VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Factory and Premises; proposal challenging VO notice of alteration; adjustment to base rate to reflect heating disputed; Valuation for Rating (Plant and Machinery) (England) Regulations 2000; Iceland Foods Ltd v Berry (VO) [2018] UKSC 15; appeal dismissed.

APPEAL NUMBER: CHG101142687

RE: AcelorMittal (Formerly A S K McGowan Ltd)
Unit G2, Steel Park Road, Halesowen, West Midlands B62 8HD
(the "subject property")

BETWEEN: ArcelorMittal Distribution Solutions Ltd — Appellant

and

Lucy Formerla-Osbourne
(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: Monday 27 January 2025

BEFORE: Gary Garland (President)

CLERK: David Slater (Registrar and Chief Clerk)

APPEARANCES: Rohan Short from Knight Frank (Appellant's representative)
Henry Plant (Valuation Officer's representative)
Ben Bevan (Expert Witness for Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed.

2. No independent expert evidence was presented to persuade me that the heating system was used mainly or exclusively as part of the trade process. It was therefore rateable plant and machinery and its value fell to be reflected in the assessment.

Introduction

3. The appeal property was a three bay, steel frame industrial building with ancillary two storey offices and limited yard facilities. The property was situated on an established industrial development north east of Halesowen town centre. The Appellant ratepayer had been in occupation of the appeal property since it was constructed which was post 2000.

4. The check, challenge and appeal process began when the ratepayer initiated a check of the information held by the Valuation Officer on 19 March 2023. The check stage was completed on 19 June 2023.

5. Following the completion of the check, the ratepayer served a proposal to alter the rating list on the Valuation Officer on 10 October 2023. The proposal was made in accordance with Regulation 4 (1) (d) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 being a challenge against the accuracy of the rateable value shown in the list for a hereditament by reason of an alteration by the Valuation Officer. The Valuation Officer’s notice of alteration dated 20 July 2018 had the effect of increasing the assessment for the appeal property from £228,000 Rateable Value (RV), which was the compiled list entry, to £231,000 RV with effect from 12 January 2018. The increase in the assessment was to reflect the addition on site of a portakabin.

6. The Valuation Officer’s decision notice dated 8 April 2024 brought the challenge stage to an end. In part well founding the Appellant’s proposal, the Valuation Officer reduced the assessment to £226,000 RV with effect from 12 January 2018. In the challenge decision, the Valuation Officer accepted the ratepayer’s proposed reduction in the unadjusted rate from £45 to £44 per m². However, the Valuation Officer rejected the ratepayer’s proposed removal of the uplift to reflect the heating installation. The appeal proceeded on the basis of that single issue being in dispute.

7. The Appellant’s appeal to the tribunal, in accordance with Regulation 13A of the 2009 appeals regulations, was made on 5 August 2024.

8. Mr Short appeared before me in a dual capacity, as both Advocate and Expert Witness. He informed the tribunal that he was not instructed under any success related or conditional fee arrangement.

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

Preliminary issue

10. On 23 January 2025, a mere two working days before the scheduled hearing, Mr Plant informed my clerk that following an inspection undertaken by the Valuation Officer earlier that week, the following items had been identified by the Valuation Officer as not being reflected in the current assessment;

    - Rotary Screw Air Compressor
    - Air Receiver
    - Transformer (1500 KVA)
    - Air Dryer
    - Air Compressor

- Pit 1 (12m Depth)
- Pit 2 (18m Depth)
- Cameras (Internal Colour) (volume 25)
- Cameras (External Modern Mid 2000s to Now) (volume 22)
- Cameras (Old 90s – Early 2000s) (volume 11)
- Rail lines

11. In addition to the above, the Valuation Officer believed that their survey measurements were inaccurate and therefore areas were now in dispute. Having compared their survey records with the measurements that were taken on site, the Valuation Officer believed that their recorded area was 172.18m² short. Currently the Valuation Officer had a total recorded area of 4,861.71m² in comparison with the survey measurements taken on site of 5033.89m². Furthermore, there was also a two-storey office space situated within the main warehouse. This was currently shown within the existing survey as OFF (works office/toilets) and MSR (Messroom/Kitchen). Following the Valuation Officer's inspection it had come to their attention that this block was more of a substantial structure with breeze blocks plastered wall, carpets, and radiators. There was also a portakabin used by workers that required an addition to reflect that it benefitted from air conditioning.

12. Without seeking to apportion blame, the above sorry state of affairs provided yet further evidence, as if further evidence was required, to show that the check, challenge and appeal process was not working as it should. Factual matters should have been resolved during the check stage. Disputes about the accuracy of the survey data should not rear their ugly head for the first time two working days before the scheduled hearing. My observation was that the current system was too reliant on ratepayers to accurately carry out a check of the information held by the Valuation Officer. In days of yore, the latter would regularly undertake inspections to ensure that the list entries were up to date. However, now it appears that if the ratepayer certifies the accuracy of the information held by the Valuation Officer, no inspection is deemed necessary and nothing is done. That is, until a case is due to proceed before a tribunal hearing, as in this case, and the Valuation Officer decides that he needs to investigate the matter more thoroughly. Taking a pause there, surely cases should be investigated properly during the challenge period and before the Valuation Officer issues a decision notice. In this case, the challenge period was relatively brief and following the Valuation Officer's issue of their decision notice, there were still a number of questions that remained unanswered that needed to be, to establish if the Appellant's case had any merit.

13. This was borne out by the fact, following advice received from the Valuation Officer's technical team the Appellant was requested to clarify the following on 16 December 2024, which was well after the appeal had been made;

    1. The number of people who work within the building, for example how many people were employed in a typical 8-hour shift and how long each would person be in the building during that shift.
    2. Is the building used for any other purpose, other than storing rolled steel coils?
    3. Where are the rolled steel coils sourced from?
    4. How long are the rolled steel coils stored for?
    5. Have the rolled steel coils been treated with any rust-preventing coating?
    6. Is there a quality checking process at the premises that classifies the steel prior to onward movement from the premises?
    7. Is the steel transferred in coil form or is it worked/shaped/formed/coated etc. at the premises before being transferred onward? It has been mentioned that the 'Property

manufacturers steel for specialist aviation and automobile industries' so a bit more information on this function would be helpful.

14. All of the above queries should have been raised with the Appellant during the challenge period not after the appeal was listed for this hearing.

15. Given the above, I decided it was appropriate to adjourn the hearing for half an hour to enable the parties to try and assist me, in agreeing basic facts. Unfortunately, following this short adjournment and having had their discussion, the parties were unable to reach agreement on what items of rateable plant and machinery were present in the hereditament on the material day 12 January 2018 and they were also poles apart on survey measurements. Personally, I found the whole situation totally unsatisfactory. However, given that the tribunal’s hands were effectively tied by the evidential restrictions contained in Regulation 17A, on what it could and could not consider in a rating appeal, having regard to Regulation 37A of the tribunal’s procedure regulations, I decided to proceed on the basis that the only matter I could legitimately consider was the point that the parties originally wanted me to decide which was whether there should be an uplift for the heating.

16. No application was made by either party to submit any new evidence, in accordance with Regulation 17A of the tribunal’s procedure regulations, so the only papers before me were the Valuation Officer’s Challenge decision and the Appellant’s appeal submission. I cannot emphasise too much that the restrictions on the admission of “new evidence” are extremely strict and investigations made after the decision letter which crystalises the case are unlikely to be admitted under the current appeal structures. That is why it is extremely important that both parties present their evidence within the challenge phase of the process.

Relevant Law

Valuation for Rating (Plant and Machinery) (England) Regulations 2000

Class 2

Plant and machinery specified in Table 2 below (together with the appliances and structures accessory to such plant or machinery and specified in paragraph 2 of the List of Accessories set out below) which is used or intended to be used in connection with services to the hereditament or part of it, other than any such plant or machinery which is in or on the hereditament and is used or intended to be used in connection with services mainly or exclusively as part of manufacturing operations or trade processes.

In this Class, “services” means heating, cooling, ventilating, lighting, draining or supplying of water and protection from trespass, criminal damage, theft, fire or other hazard.

Table 2

(a) General

Any of the plant and machinery specified in Table 1 and any motors which are used or intended to be used mainly or exclusively for driving any of the plant and machinery falling within paragraphs (b) to (f) of this Table.

(b) Heating, Cooling and Ventilating

(i) Water heaters.

(ii) Headers and manifolds; steam pressure reducing valves; calorifiers; radiators; heating panels; hot-air furnaces with distributing ducts and gratings.

(iii) Gas pressure regulators; gas burners; gas heaters and radiators and the flues and chimneys used in connection with any such equipment.

(iv) Plug-sockets and other outlets; electric heaters.

(v) Refrigerating machines.

(vi) Water screens; water jets.

(vii) Fans and blowers.

(viii) Air intakes, channels, ducts, gratings, louvres and outlets.

(ix) Plant for filtering, washing, drying, warming, cooling, humidifying, deodorising and perfuming, and for the chemical and bacteriological treatment of air.

(x) Pipes and coils when used for causing or assisting air movement.

Valuation Tribunal for England (Rating and Council Tax Appeals) (Procedure) Regulations 2009

17A Admission of new evidence on NDR appeal

(1) On a NDR appeal, the VTE 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.

(2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—

(a) the new evidence; and

(b) the ground on which the proposal was made.

(3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal.

37A Matters which must not be taken into account in NDR appeals

(1) This regulation applies in relation to a NDR appeal.

(2) In determining an appeal, the VTE must not take into account any matter unless it was included in—

(a) the notice of appeal or any document accompanying the notice of appeal;

(b) evidence or submissions provided in accordance with a direction under regulation 17(1);

(c) information to which regulation 17(4) applies which is used in the proceedings by the VO;

(d) evidence admitted under regulation 17(6A); or

(e) new or further evidence admitted under regulation 17A.

Discussion

17. Although the appeal property was described in the Rating List as a Factory and Premises, it was used as a Warehouse and Premises, however nothing turned on this.

18. Industrial properties are valued having regard to the available rental evidence for this type of property within the relevant locality. It was usual for bulk categories of this type to be placed in a valuation scheme by the Valuation Officer. The scheme would normally specify what the range of unadjusted base rate(s) should be for properties covered by the scheme. This unadjusted rate would then be adjusted if the appeal property benefitted or lacked certain features which the unadjusted rate assumed were in place. In this case, the agreed unadjusted rate of £44 per m², based on local comparable evidence, reflected the fact that the property was heated. The Appellant therefore sought to persuade me to value the appeal property at an adjusted rate of £42.90 per m² for the workshop areas, in order to reflect the fact that the value of the heating should not be reflected in this assessment. This was because, the Appellant claimed, that the heating was not for the benefit of the small number of employees within the property but was essential to its trade process.

19. The heating installation at the appeal property consisted of the following;

    a) 3 x Benson VNG135 Heaters;
    b) 2 x Combat HVAC MGB30 77KW Heaters;
    c) The heaters were auto controlled with password protection to prevent adjustment of heat;

20. Mr Short contended that the above heaters had been installed soley to prevent the high-quality steel products stored by his client from deteriorating in cold, damp weather. This heating was not for the benefit of the few employees or any other aspect to the building, it was used as part of the trade process. He therefore argued that the removal of the uplift of heating was in line with the Supreme Court's judgment in *Iceland Foods v Berry (VO)* [2018] UKSC 15 and also with the Lands Tribunal's judgments in *Leda Properties v Howells (VO)* [2009] RA 165 and *Hays Business Ltd v Raley (VO)* [1986] 1 EGLR 226.

21. In response, Mr Plant outlined the Valuation Officer's position. The heating system employed by the ratepayer was not specialised and they had seen no evidence to suggest otherwise.

22. According to Mr Short's client, the ideal temperature for the storage of the steel was 16 degrees. However, when Mr Bevan carried out his inspection, he was informed that the

temperature was reduced to 12 degrees at the weekend. Three of the five heaters were located within the middle of the warehouse, with one at each end of the building. The Benson heaters were ceiling mounted.

23. Mr Short argued that his client had provided expert evidence which proved that the heating was used mainly or exclusively as part of the trade process. I had to remind him that I did not accept that his client was in a position to provide any expert evidence, as it was the Appellant. Neither Mr Short nor Mr Bevan, who appeared before me as Expert Witnesses, were qualified to give expert evidence to assist me on the point that I had to decide. This was because neither of them had any expertise in steel or its storage.

24. In cases of this nature, the persuasive or legal burden of proof was on the Appellant to prove their case. Whilst Mr Short had asserted as fact that the heating was used in connection with the trade process, he had not provided me with any independent expert evidence to substantiate his client's case. I was not even provided with the manufacturer's storage instructions.

25. I was also not convinced that the temperature had to be maintained at 16 degrees to avoid the dew point. Otherwise, why was the thermostat reduced to 12 degrees at weekends, when the warehouse was unmanned.

26. It was also not explained what would happen in the summer months and whether high temperatures would affect the steel and whether protective measures needed to be put in place to avoid condensation. I was mindful that seasonal weather variations can heavily impact temperature and relative humidity levels which could lead to condensation forming.

27. I therefore rejected his argument that the heating at the appeal property was similar to the air handling system that was employed by Iceland in *Iceland Foods Ltd v Berry (VO)* [2018] UKSC 15 as part of the "manufacturing operations or trade process" and therefore not rateable. All warehouses required heating to some extent, especially if manpower was employed in the building. If an appellant party seeks to argue that the heating is essential to manufacturing operations or trade process, in order to qualify for a reduced base rate, they need to appear before the tribunal with at least some independent "expert" evidence to support their claim. Just relying on what their client told them, as Mr Short did, is only likely to result in one thing, an unsuccessful outcome.

Disposal

28. In view of the foregoing, I was satisfied that the Appellant's case had no merit and therefore the appeal was dismissed.

Date issued to parties: 4 February 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.
