VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Shop and premises; allowance for disruption caused by building works; appeal dismissed.

APPEAL NUMBER:	CHG100736706
RE:	140 Armada Way, Plymouth PL1 1HT (the "appeal property")

BETWEEN:	Barclays	Appellant
	and	
	Ms L Formela-Osbourne (Valuation Officer)	Respondent

SITTING:	*Remotely using Microsoft Teams*
ON:	30 April 2024 15:00
BEFORE:	Mrs L Long, Presiding Senior Member Mr M H Smith, Senior Member
CLERK:	Mr R Gath IRRV(Hons)
APPEARANCES:	Mr S Griffin (Appellant's representative) Ms J Berry (Respondent's representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel was not persuaded that an allowance should be granted due to the neighbouring building works.

Introduction

3. This appeal has been brought in respect of Barclays Bank, 140 Armada Way, Plymouth PL1 1HT which was entered in the 2017 rating list as 'Shop and premises' at rateable value £272,500 effective from 1 April 2017. The appellant was seeking a reduction of 10% due to disruption caused by the building works to a neighbouring property.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Griffin made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable.

5. Both parties had agreed that the material day is 9 June 2020 being the date that the Valuation Office Agency (VOA) received the check submission. The appeal to this Tribunal was made on 21 July 2023 following the Valuation Officer’s Decision Notice of 7 March 2023 in respect of the appeal property (hereditament).

6. Mr Griffin had declared that he charged an hourly fee irrespective of the outcome of the appeal. In view of the Upper Tribunal’s judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Griffin’s declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

7. The panel accepted this expert witness evidence on the above basis as the appeal is 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 (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. Ms Berry confirmed that she was representing the Valuation Officer (VO) as advocate and expert witness.

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

Preliminary issue

10. There was a preliminary issue in that Mr Griffin had not uploaded all of the appendices when he submitted his appeal to this Tribunal. This had come to light the day before the hearing when he provided the additional documentation to the Tribunal.

11. Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) states:

    (1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal (“new evidence”) if-

    …

    (b) all the parties to the appeal agree in writing to the party providing the new evidence.

12. As the evidence had only come through the day before the hearing, Ms Berry verbally confirmed that she had seen all of the evidence and therefore she did not object to this late evidence.

13. The panel was disappointed that Mr Griffin had failed to upload all of his evidence when he submitted his appeal to the Tribunal as the Tribunal’s expectation is that the panel will have read all of the evidence before the hearing and it did not give the panel much time to read it

all. However, as Mr Berry did not object to this late evidence, the panel decided to accept all of the late evidence.

Issue

14. The issue for determination is the level of allowance, that should be granted for disruption caused by building works to the rear and side of the appeal property.

Evidence and submissions

15. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, location maps, photographs of the appeal property and building works at other localities.

Discussion

16. There was no dispute about whether or not there had been a material change of circumstances. However, the panel had to determine if the appeal property had been affected by the building work and if so to what extent the appeal property had been affected.

17. Mr Griffin was seeking a 10% reduction effective from 9 April 2018 as that was when the work started. The VO had reduced the RV of that property to £0 to reflect the nature of the work that was being undertaken at that property. The property was a BHS store. It wrapped around the appeal property with one part being converted for A1 permission and one part had been granted A3 permission.

18. To support his argument for a 10% allowance, he referred to other assessments such as 6 St Andrews Cross and 2 Old Town Street where allowances of between 7.5% to 27.3% had been granted due to disruption caused by roadworks or redevelopment works. However, the panel considered that there were drawbacks to some of these assessments as they were restaurants and the majority of them were located in London. Whilst the panel understood that Mr Griffin was demonstrating that allowances could be awarded where redevelopment works on neighbouring properties were being undertaken, there was no dispute that an allowance could be awarded, the only issue was to decide if there had been sufficient disruption to justify a reduction and if so, by how much.

19. During questioning, Mr Griffin confirmed that works were ongoing from 9 April 2018 to April 2021 when the store had reopened. However, the scaffolding was removed in 2020 although the date was unknown.

20. Ms Berry contended that an allowance should not be granted as the scaffolding was removed prior to the material date. She also understood that the majority of the works had been completed by then and therefore she was unable to ascertain what works were ongoing as at the material date. she understood that the bulk of the works had been completed and therefore there would be very little disturbance to the appeal property.

21. The panel applied significant weight on Ms Berry's argument that the VO had decided not to allow any reduction as no evidence had been presented by Mr Griffin to show what impact the redevelopment works had on the appeal property, something Mr Griffin accepted he had failed to do.

22. The panel also attached some weight to Ms Berry’s argument that the hoarding around the scaffolding would have a minimal impact on the appeal property as the panel considered that customers would know where the bank was located and would visit the bank when there was a requirement to do so, whereas restaurants and shops were more reliant on passing trade.

Disposal

23. In view of the above findings and conclusions, the Tribunal panel was not persuaded that an allowance should be granted. The panel concluded that from the plans that had been provided by Mr Griffin the majority of the works were fit out works. There was no evidence presented to the panel to demonstrate that there was any disruption to the appeal property apart from the accidental cutting of the data cable, but again, no evidence was presented to show how long the data cable had been cut and what impact it had on the Appellant.

24. Furthermore, there was no evidence presented to the panel to show that there was any reduced footfall or disruption to the activities that could be attributed to the building works. The panel dismissed the appeal.

Date issued to parties: 7 June 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.
