VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988; material change of circumstances; vacation of major retailer; end allowance; appeal dismissed

APPEAL NUMBER: CHG100932415

RE: 7-8 George Street, Richmond TW9 1JY
(the "subject property")

BETWEEN: Barclays — Appellant

and

(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: Friday 14 February 2025

BEFORE: Mrs RS Choudhury, Presiding Senior Member
Miss KB Riddy, Senior Member

CLERK: Mr R Patel

APPEARANCES: Mr S Griffin of Jones Lang La Salle (representative of the appellant)
Mrs J Smith (representative of the respondent)
Mr M Hussain (expert witness for the respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel determined the assessment of the subject property remain at £243,000 rateable value (RV) with effect from 1 April 2017, finding that there was nothing erroneous with the Valuation Officer's decision to refuse an allowance in respect of a material change of circumstances, this being the closure of a large department store, a House of Fraser store located at 75-81 George Street, Richmond, TW9 1LZ on 20 September 2020.

Introduction

3. This appeal had been brought in respect of the following: Barclays, 7-8 George Street, Richmond TW9 1JY, which was entered in the 2017 Rating List as Bank and Premises at an RV of £243,000, with effect from 1 April 2017.

4. The challenge proposal submitted by Jones, Lang, LaSalle on behalf of the appellant was received by the Valuation Officer on 25 February 2023. It had been made under Regulation 4(1)(b) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 on the basis that the RV shown in the list for a hereditament was inaccurate by reason of a material change of circumstances (MCC) 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 closure of House of Fraser. The appellant's representative proposed a reduced assessment of £219,000 RV with an end allowance of 10% for the material change of circumstances on the grounds that the £243,000 RV shown in the 2017 Rating List was excessive.

5. The VO issued a challenge case decision notice on 16 May 2024, which stated that based upon the evidence and information available, there should be no alteration of the Rating List. The appellant remained dissatisfied, with an appeal received by the Tribunal on 16 September 2024 proposing an assessment for the subject property of £219,000 RV. The appeal was in accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, made on the grounds that the valuation for the hereditament is not reasonable.

6. The material date was 26 October 2021. The effective date, if the appeal was successful, was 20 September 2020. The antecedent valuation date (AVD) was 1 April 2015.

7. Mr Griffin was appearing on behalf of the appellant as advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised 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 not representing the appellant at the hearing on a contingency fee basis. He also declared that he understood and accepted that his duty was 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.

8. The panel have 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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 an exchange of late evidence submitted by the appellant on 12 February 2025, which was not in accordance with the Tribunal's Standard Directions. In addition, the appellant now sought a reduction in RV to £231,000, based on an end allowance of 5%, rather than 10% originally sought. The clerk had forwarded all this information to the panel in advance of the hearing. Mrs Smith raised no objection to the late evidence submitted by the appellant.

11. The panel decided that it was fair and just to consider the substantive issues, taking into account this late evidence, which both parties had sight of before the hearing. Neither party had been prejudiced; as the breach of submitting this late evidence was not considered serious or significant the panel determined that it would be in the interests of justice to include the appellant's additional evidence and consider the appeal taking into account the appellant's revised valuation.

Background

12. The basis of the appeal was that the RV of the subject property did not reflect the closure on 20 September 2020 of House of Fraser, also situated on Geroge Street, Richmond. It was contended that the closure of the retail store should be reflected in an end allowance for the subject assessment with effect from this date.

13. The subject property was a branch of a high street bank situated in George Street, located opposite the House of Fraser store in a prime retail high street area of Richmond. Photographs of the subject property were provided. It was arranged over three floors, with the ground floor comprising the banking hall and back offices, the second floor comprising ancillary offices and third floor stated to be under-utilised. The basement was stated to comprise a strongroom and had been decommissioned

14. The respondent had stated that at the AVD of 1 April 2015 Richmond was trading well and maintaining its values between the 2010 and 2017 Rating Lists.

15. The issue for the panel to determine, was if any allowance was applicable for the material change of circumstances.

Relevant Law

16. 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.

17. As the proposal was made on the ground 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.

Discussion

18. The appellant's representative now sought a revised allowance of 5% to the RV of the subject property to account for the effect of the departure of House of Fraser in September 2020, located on George Street, the same street as the subject property, which the respondent stated was a prime retail high street. House of Fraser was described as an anchor store being a shop and premises of 7,249m^2 over multiple floors, with its vacation stated to have a detrimental impact on the desirability of the subject property and other units in the locality.

19. The appellant's representative stated that the respondent recognised the closure of anchor tenants caused a negative impact on shopping centres or high streets within successive Rating Lists. He added, with House of Fraser being of significant size and located in the prime retail area, an allowance akin to those made in similar circumstances should be allowed.

20. In appeals of this nature, where a physical change has occurred within a subject's locality, the issue facing the parties was whether the effects were caused or masked by economic factors which cannot be taken into consideration. It was commonly accepted that modern retailing had seen a significant rise of e-commerce since the AVD, which was also accelerated by the pandemic. The predicament facing the panel was to determine was what, if any, element of any increased vacancy rate, or reduced footfall or trade in the locality of the subject property

was attributable to the departure of House of Fraser, as opposed to economic factors which must be disregarded.

21. The respondent submitted that the retail offering in the locality was strong even without the occupation of House of Fraser. It was stated that another anchor store, Marks & Spencer, remained in occupation of a property also situated in George Street and as such the impact of the closure of House of Fraser was negligible due to the affluence and attractiveness of the locality, which remained to be served by a high volume of strong independent and high-quality retail outlets.

22. The appellant stated that vacant units previously occupied by anchor tenants and large retailers are evidence in themselves of a physical change in the locality, the closure of which is considered a major reason for an increase in vacancy rates. This in turn leads to a reduction in demand for retail units in the area and subsequent reduction in rental levels, warranting an end allowance to the RV.

23. There was no information detailing the occupancy of retail properties within the high street area of Richmond at the AVD of 1 April 2015; on 1 April 2017 when the list came into force; and at the material day, to which the panel could refer to, as an indication of the decline in occupancy, that could be considered attributable to the closure of House of Fraser, making it difficult to compare levels at AVD and at the material day.

24. The respondent's representative stated at the AVD she believed there was demand and that there would have been other prospective tenants in the market at that time, for a vacant unit in a prime high street location, such as 75-81 George Street. She stated that a hypothetical tenant considering occupation of any of the other units in the locality would assume a large unit such as 75-81 George Street would be let in a reasonable amount of time and as such, the vacant unit would not reduce any potential rental bid. The panel was informed that on the material date, a planning application for the redevelopment of the former House of Fraser had been submitted, which tenants, be they current or potential, would be mindful of.

~~25.~~ The respondent's representative contended that no allowance should be given to the subject property as a result of the departure of House of Fraser. The respondent did not dispute that a change in the locality such as the presence of vacant properties can have an impact on the value of other properties within the locality to the extent that it constitutes a valid MCC for which an allowance is appropriate. However, she stated that this must be proven in each case for each locality. It is incorrect to assume that an increase in vacant units automatically corresponds to an allowance being warranted. It is for the appellant to show a causal link between the MCC relied upon and the value significant impact of any such event.

26. During verbal submissions, the appellant's representative confirmed there to be no evidential data submitted to show that changes to material matters including an increase in the number of vacant retail units in the locality; or reductions in pedestrian footfall in the locality, have reduced the attractiveness and the value of the subject property. Additionally, there was no data provided to suggest that there has been a loss in trade as a direct result of the House of Fraser closure. The rent passing on the subject property was £290,000 per annum agreed on 21 July 2006. The lease included tenant options to terminate the lease on 21 July 2016 and 21 July 2021, however the property was subject to a deed of variation dated 25 February 2020, which deleted the break option and added a four month period of a peppercorn rent from 25 December 2019. Moreover, there was no reference made to a rent reduction for the subject property or any other properties within the locality having been secured, to support the assertion that the MCC affected value.

27. In support of the appellant's proposed allowance, reference was made to allowances awarded in respect of numerous retail properties stated to have been impacted by the closure of an anchor store or those previously occupied by large retailers. The appellant contended that allowances had been given to premises located at various shopping centres following the departure of anchor stores or large retailers, arguing the same or similar allowances should be applied to the subject property. The panel was aware of an agreed framework under which settlements had been agreed, also however noting this framework related to properties within shopping centres rather than properties in high street locations.

28. To support the appeal, the appellant's evidence included a previous decision of the Valuation Tribunal, heard in June 2024, where a 5% allowance was awarded in respect of various retail units at a shopping centre in Wimbledon, London, to reflect the closure of Debenhams. Furthermore, the appellant's evidence referred to multiple properties where allowances had been awarded as a result of the closure of an anchor or large retailer stores, the majority of which were located in various shopping centres throughout England. The panel recognised that the allowances awarded were primarily agreed in respect of shopping centre hereditaments, and not those situated on town centre high street locations. The respondent's representative also stated the allowances referred to by the appellant were awarded were in respect of previous Rating Lists assessments, rather than the 2017 Rating List, with a different antecedent valuation date where the economic circumstances was different, as well as different material dates being in play.

29. Notwithstanding, the appellant's representative had provided evidence of settlements in what he considered to be comparable locations where allowances at the rate sought by the appellant had been awarded. Evidence of where allowances at 5% were awarded at Harrow, Portsmouth, Bournemouth, Newbury, and Nuneaton were submitted, where anchor or large retailer stores had been vacated

30. The representative for the respondent stated that the subject property was in a different locality which served a distinct catchment area. It was stated that Richmond was not a typical utilitarian market town, with it being well-known as an affluent and desirable place in which to live and visit, attracting tourists and people from around greater London. Its retail area was stated to consist of high-end boutiques and upscale dining outlets as part of a strong mix of independent retail outlets.

31. The panel noted that the allowance awarded at Portsmouth was in respect of a bank and premises. This had been agreed between the appellant and the respondent a week in advance of its scheduled listing at a tribunal appeal, with the respondent stating that whilst the property in question was a bank located directly opposite a closed anchor store, the 5% allowance was agreed due to the closure of two large retailers in the locality, as well as the Portsmouth having a town type rating description of 'weak town'.

32. Richmond was ascribed a rating description of 'average resilient type' unlike four of the locations in which 5% allowances for a similarly based MCC had been awarded. Bournemouth, Harrow and Nuneaton were classed as 'sub regional weak towns'. Bournemouth was stated to have been impacted by the closure of three large retailers/anchor stores, Harrow affected by the closure of its main anchor store, and Nuneaton was stated by the respondent to be a poorer small town which she considered would not be able to absorb the closure of an anchor store in comparison to the more prosperous and alluring attractive town of Richmond. Newbury, like Richmond was classed as an 'average resilient town' with evidence of a 5% allowance awarded to a property situated close to a Debenhams which had closed. The respondent stated the allowance was awarded as the anchor store accounted for

30% of a shopping centre, therefore being different to the appeal being heard by this panel. On this basis Mrs Smith argued the subject property did not warrant an allowance.

33. The panel attached very little weight to the agreed reductions to RVs for premises at Harrow, Portsmouth, Bournemouth, Newbury, and Nuneaton. Whilst reduced RVs may have been agreed, 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, from significantly distant locations to the subject. Any allowance in this appeal would need to be supported by evidence, be that of an increased number of vacant units, a decline in customers or trade following a material change of circumstance event at these other locations may have justified a 5% reduction. The subject appeal was located in Richmond, therefore settlement evidence relating to premises in these other locations did not necessarily offer the panel any assistance in valuing the subject hereditament.

34. In this appeal, the panel found that the closure of House of Fraser did not justify an allowance to the RV for the subject property. The panel found there to be insufficient evidence to substantiate that the RV of the subject property warranted a reduction. The absence of evidence which illustrated the impact on trade, footfall, or vacancy rates as a result of the closure of the House of Fraser store on the same road as the subject property, as well as the comparative agreed settlements, did not support the contention that the loss of the anchor store was of significant detriment. The panel found that whilst House of Fraser was situated in a prime retail position in the high street area of Richmond, the town itself, which attracted and drew in people, signified that the locality was more robust than the areas in which allowances had been awarded. Without evidence to the contrary, the panel determined that the decision of the respondent not to award an allowance to be both fair and reasonable.

Disposal

35. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the appeal be dismissed.

Date issued to parties: 13 March 2025

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.
