VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; shop and premises; rateable value disputed; there has not been a material change of circumstances for the subject hereditament and it is confirmed as shop and premises with a rateable value of £64,500 effective from 1 April 2017.

APPEAL NUMBER: CHG100744429

RE: Unit 28-29, Regent Arcade, Cheltenham, GL50 1JZ

BETWEEN:	Canada Life Limited	Appellant
	and	
	A Morley (Valuation Officer)	Respondent

PANEL: Mr K Everett (Presiding Senior Member)
Mr A Asante (Panel Member)

CLERK: Mr P Hill IRRV Tech

HEARING: Remote Hearing 2 on 16 August 2023

APPEARANCES: Mr J Fendick of Jones Lang La Salle (on behalf of the appellant
Mr R Albert (on behalf of the respondent)

Summary of Decision

1. The appeal is dismissed.

2. The panel is satisfied that –

   a. The mode and category of appeal property remains that of shop and premises and has not changed to office and premises.

   b. The rateable value is confirmed as £64,500 effective 1 April 2017.

Introduction

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

4. This appeal has been brought pursuant to Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]. The appeal challenges the respondent's decision that the appellant's proposal (also known as a "challenge" under the "check, challenge, appeal" framework) was not well-founded. The challenge was submitted on 5 November 2021. The material day in respect of this appeal was agreed by all parties as 16 June 2021.

5. Mr Fendick, a member of the Royal Institute of Chartered Surveyors 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 confirmed that he was instructed under a conditional fee. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

6. Mr Albert, a member of the Royal Institute of Chartered Surveyors, appeared on behalf of the respondent as advocate and expert witness.

Issue

7. The issues concerned whether there had been a material change in circumstances and that the mode and category of the appeal property had changed from shop and premises to office and premises. The appellants further proposed if the mode and category had changed that a new rateable value of £21,000 was applicable effective from 26 July 2019.

Decision and reasons

8. The parties' representatives took the panel through their respective submissions and evidence orally at the hearing. The panel carefully considered the parties' respective submissions, together with the legislative tests set out above. The panel was grateful to the parties' representatives for their submissions.

9. The appeal property forms part of a 1985 stone and brick-built shopping complex. The property is a double unit within the Regent Arcade shopping centre in Cheltenham. The appeal property has large windows to the frontage for display purposes. Internally the appeal property is spread over 3 floors, ground, first and second floors. The appeal property is described as a shop and premises in the 2017 rating list.

10. The appellant states there has been a material change of circumstances and made a proposal to alter the list under regulation 4(1)(b) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009, regulation 4(1)(b) says, *'the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled'.*

11. A proposal was submitted to the Valuation Officer on 5 November 2021. The appellant states that the mode and category of the appeal hereditament changed from a shop and premises to office and premises, ISG took occupation of the appeal property effective from 6 August 2019. The proposal states that ISG Retail Ltd occupied the appeal property as an office while construction works were taking place on the adjoining property. The appellant further states this was a material change of circumstances and that the rateable value should be revised from £64,500 to a rateable value of £21,000 effective 26 July 2019. Although ISG did not take up occupation until 6 August 2019, no issues were raised in respect of the date the works started, it was therefore agreed the effective date of any material change of circumstances would be 26 July 2019.

12. The appellant argued that Williams (VO) v Scottish & Newcastle Retail Ltd and Anor [2001] EWCA Civ 185 applied and that the rebus sic stantibus rule was also relevant. The appellant stated that the works undertaken to the appeal property were sufficient to change the mode and category. It was not a disputed fact at the hearing that the appeal property was used as an office for the period in question, what this Tribunal has to establish is whether the mode and category of the appeal property had changed.

13. In making their arguments the appellant highlighted the case of Bunyan (VO) v Acenden Ltd 2023 UKUT 17 and that elements of an office fit out are rateable. It was not clear to the panel what relevance this decision had in this case. This case concerned the category of fitting out, that was not matter under dispute in this appeal.

14. The panel turned itself to what works had been undertaken, and whether these works were minor and whether the appeal property could easily be returned to a shop and premises. Internally wooden partitions were erected, these were bolted for safety, but could easily be removed. No modification was made to the lighting and the internal fixtures, the pictures provided with the submission confirm this. The only change was the internal partitioning and hoarding external to the appeal property. The appellant confirmed that the works to convert the appeal property only took a matter of days, this is confirmed by the project plan shown at page 15 of the submission.

15. In conclusion the panel finds that there has been no change to the mode and category of the hereditament. It is not disputed it was used as an office, however if you take the premises ‘as they stand’ on the material day the appeal property could easily be changed back to a shop and premises. The works to do this would only be minor, the appellants confirmed that the partitioning only took a matter of days to erect, also the internal fixtures and fittings remained unchanged. This appeal is therefore dismissed, and rateable value confirmed as £64,500 effective 1 April 2017.

Date: 15 September 2023

Appeal number: CHG100744429

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.