THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended; Material change in circumstances; Burvill v Jones (VO) [2012] RA 23; Appeal allowed in part.

RE: Saville Products Limited, Millstream Lane, Failsworth, Manchester M40 1QT

APPEAL NUMBER: CHG100932903

BETWEEN:	Saville Products Limited	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent
BEFORE:	Mrs Stacey Patel	(Chair and Senior Member)
	Mrs Amanda Adeola	(Senior Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 2:	5 February 2024	
PARTIES PRESENT:	Mr Howard Nelson	
	Mrs Elaine Nelson	Owners and Directors of Saville Products Limited
	Mr Andrew Glover	Respondent's representative

Summary of decision

1. Appeal part allowed. The Rateable Value (RV) of the appeal property was confirmed as £11,500 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellants had been the non-domestic ratepayers of the appeal property Saville Products Limited on Millstream Lane, Failsworth, Manchester M40 1QT.

3. The appeal property was an industrial premises consisting of a number of properties of different ages.

- Single storey workshop / store.
- Ground and first floor offices adjacent to the industrial building.
- Purpose built industrial building of mixed age.
- Purpose built warehouse.

4. In October 2022, the valuation officer (VO) merged the four separate rating assessments on the site into one and backdated the assessment to 1 April 2017. At that point the RV was reviewed and given the issues the appellants were having regarding the activities of Enviroil and the detrimental effects to their business, an end allowance of 15% given by the VO. An additional 10% end allowance was given in respect of access issues to the site giving a total reduction of 25%.

5. The RV of the property was now £38,250 with effect from 1 April 2017 and the appellant had proposed that the RV be reduced by 90% to £3,825 with effect from 1 April 2017 because of a material change of circumstances (MCC) in respect of the activities of Enviroil.

6. The VO stated that the effects of the change of circumstances had already been reflected in the RV assessment when it was reviewed and so disagreed with the proposed alteration of the list. The appellant's representatives still sought the 90% reduction to £3,825 with effect from 1 April 2017.

7. During the CCA process the VO gave a further 10% end allowance based on a material change of circumstances in 2021 and reduced the RV to £33,000 with effect from 1 April 2021.

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

Issue

9. Whether a further RV reduction was due based on the material change of circumstances with effect from 1 April 2017.

Evidence and submissions

10. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.

11. The appellants had stated in their appeal submission that they were the joint owners of the appeal property and directors and owners of Saville Products Limited and had been trading from the premises since 2001.

12. They had submitted that they were continuing to face massive problems caused by the activities of Enviroil and that this had drastically changed the nature and focus of their business since 2017.

13. The disruption started in 2014 but had become completely intolerable since 2017 to the extent that they were in danger of being forced out of business.

14. Enviroil started as a single small waste cooking oil reprocessing site but since 2017 its operations had grown enormously including having a fleet of 42 tonne vehicles. The roads in the area were narrow country lanes unsuited to the size and volume of traffic, noise, smell, traffic, fires, pollution and damage. In 2021, Enviroil began to operate a biowaste transfer station and this caused further problems.

15. The appellants further detailed the problems caused by Enviroil and that some of the outcomes were that they were unable to access their property for some time, they had to rent other storage facilities offsite and their turnover plummeted. They had installed CCTV and had contacted the billing authority, Oldham MBC generally and its chief executive in particular, as well as the police and had also attended multi-agency meetings in 2019.

16. The billing authority had taken enforcement action against Enviroil resulting in fines, costs and compensation awards but the owner of Enviroil had not made any payments.

17. The appellants had had their premises and site professionally valued and found that its value had decreased by almost 40% from £525,000 in 2015 to £320,000 in 2020. They had estimated that the cost to them and their business was in the region of £1m.

18. In summary, they sought a 90% reduction in the rateable value of their property with effect from 1 April 2017 as they were only able to operate from the property at great inconvenience and with huge inefficiencies. They have had to reorganise their business activities completely and because they can only make minimal use of their Banbury Road warehouse for storage purposes, the rest of the business is massively disrupted. In their estimation they were only able to properly use 5 – 10% of their business premises.

19. The respondent's representative explained that any reduction in RV due to a material change in circumstances would normally be supported by rental evidence, however, the appellants owned the premises and no rental evidence had been presented.

20. He explained that the additional 10% end allowance had been given because of the MCC in 2021 and this therefore meant that a total of 35% had been given for the effects of the activities of Enviroil on the appellants' business.

21. He stated that the current assessment of the appeal property was based on industrial properties in the Oldham area, however, this was a most unusual case and he had found the effects on the business and appeal property difficult to quantify. He had visited the appeal property in May 2023.

22. He made reference to the case of *Burvill v Jones (VO)* [2012] RA 23 as that was the only case he could find that was similar in terms of food waste business. This supported the valuation of £33,000 RV but he felt that further consideration could be given.

Decision and reasons

23. The panel referred to the Local Government Finance Act 1988 in respect of the definition of rateable value in paragraph 2(1), Schedule 6 to the Act (as amended). 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"). The material day for this appeal was 1 April 2017.

24. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations") set out a number of grounds on which the list may be altered in regulation 4, including the following at 4(1)(b): "the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled."

25. A "material change of circumstances" is defined by regulation 3(1) of the 2009 Regulations as "a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the [1988] Act". Those matters are, insofar as are relevant here:

> "(a) matters affecting the physical state or physical enjoyment of the hereditament,
> (b) the mode or category of occupation of the hereditament,
> (c) …
> (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there…"

26. The issue for the panel to determine was whether a reduction in the RV was warranted as a result of the MCC, the activities of the adjacent business Enviroil.

27. The panel noted that the appellants were in occupation of the appeal property on the material day and that the activities affecting their business were present at the material day and continue to this day.

28. The panel also noted that the appellants were the owners of the appeal property as well as being the directors of the company occupying it and had stated that there was no rental evidence in respect of it. Further, the panel also noted that the VO's representative had not submitted any rental evidence of any comparable properties.

29. In fact, he had stated that this case was a very unusual case. He had visited the premises and directed the panel to the aerial photographs of the appeal property and its immediate environs. He explained that he had never come across a similar case and that it was very difficult to quantify the extent to which the MCC might have affected the rental value of the appeal property.

30. The panel found that this set of circumstances was extremely unusual and there was no doubt that the appellants' business had been and remained to be acutely affected by the ongoing activities of the neighbouring business.

31. The appellants had stated that in respect of the possibility of renting the property no-one would consider renting it in its current state. The panel understood their reasons for saying that and took into consideration the appellants' contention that they could only use 5 – 10% of their business premises.

32. However, they were still using the appeal property and the panel found that a 90% reduction would have been excessive. The panel noted the reference to the *Burvill* case but found that the issues stated within that case were considerably less intrusive than in this appeal. The panel found that it was clear that the appellants had demonstrated that a severe loss of trade had occurred.

33. The panel found that the appellants had no control over the use of the neighbouring business and it was reasonable to assume that any hypothetical tenant would recognise

such a situation and therefore would either not take on the tenancy or expect a substantial reduction in rent.

34. The panel found that this should be reflected in a reduction of 70% of the RV of £38,250 with effect from 1 April 2017 and the appeal was therefore allowed in part. The RV was calculated on a base rate of £28.00/m^2 which after a 70% reduction was £8.40/m^2.

Floor	Description	Area	Area / £m^2	Value
Ground	Warehouse	1,083.40	6.30	6,825
Ground	Workshop	208.80	7.14	1,491
Ground	Workshop	357.90	4.41	1,578
Ground	Office	52.30	8.82	461
First	Office	53.98	8.82	476
Ground	Workshop	162.27	4.41	716
				11,547

35. The panel found that the RV should be reduced to £11,500 rounded.

Order

36. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of Saville Products Limited, Millstream Lane, Failsworth, Manchester M40 1QT to an RV of £11,500 with effect from 1 April 2017.

37. A refund of the paid fee will now be arranged (Regulation 13E of the Non-Domestic Rating (Alteration of Lists & Appeals) (England) Regulations 2009. Provided there is no review of the Tribunal's decision the refund will take around six weeks to process.

Date: 1 March 2024

Appeal number: CHG100932903

Rights of appeal

Any party who is aggrieved by the Tribunal's decision 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.