VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeals: Local Government Finance Act 1988; mine inoperable; deletion; Regulation 38, Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009; appeal allowed.

APPEAL NUMBERS:	CHG101091192, CHG101054063, CHG101259299, CHG101054030, CHG101135007, CHG101091185
RE:	Hemerdon Mine, Hemerdon, Plymouth, PL7 5BU (the "appeal property")

BETWEEN:	Tungsten West Plc	Appellant
	and	
	Lucy Formela-Osbourne (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	16 April 2025
BEFORE:	Mr JM Imperato, Presiding Senior Member Mrs F Cortese, Senior Member
CLERK:	Mrs D Davies
APPEARANCES:	Mr Mark Banton of Newmark, representing the appellant as advocate and expert witness Mr Roger Teagle, on behalf of the respondent VO as advocate and expert witness

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DECISION AND STATEMENT OF REASONS

Decision

1. Appeal CHG101054030 is allowed; CHG101091192, CHG101054063, CHG101259299, CHG101135007 and CHG101091185 are dismissed.

2. The Tribunal panel was satisfied that the mine was incapable of beneficial occupation from 17 July 2019 to 30 November 2022 inclusive and determined that its entry should be deleted from the list between those dates.

Introduction

3. There are six appeals for the same property. The arguments in each are broadly similar; the main difference is in the material dates to be used. The appellant's representative explained that the intention behind submitting multiple appeals was to ensure that the VO could not 'argue on a technicality' that an appeal is invalid. Both parties' representatives agreed that the appeals should be heard together. There was no dispute about the key dates and events.

4. The representatives were appearing as both advocate and expert witness.

5. Mr Banton confirmed that he was not employed on a success-related fee basis. He declared that he understood and fully accepted that his duty was to the Tribunal in giving evidence and that he would comply with this as well as the requirements of the professional body, regardless of whether or not the evidence supported his client's case.

6. The panel accepted the expert witness evidence on the above basis: the appeal was not considered complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions - general) of the Procedure Regulations. The panel determined that it was appropriate to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

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

Background

8. Hemerdon mine is a tungsten mine and premises; it is the only one in the country. The site has not been worked since 2018, when the then-owners, Wolf Minerals, went into liquidation.

9. Wolf Minerals acquired the mine in or around December 2007 and commenced extraction in mid-2015. Prior to that there had been no extractions from the mine since the summer of 1956 when it was worked for a single day.

10. The LPA receiver took control of the property at the end of 2018 and, in order to limit financial liability, disclaimed the licences to operate the mine in March 2019 and requested that the power supply be disconnected in April 2019.

11. Wester Power disconnected the property from the electricity supply on 17 July 2019. The supply was re-distributed to other users by 19 November 2019.

12. Tungsten West PLC took ownership of the appeal property on 30 November 2019. In April 2020 the company made a request to be reconnected to the power supply. In November 2020 an agreement was reached for a supply of 2.5MVA and the connection was put into place in March 2021.

13. In November 2021 Tungsten West sought an increase in the power supply to 6.5MVA. This was delivered on 1 December 2022.

14. The evidence before the panel comprised of the information disclosed and exchanged during the challenge process. The submissions included photographs of the appeal property, email

exchanges regarding development plans and the electricity supply, the parties' skeleton arguments, copies of the current and the proposed valuations and references to relevant caselaw, including:

(a) *Humber Ltd v Jones (VO)* (1960) EWCA Civ J0407-1
(b) *Hall v Edwards (VO)* LVC 571/1966
(c) *Kier Hardman (VO) v British Gas Trading* [2015] UKUT 0053 (LC)

Preliminary issue

15. Prior to the hearing, on 10 March 2025, the appellant's representative had sought to have additional evidence admitted. The valuation officer's representative objected to the request.

16. A Senior Member considered the application on 15 April 2025. He declined to allow the evidence on the grounds that some of the information had been available when the proposals were determined, and that another element, a schematic of the site, was not sufficiently pertinent to the grounds of the appeal.

Relevant Law

17. The statutory definition of a hereditament is contained within section 64 of the Local Government Finance Act 1988. A hereditament is, by virtue of Section 115(1) of the General Rate Act 1967 a "…property which is or may become liable to a rate, being a unit of such property which is or would fall to be, shown as a separate item in the valuation list"

18. Paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 contained the statutory hypothesis for determining the rateable value of a non-domestic hereditament.

19. Although the rateable value is determined having regard to the antecedent valuation date (1 April 2015), the valuation must reflect the physical facts relating to the subject property and its locality as at the material date.

20. The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended), ('the Material Day Regulations') provides the material date to be used:

> 3 Material day for list alterations
> (1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.
>
> (2) ….
>
> (3) Where the determination is with a view to making an alteration to correct an inaccuracy in the list which arose in the course of making a previous alteration or is occasioned by a proposal disputing the accuracy of a previous alteration, the material day is the day by reference to which the matters mentioned in sub-paragraph (7) of paragraph 2 of Schedule 6 to the 1988 Act fell to be assessed when determining the rateable value with a view to making the alteration which gave rise to the inaccuracy or the accuracy of which is disputed.
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> (4) Where the determination is with a view to making an alteration so as to show in, or delete from the list any hereditament which—

(a) has come into existence or ceased to exist;

(b) has ceased to be, or become, domestic property or property exempt from non-domestic rating;

(c) has ceased to be, or become, required to be shown in the central non-domestic rating list, or

(d) has ceased to be, or come to form, part of the relevant authority's area by virtue of a change in that area,

the material day is, subject to paragraph (5), the day on which the circumstances giving rise to the alteration occurred.

21. Schedule 6, Paragraph 2 of the Local Government Finance Act 1988:

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are-
(a) matters affecting the physical state or physical enjoyment of the hereditament,
(b) the mode or category of occupation of the hereditament,
(c) ….
(cc) ….
(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, and
(e) the use or occupation of other premises situated in the locality of the hereditament.

22. The material days in these appeals were identified by the VO as:

CHG101054063	-	14 September 2022 (Check confirmed)
CHG101259299	-	21 March 2023 (Check confirmed)
CHG101135007	-	22 March 2019 (the date the licences were disclaimed)
*CHG101091192	-	30 September 2022 (Check confirmed)
**CHG101054030	-	17 July 2019 (the date the power was disconnected)
**CHG101091185	-	17 July 2019 (the date the power was disconnected)

The appellant's representative stated that alternative material days were possible for some of the appeals, but he did not pursue the point during the hearing:
* 14 October 2021, the date the RV increased
** 19 November 2019, the date the power was redistributed to other users.

Discussion

23. The appellant's representative had put forward several arguments in support of either a nominal RV or a deletion of the property's rating list entry. Not every ground was cited for each appeal. The grounds were:

a. The lack of electrical power to the site and insufficient supply capacity
b. Redundant mineral processing plant / redevelopment of the site
c. The lack of licences to extract from and operate the mine

24. The panel first considered the arguments relating to the lack of licences to extract and operate. It noted that the hypothetical tenant would be required to obtain licences in their own name. The appellant's representative stated that allowing the licences to lapse had the effect of requiring additional efforts to re-gain the licences: there was no automatic entitlement to a licence and environmental legislation has tightened up in recent years.

25. One significant issue was low frequency noise (LFN). Approximately 10% of the population can hear these infrasound emissions, and remedial measures must be put in place to mitigate the effect. In this case barriers are required around some equipment. The appellant's representative stated that, at the material dates, no-one was capable of obtaining a licence to operate at the appeal property, and that regard should be had to what was happening in reality.

26. The panel received oral confirmation that the licences were now in place. It considered that the difficulty was not site specific; rather it represented changing attitudes and legislative requirements. The panel was not persuaded that the lack of licences rendered the appeal property incapable of beneficial occupation. It determined that it would be up to the licence-holders (or prospective licence holders) to identify the appropriate remedial measures and ensure that they were in place.

27. The panel moved on to consider the plant at the site. The appellant's representative had provided a helpful overview of the sequential nature of the extraction and processing of tungsten ore. He had explained that the site was badly designed and required a significant re-development to be more efficient. The first parts of the plant, including the primary crusher and the conveyor, were no longer in use and were not intended for future use. However, they are still in situ because it is not cost effective to remove them.

28. The respondent's representative contended that he had asked for a scheme of works and had not been provided with one. He had carried out a site visit and seen no evidence of demolition. The appellant's representative stated that an update about progress and redevelopment plans had been provided at the inspection in November 2022, and again in an email on 16 November 2023. The panel reviewed the email and concluded that, although it provided a useful summary of the situation at the appeal property, it could not be said to constitute a scheme of works.

29. The panel understood from the evidence provided by both representatives that most of the existing plant was capable of use, albeit power cables had been cut to some machinery. It was noted that, for example, the crusher had been deemed unsuitable for the task it was required to perform. However, the panel found that the reason that the plant was not being operated was on efficiency grounds. Previous owners had, in the recent past, used the same plant and machinery to extract and refine ore, but the current owners found the design and layout of the site to be ill thought out and not fit for purpose.

30. The panel was not persuaded that the redundant plant and required redesign of the site rendered the appeal property incapable of beneficial occupation. It understood that technology was constantly evolving and that a new tenant, real or hypothetical, would want to refresh and improve the plant and machinery in an attempt to improve efficiency and

increase profitability. It therefore moved on to consider the lack of electrical power and the reduced capacity.

31. The lack of electricity to the site was not disputed between the parties. The power had been disconnected on 17 July 2019 and redistributed to other users by mid-November 2019. A request was made to restore the power in April 2020, but this was not effected until 11 months later, in March 2021. At that time the maximum power available to the site was 2.5MVA. Prior to the electricity supply being disconnected, the site had 12MVA available to it. According to figures provided by the appellant's representative, this equates to the supply required to power 2,400 residential homes.

32. The appellant's representative stated that the supply of 2.5MVA was not sufficient to operate the mine, although it would allow for the testing of items of plant on an individual basis. In November 2021 additional power was requested, and in June 2022 Western Power agreed to increase the capacity to 6.5MVA. This was provided from 1 December 2022.

33. The respondent's representative contended that the hypothetical tenant, or a new occupier, could request the reconnection of the power supply, and that he would have a reasonable expectation of both the necessary capacity being available and the supply being restored in a short space of time. He referred to the finding in *Hall v Edwards* in which the work required to reconnect the power was considered to be *de minimis* and not something to disturb the reality principle. The panel noted that this case referred to a domestic dwelling with significantly different requirements to a power-hungry mine. It acknowledged that in reality it had taken almost a year from request to reconnection of the supply, and then at a capacity of only one fifth of that required to power the mine fully.

34. In *Humber Ltd v Jones*, the Court of Appeal confirmed that the statutory hypothesis was a letting from year to year; the parties would have regard not just to the circumstances on the first day of the tenancy but also to perceived future benefits of occupation. The panel noted that *Humber* concerned a factory with depressed profitability which was seeking a reduction in rateable value rather than arguing that the appeal property was not capable of beneficial occupation and, as such, was not persuaded of the pertinence to this appeal.

35. The panel found that there was no certainty of the reconnection of the power supply, nor of obtaining the capacity required to operate the mine fully. Indeed, the latter has still not occurred. The appellant's representative confirmed that 6.5MVA was not sufficient to work the mine and all of the associated plant and machinery. He stated that it was hoped that more efficient processes would enable the mine to work at a lower capacity that the 12MVA previously utilised, but it would require more than the 6.5MVA currently available. He further confirmed that the redesign and associated testing was not yet complete (due in the main to financial limitations).

36. The panel was satisfied that the extended lack of an electrical supply to the property had rendered it incapable of beneficial occupation. It further considered that a supply capacity of 2.5MVA was insufficient to allow the mine to operate as a mine, noting that 6.5MVA capacity was not provided until 1 December 2022, over a year after it was requested, and well over two years since the initial request for reconnection in April 2020.

37. The panel was required to determine the date from which the property had become incapable of beneficial occupation. It understood that the material day, when the physical facts must be taken into account, was determined by Material Day Regulations. For two of the six appeals, CHG101054030 and CHG101091185, the VO had determined the material

day to be 17 July 2019, the date the power supply was disconnected. Both of these appeals had sought a deletion of the appeal property's list entry. The panel understood from the Material Day Regulations that the material day for a proposal to remove a rating list entry for reason other than demolition, no longer existing, being domestic or exempt from rating is the date that the circumstance first arose. It determined that date to be 17 July 2019.

38. The panel understood that it had a discretionary power under Regulation 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations (2009) SI 2269 which provides:

> Where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist, the order may require the alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances.

39. The panel determined that the appeal property was capable of beneficial occupation from 1 December 2022, the date that the electricity supply was increased to a capacity of 6.5MVA. No evidence was put before the panel to indicate that any additional capacity has been requested since that time, and the appellant's representative confirmed that this level of capacity was sufficient to test the plant and develop more efficient processes at the mine.

Disposal

40. In view of the above findings and conclusions, the Tribunal panel is satisfied that the appeal property was not capable of beneficial occupation from 17 July 2019 when the power supply was disconnected, until 1 December 2022 when a maximum capacity of 6.5MVA was restored to the site. The appeal CHG101054030 is allowed; CHG101091192, CHG101054063, CHG101259299, CHG101135007 and CHG101091185 are dismissed.

41. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent VO is ordered to delete the appeal property's entry in the 2017 rating list for an effective period of 17 July 2019 to 30 November 2022 inclusive to reflect the period when the mine was inoperable. The respondent must comply with this order within two weeks of its making.

42. 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). This will take approximately six weeks to process.

Date issued to parties: 1 May 2025

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.
