VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988; material change of circumstances; end allowance sought for opening of Aldi supermarket within the locality of the subject hereditament; reduction in turnover; appeal allowed in part.

APPEAL NUMBER: CHG100897852

RE: Central Midlands Co-Op, Granby Road, Bakewell DE45 1ES (“the subject hereditament”)

BETWEEN: Central England Cooperative Limited — Appellant

and

Joanne Moore (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 14 August 2024

BEFORE: Mr A Hussain (Presiding Senior Member)
Mr W Read (Senior Member)

CLERK: Mr S Fletcher

APPEARANCES: Mr P Gould of Colliers International (Appellant’s representative)
Ms C Sarfas (Respondent’s representative)

DECISION and STATEMENT OF REASONS

Decision

1. The appeal was allowed in part. The panel determined the rateable value (RV) of the subject hereditament to be £157,000 with effect from 28 March 2019.

Introduction

2. The appeal process began with a proposal made by the appellant’s representative, on behalf

of its client on 18 January 2023. The proposal was 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 proposal related to the opening of an Aldi supermarket within the locality of the subject hereditament. The appellant's representative proposed a reduced assessment with an end allowance of 22.5%, in line with a reduction in turnover attributed to the material change of circumstances.

3. The respondent issued a challenge case decision notice on 1 December 2023 which stated that the existing rating list entry of £174,000 RV was unreasonable and determined a revised entry of £163,000 RV with effect from 28 March 2019. The revised RV accounted for a 6.3% end allowance due to the opening of Aldi. The appellant's representative appealed that decision to this Tribunal on 22 March 2024 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was a shop and premises located in Bakewell town centre. The building was two-storey, built of sandstone brick, and was occupied and owned by the appellant.

5. The material date was 6 December 2022. The effective date, if the appeal was successful, was agreed by the parties as 28 March 2019, which was the date the Aldi store opened. The antecedent valuation date (AVD) was 1 April 2015.

6. Mr Gould appeared on behalf of the appellant as both advocate and expert witness. He stated that neither he nor Colliers International were instructed under a conditional fee arrangement.

7. As part of their induction training, two new members of the tribunal were observing proceedings. It was explained to the parties that it was the panel's intention to invite their colleagues to accompany it to the retiring room. The parties were assured that the new members would not participate in the decision-making exercise but would simply observe as part of their training. Neither party raised any issues or objections to this.

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

Issue

9. What, if any, further allowance was applicable for the material change of circumstances.

Relevant law

10. 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 –
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> 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.

11. As the proposal was made on the grounds of a material change in the 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

12. Arguments and factual evidence from both the appellant's representative and the respondent was provided. This comprised the respondent's decision notice, the appellant's representative's statement of case, a photograph of the subject hereditament, details of turnover and assessments deemed comparable to the subject hereditament where allowances had been given for the opening of Aldi stores. The Upper Tribunal (Lands Chamber) judgment of *GPS (Great Britain) Ltd & others v Bird (VO)* [2013] UKUT 527 (LC) was also referred to.

Discussion

13. Mr Gould contended that the 6.3% end allowance given by the respondent to the RV of the subject hereditament was not sufficient to reflect the impact of the opening of Aldi within its locality. He stated that prior to the existence of Aldi, the Co-Op was the only shop and premises of a similar ilk within Bakewell. The Co-Op was in the town centre adjacent to a carpark owned by the Local Authority and there was a private car park on the other side of the River Wye accessed via a footbridge. The Aldi store was circa one mile from the subject

hereditament and benefitted from 103 parking spaces which were free to the public. Mr Gould had provided turnover figures from the Co-Op and stated there was an average decrease in turnover of 22.5% from the years 2018 to 2021, which he attributed to the opening of Aldi in 2019. As such, he sought a reduction in RV of the same. Mr Gould also referred to *GPS & Others v Bird*, in which the Upper Tribunal determined that the opening of the Highcross shopping centre in Leicester city centre had a detrimental impact on rental values at the out-of-town Fosse Park retail park, leading to a 10% reduction in the RVs of the appeal hereditaments.

14. Ms Sarfas did not agree that the reduction of trade of 22.5% at the subject hereditament was solely as a result of the Aldi opening. She referred to turnover figures provided by Mr Gould for 2016 to 2022 and argued that trade had already fallen by circa £500,000 between 2016 and 2018 prior to the opening of the store. She cited *GPS & Others v Bird*, in which the Upper Tribunal stated, “it is not usually helpful for the value to base his valuation simply on the turnover of the occupier”. As such, she stated that the VO considered that 22.5% should be used as a starting point. She stated that 4.5% should be subtracted from that figure to reflect the drop in turnover prior to Aldi opening, resulting in 17.7%. She referred to a comparable assessment of Coop, CRS Ltd, Wellhouse Road, Lancashire which involved the same parties and pertained to a fall in trade due to the opening of an Aldi. She stated that 10% allowance was agreed in that case based on a 28% drop in turnover, a ratio of 2.8. Ms Sarfas applied that same ratio to 17.7% resulting in a 6.3% reduction in the RV of the subject hereditament.

15. Ms Sarfas also provided several other comparable assessments where allowances were given for material changes of circumstances to hereditaments pertaining to the opening of Aldi stores. Those were also Aldi Stores at Coleman Street, Derby, Watling Street, Hinckley, Greenoaks Way, Widnes, Wellington Road, Rhyl and Meliden Road, Prestatyn. Those allowances were in the range of 3.5% and 10%, and Ms Sarfas stated they were dependent on the respective reductions in trade.

16. The panel found that the location of the subject hereditament was unique given the fact it was the only shop and premises of a similar ilk within Bakewell at the material day to the Aldi. The Co-Op did not benefit from free parking, whereas the Aldi had substantial free parking on its site which was outside of the town centre. The panel found it reasonable to consider that the impact to the Co-Op in terms of footfall would have been significant being it was the sole competition to the Aldi in the locality. It also considered that the free parking at Aldi, which was in a less congested area than a town centre at no cost and therefore desirable, would be a significant driver in terms of attracting customers.

17. The panel considered the turnover figures provided by Mr Gould for the Co-Op between 2016 and 2022. It noted that turnover was falling prior to the opening of the Aldi which clearly suggested that other factors were affecting trade at the subject hereditament. However, turnover continued to decline more substantially from 2019 to 2022 following Aldi’s opening. The panel did note that there was in increase in turnover for the first time in 6 years in 2022, suggesting that trade had began to recover somewhat by that point.

18. The panel attached little weight to the comparable assessments submitted by Ms Sarfas. Whilst reduced RVs may have been agreed or conceded elsewhere, each locality is different and the evidence in other localities may have justified such allowances. This appeal concerns the opening of an Aldi in Bakewell and its impact on a Co-Op, so settlement evidence relating to the opening of other Aldi stores in Leicestershire or Cheshire, which were examples cited by Ms Sarfas, did not provide the panel with any assistance. Bakewell

is a different locality to those comparable assessments and there may have been evidence to demonstrate that the opening of an Aldi warranted a reduction in RV, which was unique to their specific circumstances. When asked, Ms Sarfas conceded that she had not provided sufficient details regarding the award of the allowances given in those comparable assessments to make a reliable comparison to the subject hereditament.

19. The panel attached little weight to the method used by Ms Sarfas to calculate the reduction to RV at the subject hereditament. The panel found she had seemingly cherry-picked percentage reductions from various sources to arrive at a figure of 6.3% from the 28% drop in turnover at the Co-Op between 2019 and 2021. One of those sources was from an allowance given at a hereditament in Lancashire, where she had derived a ratio of 2.8 from a 28% reduction in turnover at that store and applied the same ratio in her calculation of reduction to the RV at the subject hereditament. As previously stated, the panel found absolutely no relevance in applying a ratio used to calculate the RV of a different hereditament, in a completely different area of the country, with turnover unique to its own circumstances, to the subject hereditament.

20. The panel found there was a difficulty in ascertaining what, if any, further reduction was warranted at the subject hereditament. Unlike in *GPS & Others v Bird* where the Upper Tribunal was provided with turnover for half the retail units at Fosse Park affected by the opening of Highcross which it found demonstrated a consistent picture, only a single set of turnover figures was available from the subject hereditament as it was the only similar store to the Aldi in the area. Nonetheless, whilst the panel was mindful there was no direct relationship between turnover and rent, it was satisfied that a hypothetical tenant would have reduced their rental bid significantly as a result of the fall in trade as demonstrated in the turnover figures at the subject hereditament provided by Mr Gould.

21. The panel did not find that the proposed reduction in RV by Mr Gould was warranted. That allowance was based solely on the percentage drop in trade over a three-year period. Trade was falling prior to the opening of the Aldi, although did significantly increase after that point suggesting the material change of circumstance was a significant factor. The panel noted that trade had also began to recover by the material day and considered that may have been an example of the effect of a new store in the area attracting customers levelling off. Given the panel had found the allowance given by the VO as unreliable, it determined that a further reduction was warranted when considering the drop in turnover and the unique circumstances of the subject hereditament in terms of its locality. It determined that a 10% reduction to RV of the subject hereditament pertaining to the opening of the Aldi store was fair and reasonable in this instance.

22. The revised assessment for the subject hereditament's rating list entry with effect from 28 March 2019 as determined by the panel was as follows:

SHOP FLOOR AREAS			
Description	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground floor sales	1,260.39	110.00	£138,643
First floor warehouse	990.31	36.67	£36,315
Total	**2,250.7**		**£174,958**
ADJUSTMENTS			
Temporary disadvantage			-10.00%
Total			**17,496**

Valuation sub-total	**157,462**
Say RV	**157,000**

23. The panel therefore allowed this appeal in part as it considered the respondent's valuation of the subject hereditament was unreasonable, but not to the extent as sought by the appellant's representative.

Disposal

24. In view of the foregoing, the appeal was allowed in part.

25. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £157,000 with effect from 28 March 2019. The respondent must comply with this order within two weeks of its making.

26. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date: 31 August 2024

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.

Addendum

Following the release of the panel's decision on 31 August, Ms Sarfas drew the Tribunal's attention that the decision referred to the respondent as Amanda Hitchings, rather than Joanne Moore.

The original decision also referred to an effective date of 21 February 2022 in paragraph 3.

Both of the above were clerical errors which occurred when the decision was drafted.

The decision record has therefore been corrected 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: 9 September 2024.