VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) Agricultural exemption; proposal to delete premises. Appeal dismissed .

APPEAL NUMBER:	CHG100805864	
RE:	Farm Workshop, Wheatlands Farm, Finchampstead, RG40 4LZ (the "subject property")	
BETWEEN:	DG	Appellant
	and	
	Andrew Mouland (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	01/05/2024	
BEFORE:	Mrs N Crawshaw, Presiding Senior Member Mr K Everett, Senior Member	
CLERK:	Mrs J Routledge IRRV(Tech)	
APPEARANCES:	DG the appellant PG representing the appellant. Ms P Rowntree representing the respondent	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel determined that the subject property did not satisfy the conditions for it to be treated as an agricultural building nor as a wholly domestic building and therefore it could not be deleted from the valuation list.

Introduction

3. The hearing was listed to start at 10.00 unfortunately one of the Tribunal Panel had been delayed and therefore the hearing did not commence until 10.25. Both PG and DG were interested parties to the appeal as the owner of the building and directors of the occupier of the subject property.

4. This was a 2017 rating list appeal seeking deletion of the subject property from the 2017 Rating List. The challenge was submitted on 15 May 2022 the Valuation Officer (VO) issued the challenge decision on 4 August 2023.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the list is inaccurate in relation to the hereditament. The appeal was received by the Tribunal on 22 April 2023.

6. The subject property was a workshop situated on a farm, it was built in 1999 and extended in 2011, it measured 265.2 m^2 and had been entered into the 2017 Valuation List as a workshop at a base rate of £52.85 per m^2 and a rateable value of £14,000 with effect from 1 April 2017. Within the challenge documents a plan was provided and it was determined that the information held by the VO was inaccurate as the extension had not been taken into account in the original assessment. This had no bearing on the 2017 list as the information was received after the list was closed.

7. In this case the material day is the 1 April 2017.

8. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8- Model Procedure and requested the respondent to present his evidence first.

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

Background

10. Prior to 1 April 1990 ratepayers paid general rates on all properties in accordance with the General Rates Act 1967. From 1 April 1990 this changed, and business rates was introduced by the Local Government Finance Act 1988.

11. It is the duty of each valuation officer to compile and maintain local (s. 41(1) LGFA 1988) and central (s. 52(1) LGFA 1988) non-domestic rating lists.

12. Every relevant non-domestic hereditament must be entered in a local rating list unless it is exempt or entered in the central rating list.

Preliminary issue

13. The appellant's representative raised a number of preliminary issues:

I. A Freedom of Information request had been rejected by the Valuation Office Agency, he considered this was something the Tribunal Panel should have regard to as he believed that the whole farm including the workshop had been in the previous rating list and therefore the subject property was sui generis and should be considered part of the farm itself. Because of the refusal to provide information he believed this was self-incriminating proving that the decision was incorrect.

II. In the statement of truth from Ms Rowntree it was stated that she was an expert witness and that “I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement 'Surveyors acting as expert witnesses’. The appellant had received no report and was not aware that Ms Rowntree was to be an expert witness. She had not visited the property in 2021 and therefore could not speak to the situation at that time. A different officer had visited and refused to have regard to the information being supplied to him at that time. Miss Rowntree confirmed she had visited the subject property recently and was aware that there had been changes made since the visit in 2021.

III. The scope of the proposal was disputed. It was argued that Winchfield Engineering Ltd was not the sole occupier and part of the proposal was for each part of the workshop to be identified as a separate entity and rated as such. The workshop was being used to store personal possessions and for farm related equipment and repairs to farm machinery as well as the engineering work.

14. With regard to the first issue the Tribunal panel had no jurisdiction over the decision of the Valuation Office Agency regarding the application under the Freedom of Information Act and its decision. The Tribunal panel would take no inference from this.

15. With regard to the second issue Ms Rowntree explained that the reference to a “report” in the Statement of Truth was what she was to present at the hearing. There was no formal report and the evidence she was including was referred to in the decision notice and exchanges during challenge. The Tribunal panel confirmed that no written report had been provided in advance of the hearing and any factual inaccuracies or new evidence identified in Ms Rowntree’s oral presentation could be challenged during the hearing.

16. In respect of the third issue raised, the Tribunal panel referred to the challenge decision notice as the original proposal had not been included in the evidence bundle. This stated that the proposal was for the subject property to be deleted from the list as it was either subject to an agricultural exemption or should be included in the domestic list. The Tribunal panel was aware that the scope of a proposal was limited to either the valuation is unreasonable or the entry in the list was inaccurate. It was confirmed that no proposal had been made that the rateable value was unreasonable and therefore the Tribunal panel would consider the appeal on the grounds that the entry in the list was inaccurate.

Relevant Law

Primary legislation

17. Part III of the Local Government Finance Act 1988 (the 1988 Act) makes provision for the establishment of the local non-domestic rate payable in respect of non-domestic hereditaments.

18. The statutory definition of "hereditament" in section 115(1) of the General Rate Act 1967 states that it is "such a unit of … property which is, or would fall to be, shown as a separate item in the valuation list."

19. Section 51 of, and Schedule 5 to, the 1988 Act make provision for determining the extent (if any) to which a hereditament is, for the purposes of Part III, exempt from local non-domestic rating. Paragraphs 1 to 8 provide for exemption in relation to agricultural premises. So far as is relevant to these proceedings, it provides:

– **Agricultural premises**

1 A hereditament is exempt to the extent that it consists of any of the following —
(a) agricultural land;
(b) agricultural buildings;

2 provides a definition of agricultural land

3 A building is an agricultural building if it is not a dwelling and—

(a) It is occupied together with agricultural land and is used solely in connection with agricultural operations carried on on agricultural land

4 (1) A building is an agricultural building if it is used solely in connection with agricultural operations carried on on agricultural land and subparagraph (2) or (3) below applies.

(2) This subparagraph applies if the building is occupied by the occupiers of all the land c oncerned.

(3) This subparagraph applies if the building is occupied by individuals each of whom is appointed by theoccupiers of the land concerned to manage the use of the building and i s—

(a) an occupier of some of the land concerned, or

(b) a member of the board of directors or other governing body of a person who is both a body corporate and an occupier of the land concerned.

5 (1) A building is an agricultural building if—

(a) it is used for the keeping or breeding of livestock, or

(b) it is not a dwelling, it is occupied together with a building or buildings falling within paragraph (a) above, and it is used in connection with the operations carried on in that building or those buildings.

(2) Subparagraph (1)(a) above does not apply unless—

(a) the building is solely used as there mentioned, or

(b) the building is occupied also together with agricultural land and used in connection with agricultural operations on that land, and its use together with the use mentioned in sub-paragraph (1) (b) is its sole use.

20. Section 66 of the 1988 Act provides the definition of domestic property as follows:

66 **Domestic property**

(1) [Subject to subsections (2), (2B)[, (2BB)] and (2E) below,] property is domestic if—

(a) it is used wholly for the purposes of living accommodation,

(b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,

(c) it is a private garage [which either has a floor area of 25 square metres or less or is] used wholly or mainly for the accommodation of a private motor vehicle, or

(d) it is private storage premises used wholly or mainly for the storage of articles of domestic use.

[(1A) Property in England is also domestic if—

(a) it is used wholly or mainly for the activity mentioned in subsection (1B), and

(b) it is situated in or on property which is—

(i) used wholly for the purposes of living accommodation, or

(ii) a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation.

Secondary legislation

21. Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] makes provision for an appeal against the Respondent Valuation Officer's challenge decision to this Tribunal. So far as is relevant to this case, it provides –

13A Making and appeal to the [Valuation Tribunal for England]

(1) A proposer may appeal to the [Valuation Tribunal for England] on either or both of the grounds set out in paragraph (2) if—
…
(b) the [Valuation Officer] has decided under regulation 13 to alter the list otherwise than in accordance with the proposal;

(2) The grounds are—
(a) the valuation for the hereditament is not reasonable;
(b) the list is inaccurate in relation to the hereditament (other than in relation to valuation).

22. The Council Tax (Situation & Valuation of Dwellings) Regulations SI 1992/550 Regulation 7 provides:

(1) In the case of a dwelling which is a composite hereditament or is part of a single property which is a composite hereditament, the value of the dwelling, for the purposes of valuations under section 21 of the Act, shall be taken to be that portion of the relevant amount which can reasonably be attributed to domestic use of the dwelling.

(2) In paragraph (1)—

"domestic use" has the same meaning as in section 24 of the Act; and

"relevant amount" means the amount which the composite hereditament might reasonably have been expected to realise on the assumptions mentioned in regulation 6, other than paragraph (2)(h) of that regulation, if for the references to the dwelling throughout paragraphs (2) to (6) of that regulation, there were substituted references to the composite hereditament.

23. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) Regulation 14 provides the time from which an alteration is to have effect as follows:

(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

24. The evidence submitted for consideration of this appeal consisted of the VO's challenge decision, photographs and location maps of the appeal property, photographs and correspondence between the parties, and the appellant's written appeal statement including the licence granted on the subject property, and a marketing report. In advance of the hearing the clerk provided both parties the Court of Appeal judgment of *Farmer (VO) and Hambleton District Council v Buxted Poultry Limited* [1999] CA RA 61.

25. Ms Rowntree stated a report was received from the billing authority that the subject property was occupied by Winchfield Engineering Limited which was a commercial enterprise and a separate legal entity from the farm. As a consequence of the report the subject property was entered into the Valuation List with effect from 1 April 2017. When it entered the list there was no defined areas within the workshop. The photographs showed that the subject property was not solely used in connection with agriculture as it was involved in the restoration of classic cars. Therefore, the whole of the subject property was treated as non-domestic and included in the Valuation List.

26. It was submitted that there was a shared drive to the farm and subject property, however it could not be considered an appurtenance to the domestic property as there was a substantial hedge between the farmhouse and the workshop, therefore it was not within the curtilage of the domestic building.

27. The panel noted that s.66(1)(b) refers to an appurtenance “belonging to or enjoyed with” property falling with s.66(1)(a), it does not stipulate that a building must be within the curtilage of the domestic property to be an appurtenance. The Tribunal panel considered that it should not give the VO’s argument that the subject property was not an appurtenance any weight.

28. Ms Rowntree also argued that due to the definition of domestic property contained in the legislation the subject property could not be domestic as the area used for the storage of the privately owned vehicles exceeded 25m^2. The cars were now stored in the extension that was added in 2011 and partitioned off after the challenge was made, it had not been included in the valuation for the 2017 list. It was submitted that for the subject property to be deleted it would need to be either in domestic use or solely used for agricultural operations and it was neither, she therefore invited the Tribunal panel to dismiss the appeal.

29. The appellant provided a history of the workshop from the date of construction in 1999 including information on the development of the usage of the space and the planning applications. There was no domestic garage at the farmhouse although planning permission had been granted for a very large garage, it was not built. This demonstrated that a restriction of 25m^2 for domestic use was incorrect as the planning permission was for a domestic garage that was much larger than 25m^2.

30. The Tribunal panel noted that the legislation provides “it is a private garage [which either has a floor area of 25 square metres or less] or is used wholly or mainly for the accommodation of a private motor vehicle”. The Tribunal panel therefore concluded that it was not prescribed that a domestic garage had to be less than 25m^2 it can be of any size provided it is used for the accommodation of a private motor vehicle. Therefore, the VO submission that because the area was in excess of 25m^2 it could not be treated as domestic was given no weight.

31. The appellant was aggrieved by the actions of the Valuation Office Agency, the farm and workshop were inspected in 2011 but the subject property was not included as a separate entry in the Valuation List until 2021. He had been refused information regarding this and could not establish if there had been a change in the farm assessment following the inclusion of the subject property in the Valuation list. It was his contention that the subject property was part of the whole of the farm assessment in the past and nothing had changed. The billing authority was aware of the use of the workshop as planning applications had been made. He believed that the billing authority had incorrectly advised the Valuation Office Agency that the subject property was wholly occupied by Winchfield Engineering. The billing authority had now confirmed to the VO that this was not the case.

32. The Tribunal panel appreciated that there may have been errors in the past, however it was concerned specifically with the circumstances as they existed when the subject property was entered into the 2017 list and therefore could not have regard to these past issues. It was clear that the subject property was occupied by a different legal entity to the occupiers of the farm and therefore a separate assessment was correctly made.

33. The appellant argued that the parts of the subject building should be separately rated as a composite hereditament which would effectively reduce the RV to below the point where small business rate relief could be sought in respect of the area occupied by Winchfield Engineering, the portion that was domestic would be included with the farmhouse and the rest would attract the agricultural exemption. He had stated in his submission that 149.34m^2 was used to store the vehicles owned by PG, the farm used 97.59m^2 and Winchfield

Engineering occupied 105.42m^2. These measurements included the extension that was not included in the 2017 valuation.

34. The Tribunal panel understood the difficulties that the appellants had encountered and the shock of receiving a rates bill covering several years however it had to consider whether the legislation had been correctly applied. In doing so it had regard to all of the evidence and arguments put forward by both parties.

35. For the appeal to succeed the appellants had to satisfy the panel that the entry for the subject property was inaccurate and that all or part of the subject should not be included in the non-domestic list.

36. The Tribunal panel was aware from the legislation that for the agricultural exemption to be awarded the subject property must form, in a real sense, a single agricultural unit with the land. That was the effect of the judgment in *Buxted Poultry.* In that judgment, Lord Slynn concluded "that the important question is whether the two buildings or the buildings and the land are worked together so as to form one agricultural unit". In this case it was accepted that Winchfield Engineering although of importance to the running of the farm it was not solely concerned with the agricultural operations, it was also confirmed by the appellants that the secure storage contained tools which were at times used by Winchfield Engineering and therefore the agricultural exemption could not be granted to any part of the building.

37. The Tribunal panel noted that at the challenge on 15 May 2022 the area where the privately owned vehicles were stored was not separately identifiable from the area occupied by Winchfield Engineering. The appellant stated during the discussions that the cars were moved around the building at times to facilitate the restoration of the cars and the business of Winchfield Engineering prior to the extension being partitioned off. It was confirmed that any work done by Winchfield Engineering on PG's cars was done on a commercial basis. It was also noted that the area where the cars are now stored was not included in the 2017 assessment. The Tribunal panel concluded that as it was not possible to identify a distinct area that was wholly or mainly used to accommodate privately owned vehicles in the subject property at the time the subject property was brought into the list and therefore no area could be regarded as wholly domestic.

38. The appellants had argued that the subject should be treated as a composite hereditament. The Tribunal panel was aware that where use of any part of a property is shared, unless the non-domestic use can be considered to be de minimis, that part of the property does not constitute domestic property for the purposes of Part III of the 1988 Act because it is not used wholly for the purposes prescribed in S.66(1)(c). These areas were not used wholly or mainly for the purpose of accommodating private motor vehicles and therefore the Tribunal panel found the subject property was not a composite hereditament.

39. The Tribunal panel did recognise that the arrangements in the workshop have now changed and this may be something that could be the subject of a further proposal for the 2023 list.

Disposal

40. In view of the above findings and conclusions, the Tribunal panel is satisfied that the subject property was correctly entered into the 2017 Valuation List from 1 April 2017 as a non-domestic property, and therefore the appeal was dismissed.

Date issued to parties: 16 May 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.
