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3. The appeal property was shown in the list as offices and premises and is situated on a site which was previously used as a quarry. The appeal property comprised two separate buildings with a short link corridor.
4. The appellant company, Laver Leisure (Oakamoor) Limited, acquired the Moneystone Quarry site in 2010 but this did not include the Laboratory facility (the appeal property) which remained owned by Sibelco UK. The appeal property was later acquired by Laver Leisure on 30 June 2017.
5. The appellant's agent proposed a revised RV of £1 with effect from 30 June 2017 on the grounds that the appeal property was not in use from this date and could not be used.
6. The challenge was completed on 11 May 2021 and the VO's decision was to make no change to the current RV.
7. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers), the VTE may determine the form of any hearing.
8. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.
9. Mr Wright appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Wright was asked if he was instructed under a contingency based fee. He confirmed that he is paid an agreed amount based upon an hourly rate irrespective of the outcome.
10. Within his written statement, Mr Wright declared that his duty to the Valuation Tribunal as an expert witness overrides any duty to those instructing or paying him, that he has understood this duty and complied with it in giving his evidence impartially and objectively.
11. 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 Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).
12. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

13. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

14. The issue before the panel was to consider if the appeal property was capable of beneficial occupation and consequently, whether the RV should be reduced to a nominal £1 RV.

Evidence and submissions

15. In accordance with the directions for 2017 rating list appeals, the respondent valuation officer is required to serve notice on the Tribunal and the appellant if he considers that the appeal was not submitted with the correct evidence. Following this notice, the appellant has two weeks to provide reasons as to why this evidence should or should not be included. Shortly after the appeal was lodged, Mr Byrne submitted that some documents exchanged during the challenge had been omitted from the appeal documents and were to be relied on. The omitted evidence was sent to both the Tribunal and Mr Wright. As it was information exchanged during the challenge and the appellant raised no objection to the inclusion, in accordance with the Tribunal's consolidated practice statement, it is to be automatically added to the appeal documentation and was therefore considered by the panel when disposing of this appeal.
16. The panel was presented with a bundle of evidence which comprised the reasons for the challenge to the appeal property's rating assessment; the information exchanged between the parties during the check and challenge process; and the challenge decision subject to this appeal. The exchange of information included Land Registry documentation detailing ownership and the covenants attached, together with corresponding maps; details of the planning permission; photographs; and reference to the relevant law.
17. Mr Wright, on behalf of the appellant, disputed the rateable valuation on the grounds that the appeal property is not in use and therefore the rateable value does not properly reflect the market rent. The minerals in the quarry have been exhausted, quarrying has stopped and the original planning permission for the use of the premises has therefore expired. Staffordshire Moorlands Council had advised the new owners (the appellant company) that the office building (the appeal property) does not have planning permission to remain on the site and consequently, it is essentially in breach of planning permission whilst remaining on the site. Furthermore, he submitted that there is no legal right of access to the appeal property.
18. Mr Wright argued that the appeal property should be valued in accordance with the use to which is being put in accordance with the fundamental

principle of rating law (*Rebus sic Stantibus*) and that the hereditament is not in use and cannot be used legally as the planning consent has expired. He did not dispute the areas of the appeal property and confirmed that the appeal property had not been physically altered since the appellant company took over ownership. He submitted that the main basis of his argument was that having regard to the very specific planning use, who would want to lease it. He therefore proposed a revised RV of £1 with effect from the date the appellant company acquired the property, this being 30 June 2017.

19. Mr Byrne for the VO submitted that the planning restrictions relate only to the extraction of minerals from the site and the disturbance of the land within specified areas. He therefore considers that it has not been evidenced that the appeal property, which is a separate building on its own land, could not continue in similar occupation once vacated. Mr Byrne also referred to comparable assessments to indicate that former office type buildings at quarries have a rental market.

20. Mr Byrne further submitted that he does not consider the loss of access to the site has been proven and to the contrary the land registry documents allow access between the land occupied by the farms, Ministry of Agriculture and Fisheries to gain access. As landowners, Laver Leisure could make an agreement to allow access to another person.

Decision and reasons

21. In the case under consideration, Mr Wright was seeking a reduction to £1RV on the basis that the appeal property was not and could not be in use. He referred to the four essential ingredients of rateable occupation derived from the court of appeal judgment, *John Lang & Son v Kingswood Assessment Committee* [1949] CA All ER 224. The four ingredients of rateable occupation are actual occupation, exclusive occupation, beneficial occupation, and the occupation must not be too transient. When referring to occupation, the hereditament only has to be capable of occupation and not necessarily physically occupied.

22. Mr Wright argued that the four tests were not met as the appeal property was not capable of beneficial occupation. No issues or arguments were raised regarding anyone else being in rateable occupation but rather that the property was not in use.

23. The main point of contention was the former existence of very specific planning permissions which required the building to be used exclusively by Sibelco UK and exclusive rights to the minerals from the quarry. Mr Wright argued that as the planning permission had expired and operations at the quarry had ceased, the appeal property could not be used legally and is not suitable for use today. Mr Wright referred to the fundamental rating principle 'rebus sic stantibus' and submitted that the appeal property should be valued in accordance with the use in which it is being put, and, as the property could not be used, he requested nominal RV prior to its demolition or re-development.

24. The panel was aware of the rebus sic stantibus rule. However, the panel had not been provided with any evidence to demonstrate any major physical changes to the property and it noted Mr Wright's confirmation that nothing had changed and, as it stood, it could be used as a laboratory, had it not been for the planning restrictions.
25. Having regard to the definition of rateable value provided in paragraph 2(1) to Schedule 6 to the Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999), the appeal property had to be considered vacant and to let, as it stood, at the material date. As the appeal concerned a request to essentially delete the entry on the grounds that it did not pass the four ingredients of rateable occupation from the date it became vacant, the material date was 30 June 2017.
26. The panel understood that the property had previously been used by Sibelco UK as a laboratory for the testing of material specifically extracted from Moneystone Quarry. Despite the quarry ceasing operation in 2012, the laboratory continued to be in use until the appellant company took over ownership in June 2017. Furthermore, there was evidence of use on the quarry since 2012 albeit not for extraction of minerals. Planning details under SMD/2015/0220 demonstrated that part of the site had been redeveloped for operation of a solar photovoltaic farm including provision of internal service roads, fencing CCTV, below ground cabling and electrical ancillary equipment. The photographs presented to the panel evidenced that solar panels were present. The panel accepted the VO's position in that it had to value the property even if contravening the restrictions of use.
27. Mr Byrne submitted that the further part of the site had a planning application for a leisure development and whilst the appeal property was not included initially (as it was still in Sibelco UK ownership), therefore a separate application had been submitted for retention of the laboratory building and the change of use (SMD/2019/0716). Mr Byrne therefore submitted that the quarry and laboratory area are two separate sites and that there had been use since the closing of the quarry and subsequent redevelopment into a solar farm.
28. The panel considered the land registry documents and the specified covenants referred to by Mr Byrne and found that it was not presented with restrictions specific to the appeal property but rather it was restricting the disturbance and excavation of the land. Whilst the panel accepted that the appeal property was previously used as an ancillary to the quarry, it was not persuaded that the appeal property could not continue to be used as an independent property, given it was a separate site shown as office and premises.
29. The panel had regard to the position confirmed by Jane Curley from the local planning Authority (Staffordshire Moorlands District Council) in which it was stated that there was no valid consent for use. It was accepted that new planning permission may have to be obtained as the current planning had

expired. This had expired because of the cessation of operations at the quarry.

30. Ultimately, whilst the panel found that there was no specific restriction for use of the appeal property, it accepted that there would be a requirement to apply for new permission. It did not find that this alone was reason to delete a property from the rating list. There was no evidence presented to indicate that this permission could not be obtained or that there would be no rental market, particularly if an application was made for a continuance of its existing use. Furthermore, Mr Byrne referred to the assessment of The Dogs House, Cornets End Lane, Meriden, Coventry CV7 7LG which was formerly part of Meriden Quarry. The Dog House is being used and is subject to a rental agreement.
31. Mr Wright also raised issue regarding the appeal property's access in that he asserted that there was no legal right of way. The panel found that there was no evidence of this and accepted the VO's interpretation of the land registry and that as owner of the land they can have access or grant access to another. i.e., a hypothetical tenant. The onus is on the appellant to prove there is no access rights and the panel found that this had not been proven and therefore could not attach weight to this argument.
32. Within the challenge submission, it was also stated that the property was in a state of disrepair. No evidence was put before the panel to demonstrate the state of the property nor any estimates of the cost of repairs. During proceedings, Mr Wright had submitted that no changes had been made to the property since the appellant company acquired it and that the cost of repairs would likely be economical. Having regard to the assumptions contained within the rateable definition and in the absence of any evidence to prove otherwise, no weight could be attributed to this contention.
33. In conclusion, the panel was not persuaded that the property was not capable of beneficial occupation. A hereditament already existed, there had been no overt act and the panel was not persuaded that planning permission for similar use was unobtainable. What had been evidenced was an expiration of planning permission in conjunction with the use of the quarry, rather than the existence of a restriction on the use of the appeal property, which was a separate property in a different mode and category. In the panel's opinion, the case has not been proven and therefore it was not compelled to reduce the RV to a nominal assessment of £1RV. Of course, had there been works in preparation of demolition then the outcome may have been different.
34. In view of the foregoing, the appeal was dismissed.

Date: 2 February 2022

Appeal number: CHG100150599