THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; shop and premises; redevelopment of shopping centre; comparable properties; appeal allowed in part.

RE: 40-42 Bridlesmith Gate, Nottingham NG1 2GQ

APPEAL NUMBER: CHG100401292

BETWEEN: Diesel (London) Ltd (represented by Altus Group) — Appellant

and

Jo Moore (Valuation Officer) — Respondent

PANEL: Mrs J Ellis (Presiding Senior Member)
Mr W J Read (Senior Member)

CLERK: Ms S Hodgson

ON: 23 November 2022

REMOTE HEARING

APPEARANCES: Mr A Simons of Altus Group for the appellant
Mr R Hichens of the Valuation Office Agency for the respondent

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Summary of decision

1. Appeal allowed in part. An end allowance of 15% was awarded with effect from 10 July 2017.

Introduction

2. This appeal was made following a challenge against the 2017 rating list entry, on the basis that the assessment had been adversely affected by the closure of the bus station and multi-storey car park in the locality that was part of the redevelopment of the Broadmarsh Shopping Centre.

3. The appeal property was valued as ‘shop and premises’ and was situated in Nottingham City Centre, near to the Broadmarsh Shopping Centre. It was originally shown in the rating list with effect from 1 April 2017 at a rateable value (RV) of £197,000.

4. A Challenge had been submitted by the appellant’s representative. An end allowance adjustment of 30% was proposed to account for the material change of circumstances (MCC) with effect from 10 July 2017.

5. Originally the appellant’s representative had proposed a total end allowance of 45% to incorporate the closure of the bus station and the multi-storey car park, as well as the closure of the upper entrance of the Broadmarsh Shopping Centre. This appeal only relates to the closure of the bus station and the multi-storey car park. The closure of the upper entrance to the mall had a different effective date and was being addressed by way of a Valuation Office Notice.

6. The Valuation Officer (VO) made the decision to allow a 10% reduction with effect from 10 July 2017. Mr Simons did not consider this allowance to be sufficient. Consequently, the challenged decision was appealed to this Tribunal.

7. Mr Simons 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), he declared that he was instructed on a contingency based fee.

8. Mr Simons also 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)(1) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

10. Mr Hichens, for the VO, also appeared in a dual role as advocate and expert witness.

11. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

12. The issue concerned the RV of the appeal property and, specifically, the extent, if any, to which the assessment was affected by the redevelopment of the Broadmarsh Shopping Centre. The appellant sought an allowance of 30%. The VO considered a 10% reduction to be fair and reasonable.

Evidence and submissions

13. Mr Simons for the appellant argued that the closure of the multi storey car park and bus station at the Broadmarsh Shopping Centre warranted a 30% end allowance for the subject property. He contended that these closures have reduced the footfall down Bridlesmith Gate which has led to empty units in the area. He provided rental evidence post the MCC on Bridlesmith Gate and asked for a revised RV of £124,000 after rounding with effect from 10 July 2017.

14. Mr Hichens for the respondent suggested that only a 10% end allowance was warranted for the two closures from 10 July 2017 and that the empty units in the area were due to economic factors and not the MCC. He referred to other units in Bridlesmith Gate where he stated a 10% allowance had been agreed and requested the RV of £159,000 after rounding was confirmed for the subject property with effect from 10 July 2017.

Decision and reasons

15. Matters which constitute a material change of circumstances are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988.

16. When valuing having regard to the material day, the valuation arrived to, has to conform with the rateable value definition provided in paragraph 2(1) to Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999:

"The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

17. Therefore, having regard to the above, in reaching its decision, the panel considered, would the material change in circumstances affect the hypothetical tenant's bid? In doing so, economic factors must be considered as at the antecedent valuation date of 1 April 2015, whereas the physical factors are as they existed on the material date.

18. In accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268), the material day is the date on which the ratepayer confirms the accuracy of the information included in the check. For this appeal, the material date was 3 June 2020.

19. The panel considered the submission put forward by the respondent that 58 Bridlesmith Gate had been decided at a Tribunal hearing in October 2021 and the property had a 10% allowance for the closure of the bus station and the car park. Mr Hichens argued that 58 Bridlesmith Gate was closer to the Broadmarsh Shopping Centre and the subject had the same allowance.

20. Through further questioning, it transpired that the Tribunal decision on 58 Bridlesmith Gate was a compiled list appeal against the zone A rate and was not in relation to any MCC in the area. Following this appeal, the zone A rate of the subject property was reduced from £1,900 to £1,700 which, when the VO's 10% allowance for the MCC was awarded resulted in an RV of £159,000 with effect from 10 July 2017.

21. Mr Hichens referred to two other properties, 32 and 51 Bridlesmith Gate, that had been awarded a 10% allowance for the MCC. He pointed out that the subject property was located between these two assessments. Mr Simons contended that an MCC challenge had been submitted for 32 Bridlesmith Gate which demonstrated the allowances had not been agreed between the parties.

22. Footfall data had been provided by Mr Hichens that showed the footfall on Bridlesmith Gate and Clumber Street. The inclusion of Clumber Street was to demonstrate similar movement both at the location of the subject property and closer to the Victoria Centre, the other shopping centre in the city. Mr Hichens contended that this data showed the footfall in the city was due to economic factors and not the redevelopment of the Broadmarsh Shopping Centre.

23. The panel noted that the footfall data supplied covered the dates January 2015 to September 2016 and March 2018 to September 2019. There was no indication of what happened at the time the car park and bus station closed, or at the material date for the appeal. The panel therefore placed less weight on this evidence.

24. The panel reviewed the rental evidence that was put forward by Mr Simons. He had included rental evidence of new lets on Bridlesmith Gate after the closures of the bus station and car park. Four of the five new lets had been analysed below the current tone used in the area. Mr Simons had provided commentary that showed, in his opinion, the rents analysed between 28% and 61% below the tone in the area.

25. Mr Hichens had submitted rental evidence of three properties in Bridlesmith Gate post the MCC. Of these one was a new lease that had been analysed below the current tone, and two were lease renewals analysed above the current tone.

26. Economic factors could not be taken into account post 1 April 2015, and it was the panel's opinion that the rents after the MCC would have been impacted in part by uncertain economic

times. However, it did not accept that the reduction in rents in the area were solely related to economic factors. The panel found that the closure of the multi storey car park and the bus station in the city would have had a negative effect on rental values in the area.

27. In conclusion, the panel found that an allowance higher than 10% was warranted, however, it was not persuaded that 30% was supported by the evidence provided. Considering the closure of the bus station and the car park, the panel found that the disturbances would have impacted the hypothetical landlord and tenant negotiations at the AVD.

28. In view of the foregoing, the panel found that a 15% allowance was reasonable, and the appeal was therefore allowed in part with the RV reduced to £150,683, rounded to say £150,000, with effect from 10 July 2017.

29. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

30. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of 40-42 Bridlesmith Gate, Nottingham NG1 2GQ within two weeks, to £150,000 RV with effect from 10 July 2017.

Date: 22 December 2022

Appeal number: CHG100401292

Right of 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.