VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeals: Local Government Finance Act 1988; proposals to delete the entries in the list; whether capable of beneficial occupation; uneconomical to repair; appeals dismissed.

APPEAL NUMBERS:	As shown on attached schedule
RE:	Various units at Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ (the "subject properties")

BETWEEN:	Anderson Management (UK) Ltd	Appellant
	and	
	Lucy Dyer MRICS (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	2 July 2024
BEFORE:	Mr M H Smith, Presiding Senior Member Mr A Asante, Member
CLERK:	Mrs A Sloan IRRV(Hons)
APPEARANCES:	Mr D Sadiq (of Stiles Harold Williams Partnership PLC, for the appellant) Mr M Hussain (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are dismissed.

2. The panel found that the units were capable of beneficial occupation on the material date and therefore the hereditaments should not be deleted from the list.

Introduction

3. The appellant had made challenges against the accuracy of the assessments in the 2017 Rating List, by way of proposals served on the Valuation Officer (VO) on 30 August 2023. After considering the proposals and evidence submitted during the challenge period, the VO

decided that the proposals were not well founded and decision notices to that effect were served on the appellant on 11 October 2023. That decision was appealed to the Tribunal on 2 February 2024. The proposals had sought either deletion from the list or a nil valuation, but the decisions issued by the VO were only on the issue of deletion. The clerk asked the appellant's representative to clarify on what grounds the appeals had been made and he confirmed he was challenging the decision not to delete the entries from the list, as no decision had yet been issued on the valuation challenge. The panel therefore heard these appeals as requests for deletion.

4. Mr Hussain was appearing before the panel as advocate and expert witness and had provided his statement of truth prior to the hearing. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), the clerk asked the appellant's representative to clarify the basis on which he would be appearing before the panel. Mr Sadiq confirmed that he was appearing in a dual capacity as both advocate and expert witness for the appellant. He stated that he was instructed on a contingency fee basis. In giving expert evidence, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

5. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 ("the Procedure regulations"). It was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal could admit evidence whether or not it would be admissible in a civil trial). It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

6. Mr R Anderson, director of the appellant company, was present and understood to be observing the hearing. He interjected at one point during the hearing, seeking permission to address the panel. As Mr Sadiq had previously stated he would not be calling Mr Anderson as a witness, the panel adjourned briefly so that he could consult with his client. When the hearing resumed, Mr Sadiq confirmed Mr Anderson would be observing only.

7. The appeals were all brought by the same appellant, with the same representative and the issue was the same in all cases, with slight nuances in each case in terms of the cost of works and condition of each unit. Therefore, these appeals were heard consecutively with the parties making submissions and summing up on each case. After hearing all the evidence, the panel invited both parties to make closing remarks on the total evidence submitted.

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

Preliminary issues

<u>Issue 1.</u>

9. At the commencement of the hearing, the clerk invited the panel to correct the name of the appellant to the appeals. Mr Sadiq confirmed that the appeals had been lodged by the appellant in the name of Suzanne Anderson, in her personal capacity, but the company was

the ratepayer. Neither party had any objection to the correction of the record and the panel was satisfied that there was no prejudice to either party in doing so.

10. Accordingly, pursuant to Regulation 11(1)(a) of the Tribunal's procedure regulations, the panel formally directed that the appellant, Anderson Management (UK) Ltd, was substituted as the appellant in these appeals.

Issue 2.

11. Mr Sadiq asked the panel to place on record that Mr Hussain was not the original case worker for the VO in these appeals and sought permission to introduce into evidence matters discussed with the original officer. The panel was concerned that Mr Sadiq was looking to introduce new evidence that was not contained in the challenge submissions or VO decision under appeal.

12. The clerk advised that the Tribunal's standard directions, sent to the parties on 18 April 2024, prescribed that a party may make an application to include any further evidence no later than four weeks before the hearing. This would give the other party an opportunity to consider the submission and object to, or support, the application. The panel would therefore need to consider the reasons for the late application under the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926. If it was satisfied there were good reasons why the application could not have been made on time, it would then need to decide on admissibility with consideration of the limits set out in Regulation 17A of the Procedure regulations. Regulation 17A restricts new evidence to matters which relate to the appeals and were not known to the party before the VO issued her decision on the proposals, or evidence agreed by both parties.

13. Mr Hussain objected to the inclusion of any new evidence as it would place him at a disadvantage, but confirmed he had discussed the appeals with the original case worker and was well versed in the issues. The panel retired briefly after hearing from both parties and determined that no new documentation would be admitted as it considered the issues Mr Sadiq sought to include were more part of his advocacy and not evidence. It therefore advised Mr Sadiq that he may address the panel on the points he wished to make orally, and Mr Hussain may comment. The panel would weigh such submissions as it saw fit.

Background

14. The appellant purchased the freehold of the subject properties in October 2013 with a view to redeveloping the site from commercial to residential use and the construction of four apartment blocks containing a total of sixty residential units. As the units were let to tenants, the appellant had to wait for all units to be vacated before work could commence. Vacant possession of the units was obtained on 30 June 2019.

15. The planned redevelopment work was put on hold because there were issues with a right of way across the site belonging to Network Rail. Due to the delays from this issue and the Covid-19 pandemic, the appellant looked at costings to bring the subject properties back into use, as they were in a state of disrepair. After obtaining costings, the appellant considered it was not economical to refurbish the units and bring them into a state of reasonable repair.

Issue and Relevant Law

16. The issue before the panel was to determine whether each unit should be deleted from the 2017 rating list. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992/556) as amended. In respect of the subject appeals, the material day is 30 June 2019, the date the appellant sought deletion from the rating list for each unit.

17. The assumptions to be made when valuing a property for the purposes of non-domestic rating are set out in Schedule 6 of the Local Government Finance Act 1988 ("the 1988 Act") as follows:

    "2. (1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year 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 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."

Discussion

18. There were twelve units under appeal before the panel. Four were vehicle repair workshops, five were workshops, two were warehouses, and one a store. All are located on the Hockley Business Park in Redhill.

19. Mr Sadiq's submissions included photographs of each unit, some internal images taken while the units were occupied, and some internal and external images taken on a later date. The panel noted that none of the photos were dated and asked Mr Sadiq if he could confirm when they were taken. He submitted that the photos depicting the units when vacant were a mixture of those taken by the appellant, shortly after they were vacated, and photos he had taken himself on a site inspection when his firm was instructed by the appellant in February 2023.

20. The panel found that the photos showed the units in a state of disrepair but, without evidence of when they were taken, they were of limited use in demonstrating the position on the material day of 30 June 2019. It was clear that the units were older buildings, pre-1900 according to Mr Hussain, and therefore not of high quality when occupied. However, some of the later external photos showed bushes, trees, and vegetation had grown up around the units. The panel found that it was unlikely these were there when the units were occupied and suggested these photos had been taken some years after the material day.

21. Mr Sadiq cited case law, *Saunders v Maltby* [1976] 19 RRC 33, and submitted that the hypothetical landlord would not carry out all repairs but only those which were economically reasonable. He also referred to a Suffolk VT decision citing *Princes St Ltd (Ipswich) v Bond*

(VO) [2002] RA 212. Copies of these judgments were not provided for the panel to consider, and the panel found that the VTE decision would not be binding on it in any case.

22. While the panel was aware that Schedule 6 of the1988 Act sets an assumption of reasonable repair excluding those which are uneconomical when deciding the rateable value, it found that these appeals do not concern valuation. Mr Sadiq relied upon decisions concerning the disregard of uneconomical repairs and submitted that the appeal properties should be deleted because, on the material day, they were in a poor state of repair and the works required to bring them into use again were not economical to undertake.

23. The panel noted that the cases cited by Mr Sadiq pre-dated *Newbigin (Valuation Officer) v SJ & J Monk* [2017] UKSC14, where the Supreme Court held that, in a property undergoing a scheme of works, it must be established whether a hereditament exists before the repair assumptions can be considered. Mr Hussain submitted that no works had commenced on the material day, and this was not contested by Mr Sadiq, so he considered it was not appropriate to delete the assessments. Although not a property stripped back for refurbishment, the panel found that the same approach should be taken in these appeals. The first test must be to establish whether a hereditament existed that could be beneficially occupied for the mode and category of use described in the rating list before any consideration was given to value. These appeals sought deletion and therefore the only matter for the panel to determine was whether there was a hereditament or not. Put simply, were the subject properties in such a state of disrepair as to be incapable of beneficial occupation for their designated mode and category of use on the material day?

24. Mr Sadiq challenged Mr Hussain's status as an expert witness. He submitted that a previous case worker had visited the site, but Mr Hussain had not. Mr Hussain confirmed that he had visited the site on 28 June 2024, when he was allocated the appeals, and found that all but one building had now been demolished. Mr Sadiq claimed that Mr Hussain could not be an expert on these units because he has not seen them while in existence and he was not an expert in construction costs or a quantity surveyor, yet he determined the units were capable of beneficial occupation.

25. Mr Sadiq had visited the units while they still existed and taken photos in February 2023, but he conceded that he is not an expert on construction costs himself and so relied heavily on the report in his evidence bundle. The panel noted that the report, compiled by CS2 Chartered Surveyors, provided a detailed breakdown of works and costings. However, when questioned by the panel, Mr Sadiq accepted that some of the works listed were improvement works rather than essential repairs. However, he contended that the overall costs were so high compared to the value of the units, it was clearly not economical to undertake the works.

26. The panel noted that the report is dated 18 September 2023, based on a cost plan from Quarter 1 of 2022 and a condition report dated 23 March 2015. It found that the condition in March 2015 was likely to be when the units were occupied and therefore capable of beneficial occupation. By September 2023, the units had all been vacant for over four years and it was likely they would have deteriorated from the condition on the material day of 30 June 2019. The panel therefore placed little weight on the surveyor's report as it did not assist in demonstrating the condition of the units on the material day.

27. The panel understood from Mr Sadiq that the appellant company purchased the units in 2013 with tenants in occupation. The tenants occupied on a licence only, not a lease, and therefore had no repairing obligation. The tenants remained in occupation for some years while the appellant applied for planning permission to carry out the intended works to redevelop the

site. The units were vacated from various dates, with at least one being vacated the day before the material day of 30 June 2019.

28. From the internal photos provided, showing the units when occupied, the panel concluded that these were low quality units. Mr Sadiq submitted that they only appealed to tenants looking to occupy on an ad hoc basis and this was supported by the fact there was no lease and the low rental income achieved. He contended that, even in good repair, the site had a ceiling price on the level of rent that could be achieved on this type of unit.

29. Mr Sadiq had provided some analysis in his submissions, comparing the likely rent to be achieved on each unit if the costed works were carried out versus if no repairs are done. The panel found that the costs report included many aspects which were not essential repairs but were costs to bring the units to a higher specification and maximise value or income. It considered that this inflated the true cost of essential repairs. No indication was provided of costs purely to address dilapidation and bring the units up to a lettable standard. Also, the panel noted that Mr Sadiq had provided a positive rental value for each unit, based on the rent achievable if '*no repairs are done*.' This strongly suggested to the panel that a hereditament existed.

30. Mr Sadiq submitted that weight should be placed on the surveyor's report on these units and highlighted that the VO had provided no costings of their own, even in respect of the unit still standing. However, the panel found that it was not looking at valuation or the viability of carrying out repairs. In these appeals it was looking at the physical state of each unit on the material day to determine if a hereditament capable of beneficial occupation existed. The burden of proof in this type of appeal rests with the appellant to persuade the panel to allow the appeals.

31. After considering all the evidence presented, the panel was not satisfied that Mr Sadiq had proved his case. There was little evidence demonstrating the condition of the subject properties on the material day for the panel to consider. While the photographs provided did show that some units had been damaged, with holes in the floors or ceilings and damage to walls, the panel considered that this could be as a result of the units sitting empty for years, leaving them subject to vandalism and the elements.

32. Mr Sadiq submitted that the tenants had no repairing obligations and left the units in a poor state of repair when handed back to the appellant. However, the panel found that there was insufficient evidence to support this. It appeared that the units were in a relatively poor state of repair when occupied and this was reflected in the rents achieved and the fact that the tenants were not tied to a lease. The units did not each have their own toilet facilities, these being provided in a shared block, and this was reflected in the valuations. Mr Sadiq confirmed that the tenants had removed their fit out and plant and machinery when vacating. The panel found that this was normal practice when a tenant vacates an industrial unit and there is often a need for the landlord to carry out some remedial work to make the unit ready for occupation again, which would usually be proportionate to the quality of the unit.

33. In his email to the VO dated 9 October 2023, Mr Sadiq referred to the costings quoted for unit 2a and stated that "*these repairs would not generate a higher rental income for our client and as a result the property is beyond economic repair*…". The panel found this supported its findings that the report and costings dated September 2023 were for improvement works to generate a higher rental income, rather than essential repair works to make the units capable of beneficial occupation.

34. On the available evidence, the panel could not find that the units had fallen into such a state of disrepair by the material day as to no longer be capable of beneficial occupation, having been occupied recently at that point. While it was accepted that this may not be the case in the later photographs from February 2023, it could not be confirmed what the condition was on the material day. The panel noted the statement from the appellant dated 2 August 2023 in the evidence bundle, declaring that the physical condition of the units was unchanged from 30 June 2019, but there was no hard evidence to support this statement. The panel found that, in the absence of any compelling evidence of the condition of each unit on the material day of 30 June 2019, it was unlikely that the units would have deteriorated to such an extent from the recent vacation of the tenants, to be incapable of beneficial occupation as industrial workshops, warehouses, or stores.

Disposal

35. In view of the above findings and conclusions, the panel is satisfied that in each case a hereditament still existed on the material day of 30 June 2019 and the appeals were dismissed.

Date issued to parties: 25 July 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.

Schedule of appeals

Appeal number	Address
CHG101118164	Lance Roberts Period Mirrors, Unit 2a Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118258	Hockley Tyres, Units 7 & 8 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118269	Atlas Auto, Unit 10 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118175	Active Metalworks Ltd, Unit 3 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118274	Unit 12 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118202	KSM Auto Clinic, Unit 6 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118271	Unit 11 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118135	1st Call Glazing, Unit 1 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118192	Watson Coaches, Unit 5 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118263	Unit 9a Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118266	Unit 9b Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ
CHG101118277	Unit 15-16 Hockley Business Park, Hooley Lane, Redhill, RH1 6DQ