



VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; 2017 Rating List; Local Government Finance Act 1988; regulation 14(1B) Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268); car parking spaces and premises; challenge to the effective date of the subject hereditaments entering the 2017 rating list; correction of a compiled list error; BMC Properties and Management Ltd v Jackson (Valuation Officer) [2015] EWCA Civ 1306; appeals dismissed.

APPEAL NUMBERS: (1) CHG101063008; (2) CHG101063019; (3) CHG101063024;
(4) CHG101063026; (5) CHG101063031; (6) CHG101063036;
(7) CHG101063038; (8) CHG101063043; (9) CHG101063047;
(10) CHG101063052; (11) CHG101063059; (12) CHG101063068;
(13) CHG101063076; (14) CHG101063092; (15) CHG101063116;
(16) CHG101063131; (17) CHG101063139; (18) CHG101063146;
(19) CHG101063100; (20) CHG101063082

RE: Car Parking Spaces at Centre City, 5-7 Hill Street, Birmingham, B5 4UA

- | | |
|---------------------------------|---------------------------------|
| (1) Car Parking Space 54 | (2) Car Parking Spaces 57 - 61 |
| (3) Car Parking Space 71 | (4) Car Parking Spaces 72-75 |
| (5) Car Parking Space 76 | (6) Car Parking Space 98 |
| (7) Car Parking Spaces 99-105 | (8) Car Parking Spaces 111-113 |
| (9) Car Parking Spaces 114-124 | (10) Car Parking Spaces 125-128 |
| (11) Car Parking Spaces 129-131 | (12) Car Parking Spaces 132-142 |
| (13) Car Parking Space 143 | (14) Car Parking Spaces 174-184 |
| (15) Car Parking Spaces 189-191 | (16) Car Parking Spaces 192-202 |
| (17) Car Parking Space 203 | (18) Car Parking Space 204 |
| (19) Car Parking Spaces 185-188 | (20) Car Parking Space 144 |

BETWEEN:	Bruntwood Aviva Ltd	Appellant
	and	
	Lucy Formela-Osbourne (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Thursday 14 November 2024

PANEL: Mrs S Sohota, Presiding Senior Member
Mrs PA Crowther-Newman, Senior Member

CLERK: Mrs K Edhouse-Thomas

APPEARANCES: Mr A Habteslasie of Landmark Chambers (Counsel for the Appellant)
Mr C Ormondroyd of FTB Chambers (Counsel for the Respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals were dismissed.
2. The Tribunal panel determined that the valuation officer was empowered to make retrospective alterations to the rating list to correct an error. It found nothing erroneous with the effective date of 1 April 2017, when the subject hereditaments entered the rating list.

Introduction

3. The subject property is a basement car park at Centre City, 5-7 Hill Street, Birmingham B5 4UA. The appellant is the landlord of the premises and responsible for the appeal hereditaments.
4. The appellant made a challenge on 17 May 2023 against the accuracy of the 2017 rating list, specifically the effective date of the subject hereditaments entering the list. There was no dispute between the parties over the valuation. After considering the evidence submitted during the challenge period, the valuation officer decided to make no change to the effective date of the existing hereditaments. A decision notice to that effect was served on the appellant on 7 September 2023 and its representatives then appealed the valuation officer's decision to the tribunal on 22 December 2023. The appeals were made on the grounds that the list is inaccurate in relation to the hereditaments (other than in relation to the valuation) under regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009. The material day was 1 April 2017, this being the date the subject hereditaments entered the rating list.
5. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

6. On 24 January 2022 the valuation officer served a notice on the appellant to bring the basement car park of the subject property into the rating list as a single hereditament from 1 April 2017. The single hereditament consisted of 260 car parking spaces at a rate of £1,250 per space.
7. A check was submitted by the appellant to split the car parking spaces in line with various occupants and 204 assessments were created. The check decision was issued by the valuation officer on 31 October 2022. The 204 assessments entered the rating list with effect from 1 April 2017.
8. The appellant is disputing the effective date of the subject hereditaments, instead he proposed in the first instance, 31 October 2022. This being the date that the alteration was

made to the rating list to enter the subject hereditaments. In the alternative, the appellant proposed 24 January 2022, the date that the single hereditament first entered the rating list.

9. The cases had been previously listed to a hearing on 17 May 2024 and adjourned with directions. The initial challenge had proposed an effective date of 31 October 2022, however the appellant's skeleton argument had introduced an alternative date of 24 January 2022 and referred to two pieces of caselaw. The panel at the hearing on 17 May 2024 adjourned the cases to allow the respondent's representative the opportunity to provide a response to the additional effective date argument and the case law submissions. These directions were complied with.
10. The evidence bundle before the panel comprised all the evidence disclosed and exchanged during the challenge. It also included the parties' skeleton arguments and the respondent's response to the appellant's skeleton argument after the first hearing.
11. The parties made reference to the following Court of Appeal judgment *BMC Properties and Management Ltd v Jackson (Valuation Officer)* [2015] EWCA Civ 1306. The appellant's case made reference to *Lamb & Shirley Ltd v Bliss (VO)* [2001] EWCA Civ 562.

Relevant Law

12. The parties were in agreement that the relevant law was contained in regulation 14(1B) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, which was as follows:

14 Time from which alteration is to have effect: 2005 and subsequent lists

- (1) This regulation has effect in relation to alterations made on or after 1st October 2009 to a list compiled on or after 1st April 2005.
- (1A) Paragraphs (2), (2A), (2B) and (6) do not apply in relation to a list compiled on or after 1st April 2017.
- (1B) Subject to paragraphs (3) to (7), for a list compiled on or after 1st April 2017, where an alteration is made to correct any inaccuracy in the list on or after the day on which it is compiled, the alteration shall have effect from the day on which the circumstances giving rise to the alteration first occurred.

Discussion

13. The panel was required to determine whether the valuation officer had used the correct effective date of 1 April 2017, when the subject hereditaments entered the rating list.
14. The following common ground had been reached between the parties:
 - (1) The car parking spaces existed prior to the start of the 2017 list, and were in control of the appellant, but had not been previously assessed.
 - (2) The relevant law was contained in regulation 14(1B) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

15. On behalf of the appellant, Mr Habteslasie argued that the valuation officer had made two alterations to the rating list, which could not be ignored. The first alteration was made on 24 January 2022 when the car park was incorrectly represented by a single hereditament. This inaccuracy in the list was corrected in respect of the appeal hereditaments on 31 October 2022. He argued that the subject hereditaments should be brought into the rating list from the date that the alteration of the list was made on 31 October 2022, breaking up the single hereditaments into multiple. The alternative date of 24 January 2022 was put forward by Mr Habteslasie as a fallback. This was the date that the car park first entered the rating list as a single hereditament.
16. Mr Habteslasie referred to regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. He argued that the circumstances are to be identified with reference to regulation 4(1) in the first instance. In this case he referred to regulation 4(1)(g). He stated that the single hereditament first entered the list as 'a hereditament not shown in the list ought to be shown in that list'. Following the appellant's check submission, the single hereditament was split and the appeal hereditaments entered the list under regulation 4(1)(l) 'property which is shown in the list as one hereditament ought to be shown as one or more different hereditaments'. He argued that the circumstances giving rise to the initial alteration first occurred at the point at which the valuation officer made the decision to enter the car park in the list as a single hereditament, in his opinion this was the earliest possible effective date. Prior to 24 January 2022 there was no hereditament in the list, and it was therefore not possible to say that one hereditament ought to be shown as more than one. The circumstances giving rise to the second alteration was at the point that the correction was made and the hereditaments were split.
17. The panel noted that regulation 4(1) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 provided the circumstances in which proposals may be made. In respect of these appeals, the initial alteration to the list had been made by the respondent, to bring the car park into the rating list as a single hereditament, not as a result of a proposal being made by the appellant. The second alteration was made as a result of the appellant's check submission. The panel therefore gave little weight to this argument, and accepted Mr Ormondroyd's argument that regulation 14(1B) did not always have to be tied in with regulation 4 as many alterations are made by the valuation officer in their duty to maintain an accurate list.
18. The panel was more persuaded by the arguments of the respondent. Mr Ormondroyd contended that the car parking spaces existed prior to 1 April 2017 and were in the control of the appellant. He argued that the date on which the circumstances giving rise to the alteration occurred prior to the commencement of this rating list and in correcting the compiled list error, the alteration should have effect from the earliest possible date in the 2017 rating list, this being 1 April 2017.
19. Mr Ormondroyd argued that the appellant's contention that the matter should be treated differently because the 2017 rating list had been altered in two stages was not correct. In his opinion the intention of the legislation was to facilitate the maintenance of an accurate list, and to achieve procedural fairness between ratepayers and billing authorities. Mr Ormondroyd argued that if the appellant's contention was correct, ratepayers could be treated differently depending on whether their hereditament had entered the list in one stage or two. Deleting one inaccurate entry and replacing it with 204 accurate entries should not make a difference.

20. Both parties referred the panel to the Court of Appeal judgment in *BMC Properties and Management Ltd*. Mr Habteslasie drew parallels with the issue in this judgement. In that case, he argued that the word “circumstances” is not limited to the change of use or other events affecting the hereditament which occasions the alteration but can extend to the circumstances giving rise to a subsisting inaccuracy in the list. He contended that the panel should look at the inaccuracy of the list with reference to the hereditament. The inaccuracy in this case was that there was one hereditament covering multiple hereditaments. He argued that the panel should consider what the circumstances were and when they occurred.
21. Mr Habteslasie also referred to paragraph 40 of the judgment which stated, “The list of circumstances which may give rise to an alteration of the list are set out comprehensively in regulation 4”. Mr Ormondroyd argued that this was a general remark made in passing, and did not mean that you had to confine yourself to one of those circumstances.
22. Mr Ormondroyd contended that this judgment supported the respondent’s case. He argued that the Court of Appeal in that case was confronted with the argument that the predecessor to regulation 14(1B) could *only* refer to a “change of use or other event” affecting a hereditament. The consequence it was argued, was that an acknowledged error in the 2005 list could not be corrected because it was not known exactly when the “change of use or other event” underlying the list alteration had taken place. The Court of Appeal rejected this argument and held that the provision was “obviously drafted in order to encompass both initial inaccuracies in the list due (e.g) to the omission of a rateable hereditament and subsequent changes of circumstances which render the list inaccurate”.
23. The panel accepted that the valuation officer had initially misidentified the car park as one hereditament containing 260 car parking spaces. At a later date this had been corrected and the alteration had been reversed. Upon being made aware that the hereditament should be split, the valuation officer corrected this error and 204 hereditaments entered the rating list.
24. In accordance with regulation 14(1B) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the valuation officer was correcting an inaccuracy in the list. It was not in dispute that the car parking spaces had been in existence well before 1 April 2017, and on that basis the panel reached the conclusion that the correct effective date was from the start of the 2017 list.
25. The panel rejected the appellant’s arguments, which were based on their entitlement to take advantage of the valuation officer’s errors. The panel noted that the car parking spaces were not included in the 2010 list, and it considered that it would be a gross injustice to other interested parties, including other ratepayers in the same car park, if the appellant were to benefit from a further five years without liability to pay rates on these car parking spaces.

Disposal

26. In view of the above findings and conclusions, the Tribunal panel is satisfied that the valuation officer made no error in the effective dates of the subject hereditaments entering the rating list, and the panel dismissed the appeals.

Date issued to parties: 4 December 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.
