THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; material change in circumstances; scope of appeal; allowances for adjacent building works; appeal dismissed.

Re: 128 Armada Way, Plymouth, PL1 1LA ("the subject property")

APPEAL NUMBER: CHG100121160

BETWEEN: Claire's Accessories UK Ltd Appellant

(represented by Lambert Smith Hampton)

and

Mr D Virk Respondent

(Valuation Officer)

PANEL: Mrs L Bryning (Senior Member)

Mrs N C Yang

CLERK: Mrs A Sloan

REMOTE HEARING: 17 August 2021

PARTIES PRESENT: Mr D Bullimore (Appellant's representative)

Mr A Wright (Valuation Officer's representative)

Summary of decision

1. The appeal was dismissed and the Rateable Value (RV) of £22,250 confirmed from 1 April 2017.

Introduction

2. 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.

3. 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. The hearing was conducted via Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. The appeal was brought in respect of the entry in the rating list shown as 128 Armada Way, Plymouth PL1 1LA (the subject property). The subject property is a shop and premises situated adjacent to a large retail building, formally occupied by British Home Stores (BHS).

5. The compiled list entry for the subject property was the subject of a challenge (CHG100121153) and the RV was reduced from £25,750 to £22,250 with effect from 1 April 2017. Three additional checks were made by the Appellant citing a material change in circumstances (MCC) affecting the subject property, relating to different stages of the building work going on at the adjacent former BHS property. Challenges CHG100121155 and CHG100121157 were not successful as the related checks had been made after the MCC stage had ceased. Only one appeal was made, against the third challenge decision, and that was the appeal that came before the panel at this hearing.

6. The proposal was submitted by the Appellant's representative on 28 August 2019, stating that the RV was disputed because of an MCC. The challenge decision notice from the Valuation Officer (VO) was dated 10 December 2020, refusing to reduce the RV to £12,000 as sought by the Appellant. The appeal against this decision was lodged with the Tribunal on 7 April 2021.

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

Issue

8. The issue before the panel was to determine whether an end allowance was warranted, given the disruption to the subject property caused by the adjacent building works.

Evidence and submissions

9. Mr Bullimore had, in his appeal submission, declared that he was instructed on a conditional fee basis. However, he had also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and he would comply with this, regardless of whether or not the evidence supports his client's case.

10. 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 is allowable due to the Tribunal's rules on admissibility of evidence (reg 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). It therefore considered the "expert" evidence and assessed what weight it should give to it in the context of the matters in issue before it.

11. The evidence bundle provided comprised all of the documents exchanged between the parties as part of the challenge process, following the Appellant's proposal to alter the entry in the 2017 rating list in respect of this MCC.

12. Mr Bullimore's proposed valuation not only sought an end allowance of 20% for the adjacent building works but also included a reduction in the base rate for the assessment. The current

valuation, following the challenge decision in December 2020, at £22,250 was based on a Zone A price of £530/m^2. Mr Bullimore proposed a Zone A price of £360/m^2. Photographs of the subject property, and the neighbouring former BHS building, were provided showing scaffolding and hoarding around the BHS property. Photographs were also provided from inside the subject property showing cracks that appeared in the first floor ceiling during asbestos removal works next door. In support of his case for an end allowance to reflect the disruption from the building works, Mr Bullimore provided trading figures from the subject property and examples of other properties where end allowances had been granted for adjacent building works or scaffolding. He asked the panel to reduce the RV to £12,000.

13. Mr Wright explained that he resisted the application of an end allowance because there was insufficient evidence of the disruption caused to the Appellant. He provided photographs of the properties referred to by Mr Bullimore where allowances had been given in Old Town Street and St Andrew Cross. In his opinion the properties involved in those locations were directly affected by the scaffolding and therefore suffered a higher degree of disruption than the subject property. He also highlighted that the allowances given in those examples was just 7.5% so he considered there was no evidence for a 20% allowance on the subject property. Mr Wright's analysis of the trade figures provided for the subject property led him to consider that trade was falling before June 2019 and there was insufficient evidence to show that the fairly consistent fall in trade was related to the building works. He asked the panel to confirm the existing RV of £22,250.

Decision and reasons

14. Both parties had addressed the Zone A rate applied in their respective valuations in their submissions, but the panel concluded that the accuracy of the compiled list entry was not a matter for this hearing. A challenge decision had been issued (CHG100121153) reducing the compiled list entry. If the Appellant did not agree with that decision, an appeal should have been lodged for the VTE to determine the dispute. Mr Bullimore confirmed that he had missed the deadline to lodge an appeal against the compiled list challenge decision and there was no suggestion at the hearing that he sought to lodge a late appeal out of time. The panel therefore concluded that the appeal before it was solely in relation to the MCC challenge decision not to award an allowance for the adjacent building works from 17 June 2019 and no weight was placed on arguments relating to the Zone A price.

15. Paragraph 7(b)(i) of the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI1992/556) sets out the Material Day on which the physical situation at the property must be considered. It is not necessary to set out the full provisions here, but the Material Day is set as the date on which the VOA received confirmation from the ratepayer on the accuracy of the information about the property, under regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

16. The parties confirmed that the Check was submitted on 24 June 2019 and the accuracy of the information held on the subject property was confirmed on that date. Therefore, the panel must consider the situation at the property on 24 June 2019 as the material day.

17. Mr Bullimore had stated that the effective date for the period of adjacent works concerned with this appeal was 17 June 2019. An online article was presented showing scaffolding in place on the former BHS store in January 2019. Further undated photographs were provided showing hoarding in front of the BHS property. It was not clear whether any of the photographs presented captured the position on the material day, but the panel was satisfied

nevertheless that neither the scaffolding or the hoarding shown in the images presented covered the subject property or affected access.

18. Mr Bullimore had contended that the Appellant suffered from noise, dust, vibration, loss of prominence and footfall during the works in addition to problems with damp and cracks in the walls and ceilings. The panel did not doubt this was the case but there was little evidence as to the degree of disruption at the material day. If the effective date on 17 June 2019 was when the scaffolding was replaced with hoarding, the panel noted that neither had obscured the frontage of the subject property, as was the case with the examples referred to in Old Town Street and St Andrew Cross. Those properties had been given a 7.5% allowance to reflect the fact that the scaffolding covered the respective properties and therefore clearly had an effect on prominence and access.

19. Mr Wright stated that he believed the hoarding at the former BHS building had been removed from 3 August 2020. He stated that the allowances at Old Town Street and St Andrew Cross were from the 2010 rating list and the period concerned ranged from 19 January 2015 to 26 April 2016. From the evidence presented, the panel concluded the disruption to the subject property, while for a similar duration, was less severe as the subject property was not directly affected by the hoarding or scaffolding,

20. Mr Bullimore had also referred to examples of allowances for adjacent building works in Bristol (7.5%), Southampton (15%) and Cheltenham (20%). However, no details were provided of the nature of these works or photographs to illustrate the level of disruption. The panel noted that these examples were also outside the Plymouth area, so it placed little weight on these examples to support a 20% allowance for the subject property.

21. Mr Bullimore confirmed that no reduction in rent had been negotiated by the Appellant with the landlord to compensate for the disruption caused by the adjacent works. However, he stated that there was no mechanism for such negotiation on the existing lease.

22. Trade receipts had been supplied by the Appellant and Mr Bullimore stated that comparison between the same quarters in 2018 and 2017, showed a fall in receipts ranging from 18% to 26% per quarter. He therefore considered a 20% allowance was reasonable. Mr Wright was of the opinion that these figures showed a consistent average 20% decrease in sales throughout 2018. The trade receipts for 2019 compared to 2018 showed a fall in receipts ranging between 8% to 15%. The panel did not find that there was a noticeable difference in the trade figures around the material day or during the duration of the works on the former BHS building. Mr Wright provided Springboard footfall figures for Plymouth city centre for 2018 and 2019 which he felt demonstrated footfall was in decline in the general area, perhaps due to the increase in online shopping or the shopping centre at Drake’s Circus attracting more custom. He also highlighted that the Appellant has another retail unit in the city centre, in what he considered a better location. Mr Wright suggested that this superior unit may also affect trade at the subject property over time.

23. After considering the evidence presented by both parties, the panel concluded that a hypothetical tenant considering the property on the material day would not reduce his rental bid to reflect the works underway on the adjacent property. It seemed that on the material day the works were fairly advanced, with the scaffolding removed and replaced with hoarding. Mr Wright stated that the hoarding was removed on 3 August 2020 so, on the material day, the hypothetical tenant would be considering the impact of the hoarding for a further 13 months. As the hoarding did not cover the subject property’s frontage or affect

access, the panel did not consider that a new tenant, fresh to the scene on the material day, would be affected by the adjacent works to improve the adjacent property.

24. Whilst the panel noted Mr Bullimore's comments regarding noise and disruptions from the works and photographs of cracks in the walls or ceiling, it found that the property must be valued as if it were in a reasonable state of repair. Little evidence had been provided by the Appellant of the disruption experienced and how it affected the enjoyment of the subject property.

25. In appeals of this nature, the burden lies with the Appellant to persuade the panel that his appeal should succeed. In this case, the panel was not persuaded that the disruption from the neighbouring works was so severe that a 20% allowance was warranted. Considering the examples in Old Town Street and St Andrew Cross, the panel did not find that any reduction was justified at the subject property and the appeal was dismissed.

Date: 7 September 2021

Appeal number: CHG100121160