THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; shop and premises; extensive redevelopment works in the locality; dispute over the level of allowances to be applied; appeal allowed in part.

RE: 11-13 Lister Gate, Nottingham NG1 7DE

APPEAL NUMBER: CHG100418607

BETWEEN:	River Island Clothing Co Limited	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent

PANEL: Ms L Hussein-Venn (Senior Member)
Ms S Eze (Member)

CLERK: Ms R Muller

HEARING: Remote Hearing No. 3: 17 February 2023

APPEARANCES: Mr D Haselhurst from GL Hearn Limited, the representative for the Appellant
Mr Richard Hichens, the representative for the Respondent

Summary of decision

1. Appeal allowed in part. An end allowance of 15% was awarded to the assessment of the subject hereditament to reflect the severity of the redevelopment works within the locality.

Introduction

2. This was an appeal following a challenge against the 2017 Rating List entry, on the basis that the assessment had been adversely affected by works in the locality.

3. The subject hereditament was valued as shop and premises and was situated on Lister Gate, which was a prime retail street in Nottingham city centre.

4. The Rateable Value (RV) of the subject hereditament had been entered into the Rating List £580,000 from 1 April 2017, as shop and premises. A check had been submitted on 7 June 2019 and completed on 7 October 2019. A challenge was submitted on 5 October 2020 and was completed on 31 March 2022. An appeal was received by the Tribunal on 21 July 2022.

5. Originally, the Zone A rate to be adopted to value the subject hereditament had been in dispute, however, this issue had been resolved prior to the hearing. Therefore, the only issue for the panel to consider was the allowance to be adopted for the disturbance caused by the material change of circumstances (MCC), namely the closure and subsequent demolition of the Broadmarsh car park and bus station. The material date with regards to this appeal was 7 October 2019. The date the check had been completed.

6. Mr Haselhurst, the appellant's representative submitted that an allowance of 20% was proposed to account for the MCC with effect from 10 July 2017. Mr Hichens, the respondent's representative made the decision to allow a 7.5% reduction to the assessment with effect from 10 July 2017. Mr Haselhurst did not consider this allowance to be sufficient given the intensity of the works and the impact on the subject hereditament. Consequently, the challenged decision was appealed to this Tribunal.

7. Mr Haselhurst 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 included a statement that he was not instructed under a contingency based fee.

8. Mr Haselhurst 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)(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 Hichens also appeared in a dual role as advocate and expert witness.

12. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary matter

13. Both parties had included new evidence prior to the hearing. Neither party had any objections to the evidence that had been submitted, except for Mr Hichens with regards to a newspaper article that Mr Haselhurst had included.

14. The panel considered the new article and noted that it was published on 25 January 2023. It was titled 'Nottingham's high street issues 'exacerbated' by Broad Marsh amid 93 empty shops'. Even though the article mentioned Lister Gate as well as other areas within the city, the panel held that as it was written several years after the MCC occurred, it was not as relevant to this appeal as the actual rental and trade details provided within the evidence bundle.

Issue

15. The issue for the panel to consider was whether the RV of the subject hereditament had been affected by the works within the locality. The appellant sought an allowance of 20% with regards to the assessment. However, the Valuation Officer (VO) had originally stated a 7.5% allowance had been reasonable but had amended it to a 10% reduction following a recent Valuation Tribunal decision.

Evidence and submissions

16. Mr Haselhurst for the appellant argued that the closure of the multi storey car park and bus station at the Broadmarsh Shopping Centre warranted a 20% end allowance for the subject property. He contended that these closures have reduced the footfall down Lister Gate which has led to empty units in the area. He provided rental evidence post the MCC on Lister Gate and asked for a revised RV of £405,000 after rounding with effect from 10 July 2017.

17. Mr Haselhurst provided a recent Valuation Tribunal decision for 40-42 Bridlesmith Gate, which concerned the RV of this property and specifically, the extent, if any, to which the assessment was affected by the redevelopment of the Broadmarsh Shopping Centre. The panel had found that a 15% allowance was reasonable.

18. Mr Hichens for the respondent referred to a recent well founded Challenge CHG100724434 of 38, Lister Gate, Nottingham, NG1 7DD where a 10% allowance had been awarded from 10 July 2017, due to the closure of the bus station and the car park. He referred to other units in Lister Gate where he stated a 10% allowance had been agreed and requested a revised RV of £455,000 was confirmed for the subject property with effect from 10 July 2017.

19. Case law detailed within the submissions were:

(i). *GPS Ltd & others v Bird (VO)* [2011] RA 20 to 26
(ii). *Lotus and Delta v Culverwell (VO) & Leicester City Council,* [1976] RA 141

Decision and reasons

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

21. 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.

22. 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.

23. 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 7 October 2019.

24. Footfall data had been provided by Mr Hichens that showed the footfall on Lister 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. It was noted by the panel that Mr Hichens contended that this data showed that it was difficult to separate the economic impact on rents from any impact of MCC physical factors.

25. 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, although considered this evidence, placed less weight on this evidence. The panel also noted that the Albert Street counter did not support the trade figures provided. The size and scope of the camera was unreliable as evidence.

26. Mr Haselhurst had provided trade information with regards to 10, 14-16, 28-30, 37 Lister Gate and the subject property. With regards to 10 Lister Gate, the trade had fallen for the period of July 2017 to June 2018 by 34%. This was evidenced when compared to the same period the previous year. However, the panel noted that this fall had been documented just over a year prior to the material date with regards to this appeal.

27. However, 14-16 28-30, 37 Lister Gate and the subject property's trade showed a fall in trade for a two year period after the commencement of the MCC, which was up to July 2019, close to the material date with regards to the subject property. The trade fell between 17.18% and 34%, which averaged around 25%. Therefore, the panel considered this assisted it when combined with the other evidence when making its decision.

28. The panel reviewed the rental evidence that had been submitted with regards to the subject property. It had originally been let under a 15 year lease which had commenced on 13 April 2006 at a passing rent of £725,000. The lease was subject to a rent review every five years and both rent reviews that took place in 2011 and 2016 had nil increases with the rental figure remaining the same. Therefore, there was no evidence for the panel to consider whether or not the MCC had had any impact on the rent of the subject property.

29. Mr Hichens had submitted rental evidence with regards to properties located on Lister Gate. 14-16 Lister Gate had originally been let on a 15 year lease on 20 December 2006 with a headline rent of £1,050,000. However, on the lease review on 4 September 2018, the rent had been reduced by £420,000 to £550,000.

30. The panel noted that 40 Lister Gate had been let on a five year lease on 1 June 2015 with a headline rent of £245,000. Again, on the lease renewal on 1 January 2019, the rent had decreased slightly to £200,000. It was also noted that 34 Lister Gate had originally been let on 2 August 2011 at a headline rent of £52,000 for one year. However, on 27 November 2018, this property had been let again on a one year basis for the headline rent of £9,000.

31. 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.

32. The panel also considered the VT decision for 40-42 Bridlesmiths Gate, which also supported a 15% end allowance. Even though Lister Gate was closer to Broadmarsh, the impact of the MCC would similarly affect properties located further away. The panel referred to the case of *GPS Ltd & others v Bird (VO)* [2011] RA 20 to 26. This case considered an MCC where existing trade and rents had been examined and an allowance applied due to the MCC. However, the panel held that Foss Park was in a different area so it placed less weight onto the details of this case.

33. 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. Therefore, the panel found that an allowance higher than 10% was warranted, however, it was not persuaded that 20% was supported by the evidence provided. The panel held that an allowance of 15% was adequate with regards to the MCC. The appeal was therefore allowed in part with the RV reduced to £430,568, rounded to say £430,000, with effect from 10 July 2017.

34. 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

35. 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 11-13 Lister Gate, Nottingham NG1 7DE within two weeks, to £430,000 RV with effect from 10 July 2017.

Date: 7 March 2023

Appeal number: CHG100418607

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.