelink Limited, had been in extensive negotiations regarding the redevelopment of a large area of land which included the site of the subject property. Outline planning permission had been approved for 1,400 residential dwellings, a school, neighbourhood centres, an industrial estate and associated infrastructure. Once the paintballing business had vacated the site in August 2019 the appellant wanted to ensure vacant possession could be achieved without delay and therefore he did not seek a replacement tenant.

16. According to Mr Chiffers, the site had been left in a derelict state although a farmer used the buildings on an ad hoc basis for his cattle and to store haybales. Mr Chiffers stated that this arrangement began around the time the former paintballing tenants vacated and was formalised in July 2023 with a monthly licence agreement.

17. The panel noted from the appellant's challenge submission that he had referred to the subject property as being no longer in use. There was also an email exchange between the appellant and the Valuation Office Agency, on 3 October 2022, in which the subject property was referred to by the appellant as being 'vacant and unused since 31 August 2019'. At the hearing, Mr Chiffers suggested that being vacant, the subject property should be exempted from business rates. The panel found this comment to be at odds with his earlier assertion that the subject property was occasionally used by a farmer.

18. Mr Richardson referred to a site visit which he made on 24 July 2023 with Miss L who was acting on behalf of the appellant. During an earlier telephone conversation with Mr Richardson, Miss L had told him that the neighbouring farmer had cut the grass but did not use the buildings. During the site visit Mr Richardson found signs of vandalism, and the yard was overgrown and holding water. The building appeared to be unused. He had taken some photographs from which the panel noted that the buildings were in a very poor condition and there were no signs that any vehicles had entered the yard.

19. Whilst summing up his case, Mr Chiffers requested an adjournment so that he could provide further evidence, namely a copy of the licence agreement with the unnamed farmer. However, the panel was aware that the licence had not been agreed until around the time of the site visit in July 2023, and the panel did not consider this document would assist in establishing the use and occupation of the subject property at 31 August 2019, the effective date of this appeal. In any case, the evidence should have been exchanged before the Valuation Officer made a decision on the challenge proposal in August 2023. The panel therefore denied his request for an adjournment.

20. In determining whether the subject property should be exempt from rating as agricultural property, the panel first had to consider its use. From the evidence presented, the panel could find nothing to suggest that the subject property was in any use at all. It had been referred to as derelict in the appellant's submissions and this was established during the VO's site visit and by the photographs taken by him at that time. The appellant had not submitted any evidence to the contrary. Indeed, at the hearing Mr Chiffers had stated that the property was so derelict that it should be deleted from the valuation list due to its non-use.

Disposal

21. In view of the above findings and conclusions, the panel was satisfied that the subject property did not meet the provisions of paragraph 3 of Schedule 5 and should remain in the rating list with an RV £12,500 with effect from 1 April 2017.

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22. Accordingly, the panel dismissed the appeal.

Date issued to parties: 4 June 2024

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.
