THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Appeal; 2017 Rating List; Restaurant and Premises; Material change of circumstances; Allowance to reflect the loss of trade due to vacant properties within the immediate locality; Appeal dismissed

Re: 29-31,East Street, Brighton BN1 1HL

APPEAL NO: CHG100082977

BETWEEN Englishs of Brighton Appellant

and

Mr A Corkish (Valuation Officer) Respondent

BEFORE: Mr G Coombes (Senior Member) and Miss E Blois

ON: 4 December 2020

REMOTE HEARING

APPEARANCES:

Mr S Campbell of Altus representing the Appellant as advocate and expert witness.

Mr G Squires represented the Respondent as advocate only.

Summary of decision

1. The appeal was dismissed and the assessment was confirmed at £120,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. 29-31 East Street, Brighton (the 'appeal property') had been entered in the rating list at £120,000 RV with effect from 1 April 2017. The appellant had challenged the assessment of the appeal property on 21 March 2019 on the grounds that there had been a material change of circumstances to the locality following the closure of four units within the Quadrant area of East Street. The appellant's representative was seeking a 25% reduction in the appeal property's assessment to £90,500 RV, with effect from 1 October 2017 to reflect the fall in footfall and subsequent trade due to the vacant units.

3. The appeal property was a seafood restaurant which had been trading since 1880 and had been in the same family since 1945.

4. The appeal was made to the Tribunal following the Valuation Officer's (VO) Challenge Case Decision Notice of 16 July 2020, in which the VO had determined that no change to the RV would be made.

5. 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.

6. 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.

7. Mr Campbell 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), his declaration of truth included a statement that he was instructed under a conditional fee arrangement.

8. Mr Campbell 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 the client's case.

9. 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).

10. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

11. Mr Squires explained that whilst he had not inspected the appeal property and therefore could not be considered an expert witness to that extent but he had previously lived in Brighton for four years and knew the area extremely well.

12. 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 when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issues

13. The sole issue in dispute related to whether an allowance was warranted to reflect the closure of other properties within the immediate locality which remained vacant

Evidence and Submissions

14. Mr Campbell provided photographs of the appeal property and the vacant units referred to. He also submitted a list of the properties in the Quadrant and the situation of these in date order. A sales and covers comparison for the appeal property was provided to illustrate the loss of income following each of the closures of nearby units caused by the decline of the area.

15. In further support of an allowance Mr Campbell referred to a number of decisions in which allowances had been granted for loss of trade and the marketing details for 31a-32 East Street dated June 2018.

16. Mr Squires contended that no evidence had been provided to show that the cause of the closures of the nearby properties was due to anything other than economic factors after the antecedent valuation date of 1 April 2015. He argued that the VTE decisions referred to had been for various other reasons such as the protest outside St Paul's cathedral and the opening of new shopping centres. It was his view that none of these decisions were on all fours to the appeal before the panel and that little weight should be attached to them. He therefore stated that no allowance was warranted and requested the panel dismiss the appeal.

Decision and reasons

17. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions as set out in paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

18. Under regulation 7(b)(i) of the Non-Domestic (Material Day for List Alterations) Regulations 1992, in cases where a material change of circumstances has been cited, the material day was the date the appellant confirmed the information held by Valuation Officer under the "check" process. It was confirmed that the check which led to this appeal had been completed on 19 March 2019. Therefore, the panel had to view the matters affecting the physical state or enjoyment of the appeal property and its locality at the material day of 19 March 2019, at which time there were four vacant units in the locality.

19. The panel could attach little weight to the decisions in which allowances had been granted due to changes in the locality as these were in respect of different circumstances to the appeal property. In *Pavlou (VO) [2015] UKUT 0102 (LC)* the case concerned the Occupy London Protest and the impact on businesses over the Christmas period for which a rent reduction had been granted by the landlord. Appeals 066024401982/539N10 and 066024402012/539N10 *Landsborough v Grace [2015]* concerned the closure of car parks in Crewe and whilst an allowance was granted for vacant units the panel was of the opinion that the circumstances were different in respect of the appeal before it. Appeal 194522001589/053N10 *Browns (Watford) Ltd v Dunlevey* concerned vacant shops in a shopping centre and a market which was being run down. In the Browns case a rent reduction had been granted by the landlord which was not the case in the appeal before the panel.

20. The panel considered the details of sales and covers provided by Mr Campbell and noted that trade did appear to have declined following the closure of the Kath Kidson unit in October 2017. However, sales had increased again following the closure of Pressleys jewellers and in, July 2018, had been at a slightly higher level than the previous August. Given these figures it was clear to the panel that being a seaside location trade during the Summer months would exceed that during the winter.

21. Whilst the panel appreciated that the appeal property was leased through connected parties, being a pension fund of the owners, no reductions in rent for other properties had been provided to show that a hypothetical landlord would reduce the rent due to the vacant units.

22. Mr Campbell had provided the marketing details for 31A-32 East Street from June 2018 with a rent sought of £60.52 ft^2. He stated that at the AVD the valuation of this property equated to £71.52ft^2. The panel could attach little weight to this evidence as the actual rent paid in 2015 was not provided for it to assess the actual decrease if any.

23. It was unfortunate that a reduction of 10% had been proposed by the VO in the initial challenge decision which was later rescinded. However, the panel accepted Mr Squires' explanation that he had made a error of judgement when proposing this offer and following completion of the challenge stage had changed his view. Little weight could therefore be attached to the offer made as the appeal was against the Challenge Decision Notice which defended the original assessment.

24. The panel attached weight to the fact that at the AVD all the vacant units were let and that their closures had not been caused by a physical change in the locality. Mr Campbell had failed to persuade the panel that the drop in trade for the appeal property had been anything other than the economical circumstances and seasonal changes prevailing at the time.

25. Having regard to the above, the panel confirmed the appeal property's current assessment of £120,000 RV with effect from 1 April 2017. The subject appeal was therefore dismissed.

Date: 22 December 2020

Appeal number: CHG100082977