



VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 Rating List; paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988; material change of circumstances; vacation of major retailer from shopping centre; end allowance; twelve appeals allowed in part; one appeal dismissed.

APPEAL NUMBERS: CHG100746950, CHG100746982, CHG100746958, CHG100746966, CHG100746925, CHG100746972, CHG100746931, CHG100746993, CHG100746988, CHG100746942, CHG100746974, CHG100747009 & CHG100747010.

RE: Various Units at Centre Court Shopping Centre, London SW19 8ND
(see schedule appended to this decision for the “subject hereditaments”)

BETWEEN:	Standard Life Assurance Ltd	Appellant
	and	
	Lucy Dyer (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 17 June 2024

BEFORE: Mr K Everett (Presiding Senior Member)
Ms C Jones (Senior Member)

CLERK: Mr S Fletcher

APPEARANCES: Mr I Allison of BNP Real Estate (Appellant’s representative)
Mr R Humphries (Respondent’s representative)

DECISION and STATEMENT OF REASONS

Decision

1. The appeals, apart from the appeal relating to Unit 115, were allowed in part and the list

entries were reduced by 5% with effect from 13 July 2020. The appeal in relation to Unit 115 was dismissed.

Introduction

2. The appeal process began with proposals made by the appellant's representative, on behalf of its client(s) on 15 November 2021. The proposals were made under Regulation 4(1)(b) of the Non-Domestic Rating (Alterations of Lists and Appeals (England) Regulations 2009 on the basis that the rateable value (RV) shown in the list for a hereditament was inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled. The material change "event" referred to in the proposals related to the closure of Debenhams. The appellant's representative proposed reduced assessments with an end allowance for the material change of circumstances.
3. The respondent issued challenge case decision notices on 26 September 2023 which stated that the proposals were not well-founded and there should be no alteration of the list. The appellant appealed those decisions to the tribunal between 5 and 9 May 2023 on the grounds that the valuations remained unreasonable.
4. The subject hereditaments were retail stores located in Centre Court Shopping Centre, London. The shopping centre was located on The Broadway in the centre of Wimbledon.
5. The grounds of all thirteen appeals were that the RVs of the subject hereditaments did not reflect the closure of Debenhams, Unit 115, Centre Court Shopping Centre with effect from 1 February 2020. It was contended that the closure of the retail store should be reflected in an end allowance for each of the subject assessments with effect from the same date.
6. The material date was 17 July 2020. The effective date, if the appeals were successful, was disputed. The antecedent valuation date (AVD) was 1 April 2015.
7. Mr Allison appeared on behalf of the appellant as both advocate and expert witness. He stated that neither he nor BNP Real Estate were instructed under a conditional fee arrangement.
8. Prior to the hearing, the tribunal had been informed that the appellant was no longer the ratepayer and therefore the current ratepayer, Romulus, was added as a party and notified of proceedings.
9. This decision document is not and does not purport to be a verbatim record of proceedings.

Issue

10. What, if any, allowance was applicable for the material change of circumstances and the effective date that it should apply from.

Relevant law

11. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (the "1988 Act") (as amended):

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.

12. As the proposals were made on the grounds of a material change in their locality, regard had to be made to paragraphs 2(6) and 2(7) of Schedule 6 to the 1988 Act;

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are—

- (a) matters affecting the physical state or physical enjoyment of the hereditament,
- (b) the mode or category of occupation of the hereditament,
- (c) the quantity of minerals or other substances in or extracted from the hereditament,
- (cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,
- (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
- (e) the use or occupation of other premises situated in the locality of the hereditament.

Evidence and submissions

13. Arguments and factual evidence from both the appellant's representative and the respondent was provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission, a map demonstrating the location of the shopping centre, the respondent's challenge decision notice and reference to, and photographs of, shopping centres deemed comparable to the centre which comprised the subject hereditaments.

Discussion

14. Prior to hearing the submissions from both parties' representatives, the panel was invited by them to dismiss the appeal of Unit 115, Centre Court Shopping Centre, on the basis that the unit was the premises which was previously occupied and vacated by Debenhams and the cited material change of circumstances in each of the other appeals. The panel accordingly dismissed that appeal. Any further reference to the subject hereditaments in this decision excludes Unit 115.

Effective date issue

15. The panel was advised by the clerk to the tribunal that, should it find that a reduction in the RV's of the subject hereditaments pertaining to the material change of circumstances was warranted, that the effective date of list alteration would be 13 July 2020. The appellant's representative challenged that advice, and argued that any such reduction should be applied with effect from 1 February 2020, the date that Debenhams vacated Unit 115.
16. The panel determined that any such effective date should it find that a material change of circumstances had impacted any of the subject RVs would be 13 July 2020. It was fundamental that rating valuations had to be undertaken, having regard to the facts as they stood on the material day, which in these appeals was 17 July 2020. The effective date of any list alteration pursuant to a material change of circumstance was restricted, by Regulation 14 (1B) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, to the date when the circumstances giving rise to the alteration first occurred.
17. The panel found that a subsequent material change of circumstance in the locality of the subject hereditaments had occurred following the closure of Debenhams on 1 February 2020, as, on 13 July 2020, AFC Wimbledon began occupation of a vacant unit in the Centre. The appellant was hung by its own petard as its proposals stated that the effective date of the material change of circumstances was 13 July 2020 when, it cited that the last change in occupation in the centre took place. At the hearing, the appellant's representative resiled from the above and sought an effective date of 1 February 2020 to coincide with the closure of Debenhams.
18. Unfortunately for the ratepayer, no reduction in assessment can be given from the date of the closure of Debenhams, for the simple reason that, in any rating valuation exercise, the tribunal has to value having regard to physical facts relating to the property and its locality at the material day. In this case, the material day is accepted to be 17 July 2020 and therefore by then, AFC Wimbledon had begun occupation at a vacant unit on 13 July 2020. As such, the panel was unable to disregard the effect of the second material change and determined that the date of that change would be the effective date of any list alteration should it find any to be warranted.

Material change of circumstances

19. The appellant's representative sought an allowance of 7½% to the RVs of the subject hereditaments to account for the effect of the departure of Debenhams from Unit 115 in Centre Court Shopping Centre in February 2020. Debenhams had occupied Unit 115 as a shop and premises which was split over three floors. The appellant's representative stated that the premises accounted for 37.8% of the total size of the centre and argued that the vacation of Debenhams, which was described as an anchor store, had had a detrimental

impact affecting the entire centre. The appellant's representative stated that the units at the centre were fully occupied on 1 April 2015 and only two units were vacant when the list came into force on 1 April 2017. By the material day, fifteen out of the sixty-one units at the Centre were vacant, with a vacancy rate of 46% at the Centre, of which 83% of was accounted for by the closure of Debenhams. It was also stated that footfall had reduced at the Centre from 174,249 (as at 1 April 2015) and 177,939 (as at 1 April 2017) weekly to 84,533 in the week of the material day of the appeals, which equated to a 52% decline.

20. Reference was made by the appellant's representative to a reduced rent for Monsoon at Unit 226-228 in July 2020 where it was said to have secured a 57% reduction in rent, which the appellant's representative argued supported his assertion that vacancy rates at the centre and a drop in footfall had affected value.
21. The appellant's representative's proposed allowance was aligned with allowances conceded by the Valuation Officer at both the Potteries Shopping Centre, which was located in the business district of Hanley in Stoke, and the Brunswick Shopping Centre, which was in the centre of Scarborough, North Yorkshire. The appellant contended that allowances had been given to premises located at both of those shopping centres following the departure of a Debenhams at both sites with effect from 15 May 2021, and argued the same allowance should be applied to the subject hereditaments. He had provided analysis to demonstrate comparative vacancy rates at the Centres and to support the contention that the loss of the anchor stores was of significant detriment.
22. The respondent's representative contended that no allowances should be given to any of the subject hereditaments as a result of the departure of Debenhams from Unit 115. The respondent's records showed that there were six vacant units in January 2020 which had risen to fifteen by the material day of the appeal. It was contended that the rise in vacant units were attributable to the Covid-19 pandemic and other economic factors which were not present at the AVD. It was argued that retail demand was robust and investment in shopping centres and high streets was strong at the AVD. The respondent's representative stated that demand was improving for shopping centres at the AVD and there would have been several large department store occupiers in the market at that time for a vacant unit in a shopping centre such as Unit 115. He stated that any hypothetical tenant considering occupation of any of the other units in the centre would assume a large unit such as Unit 115 would be let in a reasonable amount of time and as such, the vacant unit would not reduce any potential rental bid.
23. The respondent's representative argued that the allowances given at the Potteries and Brunswick Shopping Centres did not warrant an allowance for the subject hereditaments at Centre Court Shopping Centre. He contended that the only similarities between the centres was that they were of a similar age and had a Debenhams store vacate them. He stated that the centres were in different localities which served distinct catchment areas. He argued that Wimbledon, the location of Centre Court Shopping Centre, was an affluent area, and not comparable to the city centres of Stoke and Scarborough.
24. The respondent's representative disagreed that the reduced rent for Unit 226-228 effective from July 2020 was indicative of rental values reducing due to Debenhams' vacation, as it was an agreement made during Covid-19 restrictions and therefore did not represent a realistic hypothetical rental value given that the impact of Covid should be disregarded when undertaking a valuation. Similarly, he argued that the contentions relating to footfall

reductions were not relevant as they too were pertaining to the pandemic rather than the closure of the Debenhams store. He added that other factors had also contributed to vacancy rates and footfall since the AVD such as the significant rise of consumers preferring internet shopping, and as such, the current landscape of retailing had changed beyond recognition. The respondent did not consider that any evidence had been provided which substantiated that the RVs of the subject hereditaments warranted a reduction as the vacancy rates at the centre were a result of the pandemic.

25. The panel was aware that ratepayers and their representatives were presented with significant difficulties in appeals of this nature as where a physical change has occurred within a subject's locality, sometimes the effects were masked or caused by economic factors which cannot be taken into consideration. The panel found that to be the case in these appeals. The material day was subsequent to the UK Government's first coronavirus lockdown and significant measures remained in place which the panel found would have clearly affected footfall at shopping centres. It was commonly accepted that modern retailing had seen a significant rise of e-commerce resulting in a reduced demand for non-digital buyers since the AVD, which was also accelerated by the pandemic. The quandary for the panel to resolve was what, if any, element of any reduced footfall or trade at the centre was attributable to the departure of Debenhams at Unit 115, as opposed to economic factors which must be disregarded. Since the closure of Debenhams, a second material change had occurred with the arrival of AFC Wimbledon.
26. The panel found that Debenhams was a key tenant of Centre Court Shopping Centre, which acted as a magnet to draw customers to the centre. It had occupied a unit which was over three floors of the building and constituted nearly 38% of the total size of the centre. It found it reasonable to determine that its departure would result in a reduction in customer numbers and a consequent decline in trade for other retailers in the centre.
27. Prior to Debenhams moving out in February 2020, there were fourteen vacant units in the centre. Debenhams' vacation totalled fifteen. At the material day, five further units at the centre had been vacated, and two other vacant units had been occupied. It was difficult for the panel to determine which departures were directly caused by the departure of Debenhams. Naturally, tenants could vacate their premises at the end of the lease, unrelated to any activity within the locality. A business decision to vacate a premises could have been taken prior to it being common knowledge in the sector that Debenhams was due to go bust and shut down its stores. Two units had been occupied at the centre following its departure prior to the material day which suggested to the panel that there was still a market for trade at the centre. However, the panel found it was reasonable to consider that some of the vacations would be attributable to Debenhams' departure. Two units which were vacated following its departure had their leases ongoing and the tenants had left prior to the cessation of those leases. The panel found it was not beyond the realms of possibility to conclude it was a result of the largest unit in the centre being empty, and its resultant impact on footfall and trade.
28. Whilst the panel determined that the closure of Debenhams had an impact on footfall and trade, it considered that the 7½% allowance sought by the appellant's representative was excessive due to the subsequent occupation of a unit by AFC Wimbledon. The panel found that event, which preceded the imminent move of the football club to its new stadium at Plough Lane, signified that trade was picking up again at the centre. This was a positive factor when considering footfall and trade which lifted some of the gloom of the departure of Debenhams.

29. The panel attached no weight to the agreed reductions to RVs for premises at the Potteries and the Brunswick Shopping Centres. Whilst reduced RVs may have been agreed or conceded elsewhere, each locality is different and the evidence in those other localities may have justified an allowance. It would not be typical rating practice for a valuer to source assessments, especially in the form of shopping centres which are abundant, from significantly distant locations to the subject. The subject appeals concerned Centre Court Shopping Centre, which was located in Wimbledon, so settlement evidence relating to premises in Stoke or Scarborough did not offer the panel any assistance in valuing the subject hereditaments at Centre Court. Wimbledon is a different locality to Stoke and Scarborough, and in the latter two, evidence of an increased number of vacant units or evidence to show that customers or trade had declined following a material change of circumstance event at those centres may have justified a 7½% reduction.
30. In the subject appeals, the panel found that the departure of Debenhams did justify an allowance to the RV for the subject hereditaments. Units at the centre had been vacated following the departure of Debenhams from Unit 115 which the panel found were attributable to that event and the loss of a key tenant at the centre had a subsequent effect on footfall and trade. However, that effect would have also been masked by economic factors and the Covid-19 pandemic which were to be disregarded for the purposes of valuation. AFC Wimbledon had subsequently occupied a unit in the store prior to the material day, which the panel deemed as a positive factor. In this instance, and given the evidence provided, the panel determined an allowance of 5% for each subject hereditament to be both fair and reasonable.
31. In view of the foregoing, the appeals for the subject hereditaments, excluding Unit 115, were allowed in part as the existing valuations were deemed unreasonable, but not to extent sought by the appellant's representative, and their assessments in the 2017 rating list reduced by 5% with effect from 13 July 2020. The appeal pertaining to Unit 115 was dismissed.

Disposal

32. In accordance with Regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to reduce the entries in the rating list for the following subject hereditaments with effect from 13 July 2020 to:

Unit 303-304	RV £52,000
Unit 225	RV £54,500
Unit 306	RV £12,800
Unit 113	RV £83,000
Unit 202	RV £52,500
Unit 207	RV £41,500
Unit 231	RV £84,000
Unit 233	RV £85,000
Unit 220	RV £62,500
Unit 212	RV £87,500
Unit 208	RV £102,000
Unit 213 to 214	RV £188,000

33. Under Regulation 38 (9), the Valuation Officer must comply with this order within two weeks of the date of its making.
34. Any fee paid for the appeals allowed in part will be refunded in full in accordance with regulation 13E of the above Regulations, provided there is no review of the tribunal's decision.

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.

Date: 2 July 2024

Addendum

Following the release of the panel's decision on 2 July 2024, the respondent's representative drew the Tribunal's attention a clerical error in the Order. The original decision incorrectly ordered that the RV for Unit 233 was to be reduced to £86,500. The correct figure was £85,000.

The decision record has therefore been altered and reissued under Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

Date when amended decision was released: 4 July 2023

SCHEDULE

Appeals consolidated and heard together by the tribunal on 17 June 2024

Appeal Number	Subject hereditaments
CHG100746950	Unit 303-304, Centre Court Shopping Centre, London SW19 8ND
CHG100746982	Unit 115, Centre Court Shopping Centre, London SW19 8ND
CHG100746958	Unit 225, Centre Court Shopping Centre, London SW19 8ND
CHG100746966	Unit 306, Centre Court Shopping Centre, London SW19 8ND
CHG100746925	Unit 113, Centre Court Shopping Centre, London SW19 8ND
CHG100746972	Unit 202, Centre Court Shopping Centre, London SW19 8ND
CHG100746931	Unit 207, Centre Court Shopping Centre, London SW19 8ND
CHG100746993	Unit 231, Centre Court Shopping Centre, London SW19 8ND
CHG100746988	Unit 233, Centre Court Shopping Centre, London SW19 8ND
CHG100746942	Unit 220, Centre Court Shopping Centre, London SW19 8ND
CHG100746974	Unit 212, Centre Court Shopping Centre, London SW19 8ND
CHG100747009	Unit 208, Centre Court Shopping Centre, London SW19 8ND
CHG100747010	Unit 213 to 214, Centre Court Shopping Centre, London SW19 8ND