THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; The Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended; material change in circumstances; Appeal dismissed.

RE: The Vault and The Qube, Dakota Drive, Liverpool L24 8RJ

APPEAL NUMBER: CHG100774704 & CHG100774708

BETWEEN: B&M Retail Ltd Appellant

and

Amanda Hitchings (Valuation Officer) Respondent

PANEL: Ms J Hadley (Presiding Senior Member)
Mr M Bhatti (Member)

CLERK: Ms J Routledge IRRV Tech

REMOTE HEARING ON: 12 January 2024

APPEARANCES: Mr David Cownie of CBRE Ltd for the appellant
Ms C Kirwin-Blakeman for the respondent

Summary of decision

1. Appeals dismissed. The panel confirmed that no end allowance should be given in respect of the opening of the Mersey Gateway toll bridge.

Introduction

2. These were 2017 rating list appeals made in respect of The Vault and The Qube, Dakota Drive, Liverpool L24 8RJ (the 'appeal properties'). The challenge proposal was submitted by CBRE on behalf of the appellant, B & M Retail Limited, on 8 February 2022. It had been made on the grounds of a Material Change of Circumstances (MCC) and requested a 10% reduction in the

RV of the combined premises to reflect the increased costs incurred by the appellant following the opening of the Mersey Gateway toll bridge. A revised rateable value (RV) of £1,440,000 was proposed against the RV of £1,600,000 for The Vault and a revised RV of £1,230,000 for the Qube against the current RV of £1,370,000.

3. The Valuation Officer issued a challenge case decision notice on 7 March 2023 which disagreed with the proposed alteration of the list.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 7 July 2023.

5. Mr Cownie 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 on a conditional fee basis. 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. 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).

7. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

8. The appeal hereditaments were two large national retail distribution warehouses situated on Estuary Commerce Park, Speke. The Vault measured 61,316m^2 and the Qube measured 46,816m^2. These premises were owned by the appellant and occupied under a lease back arrangement. The rent passing on the property remains a function of the sale and leaseback agreement, the reviews being to an amount fixed at the commencement of the lease, details of the lease were not provided.

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

Issue

10. The issue between the parties was whether the effect of the opening of the Mersey Gateway toll bridge was such as to justify a reduction in the rateable value of the appeal hereditaments.

Evidence and submissions

11. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, VO's challenge case decision notice and the appellant's challenge submission.

Decision and reasons

12. The panel referred to the Local Government Finance Act 1988 in respect of the definition of rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, as defined at paragraph 2(1) of Schedule 6 to the Act.

13. Briefly, the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

14. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations") set out a number of grounds on which the list may be altered in regulation 4, including the following at 4(1)(b): "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." In respect of the subject appeal, the material day was 14 October 2017.

15. A "material change of circumstances" is defined by regulation 3(1) of the 2009 Regulations as "a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the [1988] Act". Those matters are, insofar as relevant here:

    "(a) matters affecting the physical state or physical enjoyment of the hereditament,
    (b) the mode or category of occupation of the hereditament,
    (c) …
    (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…"

16. The issue for determination was whether a reduction in the RV was warranted as a result of the MCC. As outlined by the parties, the MCC in question was the opening of a toll bridge that had replaced a free to use bridge. This bridge provided the easiest access to routes to the Midlands, Wales, and the Southwest from the appeal hereditaments according to the appellant.

17. Mr Cownie for the appellant provided a history of the site and advised that these were the only two warehouses on the site large enough to cope with the volumes of goods required for a national retailer. The geographical limitations of the appeal hereditaments had been taken into account in the compiled list following a previous challenge. However, this did not take into

account the costs of the toll bridge as at the time of the AVD the toll bridge was not open, therefore the MCC had not occurred and could not be taken into account in the rental negotiations. He argued that a hypothetical tenant would reasonably negotiate lower rents through the “higgling of the market” which could be expressed as a sum of money as the costs of the toll was a quantifiable amount.

18. He contended that an adjustment of 10% was reasonable, given the charges incurred by the appellant of approximately £300,000 per annum since the toll came into force and this equated to 10% of the combined RV of the two warehouses. He provided details of the cost to the appellant from October 2017 to the end of 2021.

19. Ms Kirwin-Blakeman for the respondent argued that no allowance was reasonable as the fact that the free to use bridge was to close and there was to be a toll bridge with the intended charges was widely advertised as early as 2014. This information being in the public domain would have been reflected in any rental bid at the AVD. She did not dispute the calculation of 10% against the RV if the panel found that it was satisfied that a reduction in the RV was warranted.

20. Ms Kirwin-Blakeman also advised that there had been no other proposals received relating to the opening of the toll bridge from local rate payers.

21. The panel had regard to the legislation and considered paragraph 2(7)(d) operates so as to take that physical matter as it was on a date postdating the AVD. When a list is compiled, the valuer should simply take the physical characteristics of the locality as they were on that date, the principle of *rebus sic stantibus* (i.e. “as things stand”). Therefore the respondent’s argument that the cost of the toll bridge could be included in the hypothetical rental bid at the AVD as the charges were known at the time was not given weight as the tolls were not in place and the effect on the appellant could not be known.

22. Mr Cownie provided several maps to demonstrate that the comparable properties relied upon by the respondent were not affected by the opening of the toll bridge as alternative routes avoiding the toll bridge were available. These maps also demonstrated that the route from the subject premises to the M6 south via the toll bridge was five minutes quicker and four miles shorter than an alternative route. Mr Cownie had emphasised the small margins that the appellant company was operating under and that paying toll costs had had an adverse effect on the appellant.

23. He provided no details of the previous transport costs incurred by the appellant prior to the opening of the toll bridge, relying on the details of the charges incurred following the opening of the bridge.

24. The panel noted that the appellant had incurred costs on average of £300,000 per annum in respect of the tolls but the effect on the overall transport costs to the appellant was not evidenced. It had noted Mr Cownie’s comments regarding the small margins that the appellant was operating under and concluded that the use of the toll bridge must be economically viable for the appellant for example better traffic flow reducing journey times, otherwise the alternative routes would have been used.

25. The panel was aware that it was well-established in the application of the rating principles that the volume of trade or the level of profitability achieved by a particular occupier is not a characteristic which is essential to the value of the right to occupy the property from which the business is conducted.

26. The panel also noted that no other proposals had been made for end allowances following the opening of the Mersey Gateway Bridge. It appreciated that the appellant was a large operator, however if the toll charges had made a significant difference, it would have expected other proposals from the area of the Speke industrial estate especially as the toll charges would have a greater effect on the small businesses that trade locally.

27. The burden of proof is upon the appellant to demonstrate that the opening of the toll bridge would have caused a reduction in the rental bids for the subject premises. The panel found that the hypothetical landlord would not have reduced the hypothetical rent given that there were suitable alternative routes and the appellant's representative had not demonstrated that the overall operating costs to the appellant had been adversely impacted.

28. In view of the foregoing the appeals were dismissed.

Date: 5 February 2024

Appeal number: CHG100774704 & CHG100774708

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.