IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG101047297

Sitting remotely using Microsoft Teams

Date: 30 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 Rating List Appeal; Shop and premises; Material change of circumstances; closure of Frasers store; Appeal dismissed.

Before:
MISS AM PRICE
MRS A TAYLOR

Between:

C. & J. CLARK INTERNATIONAL LTD — **Appellant**

- and -

KAREN GILES (VALUATION OFFICER) — **Respondent**

Regarding:

31 FRIARGATE, GRIMSBY DN31 1QQ
(the “appeal property”)

Mr Sean Keogh from GL Hearn represented the **Appellant**
Mr Steven Bicknell appeared for the Appellant as its Expert Witness
Ms Judith Smith from the Valuation Office Agency represented the **Respondent** Valuation Officer
Mr Andrew Gausden appeared for the Valuation Officer as her Expert Witness

Hearing date: 15 May 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed as there was no relevant evidence to support the appellant's claim that the closure of the House of Fraser had had an adverse effect on the appeal property.

Introduction

2. The appeal property was a shop and premises located within the Freshney Place Shopping Centre in Grimsby. As Grimsby Town centre was so small, Freshney Place was to all intents and purposes the town centre. Freshney Place was an indoor shopping centre with around 100 retail or restaurant units. Victoria Street which lay parallel to Freshney Place was a typical open air high street and accommodated around 50 retail units.

3. The appeal property's existing entry was £76,500 Rateable Value with effect from 1 April 2017. The appeal property was a Clark's shoe shop. The appellant took the property initially on a 27 years' lease which commenced on 11 October 1989 and the rent was subject to five yearly rent reviews. Following the expiry of the original lease, a new 2 year lease was agreed with the landlord with effect from 22 August 2018 and the rent passing was £40,000 per annum. After that, another 2 year lease was granted that took effect from 22 August 2020 with no change to the passing rent. The appellant subsequently vacated the appeal shop in 2024.

4. On 6 April 2023, the appellant's representatives made a proposal, on the appellant's behalf, in accordance with Regulation 4 (1) (b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (the "NNDR Appeal Regulations"). The proposal was thus made on the grounds that there had been a material change of circumstances (MCC). The MCC event referred to in the proposal was the closure of the nearby House of Fraser store, which was situated in Victoria Street and this store closed on 7 July 2020.

5. After considering the merits of the proposal, the Valuation Officer was of the opinion that it was not well founded and a decision notice to that effect was issued on 7 March 2024. The appellant subsequently appealed to the tribunal, in accordance with Regulation 13A of the NNDR Appeal Regulations on 26 April 2024.

6. When the proposal/challenge was made, the appellant sought a 20% end allowance with effect from 7 June 2020 to reflect the material change of circumstances resulting from the closure of the House of Fraser store. At the hearing, the appellant sought a reduced end allowance of 5%.

7. Mr Steven Bicknell appeared for the appellant as expert witness and informed the panel that he was not instructed under any success related or conditional fee arrangement. Mr Andrew Gausden appeared for the Valuation Officer as her expert witness. Both expert witnesses were familiar with Grimsby town centre.

8. The material date for the purposes of this appeal was 14 December 2021.

9. The parties had identified this appeal, as a test case, as there were a number of outstanding appeals made on the same grounds relating to other shops in Grimsby town centre.

10. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Relevant Law

11. As the proposal was made on the grounds of a material change in the locality of the appeal property, 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

12. Mr Keogh explained that over 3,000 challenges had been made on similar grounds to the present appeal, where there had been large store closures. In a number of geographical areas, it had been possible to reach an agreement over what allowance, if any, was applicable to reflect the material change of circumstances. Where the large store that had closed formed 20% or more of the available retail space in the locality, generally speaking, it had been possible for the Valuation Officer and the ratepayers' representatives to reach a level of agreement. The panel was informed that end allowances had been agreed in other towns and cities to reflect the closure of large stores. The closure of an anchor store or major retail store was accepted to be a material change of circumstances that would potentially have had an impact on the hypothetical rental value of nearby affected units. This being the case and provided the evidence supported it, an end allowance would be applicable from the date of the store's closure. Ms Smith accepted that the closure of the House of Frasers in Grimsby was a material change of circumstances and believed that the appellant was reliant on Paragraph 2 (7) (e) of Schedule 6 above – the use or occupation of other premises situated in the locality of the hereditament.

13. In other towns and cities like Stoke on Trent and Scarborough, it had been possible for the parties to reach agreement on the level of end allowance to reflect the closure of the large store. Unfortunately, that was not the case in Grimsby, so the appeal under consideration was being run as a test case and the related appeals, in relation to other units in Grimsby which were said to similarly affected by the closure of the House of Fraser store had been stayed pending the outcome of this appeal.

14. In their challenge submission, the appellant had proposed an end allowance of 20% as being applicable in this case. However, at the hearing the appellant sought 5% which according to Mr Keogh would normally be appropriate if the large store that had closed constituted 20% of the available retail space. In the case under consideration, the former House of Fraser store equated to around 18% of the town centre retail space and therefore the parties were not able to reach agreement.

15. It was fair to say that both Mr Bicknell and Mr Gausden had completely different opinions on the level of impact that the closure of the House of Fraser store had had on the appeal property.

16. In his evidence, Mr Bicknell stated that even though it was just one shop, House of Fraser was an important draw to Grimsby. In helping to attract people to the town it inevitably had a beneficial, trickle-down, effect on other shops. The closure had therefore had an adverse impact on the town centre as a whole.

17. Mr Gausden had a completely different view of things to Mr Bicknell. The way he saw it was that the House of Fraser's closure would have had no effect on the appeal property or its neighbouring stores. The appellant's intention was to close the House of Fraser store in January 2019 and this was announced in June 2018. The closure of the store was delayed as it had a temporary stay of execution and it survived until 7 July 2020. Whilst it remained open for business, Mr Gausden described it as a miserable shopping experience. Having visited it, only the menswear section had any stock.

18. Although they had differing views on what benefits, if any, the House of Fraser had on Grimsby town centre whilst it was open for business, both parties' experts were in agreement that Grimsby town centre had been in decline for a number of years. This was reflected in the fall of rental values, which were in decline well before the House of Frasers shut its doors. One of the reasons for the decline was the decline in its fishing industry. As Grimsby town centre was so small, it lacked critical mass. Lincoln and Hull which were nearby provided a superior experience.

19. Mr Gausden stated that the vacancy rates in Freshney Place did not justify an allowance. Having regard to Grimsby as a whole the vacancy rates were 20.3% (2019), 24.7% (2020) and 26.9% (2021). Although vacancy rates had increased, it did not necessarily mean that the increase was related to the closure of the House of Fraser. There were other factors at play like economic factors which had changed since the antecedent valuation date (1 April 2015) and fell to be disregarded and as did any negative change in shopping habits following the Covid pandemic.

20. Both Mr Keogh and Mr Bicknell referred to an earlier VTE panel decision, in relation to the 2010 Rating List, where the assessments of various shop units within the Frenchgate Centre in Doncaster were reduced by 5% following the closure of British Home Stores and Clas Ohlson. These stores combined represented around 17% of the retail space in Doncaster. As Doncaster was a superior shopping centre, in comparison to Grimsby, it was contended that the appellant's proposed end allowance of 5% in the appeal case was more than justified.

21. In open tribunal, the clerk referred the panel and the parties to the Upper Tribunal's judgment in *GPS and Others v Bird (VO)* [2013] UKUT 0527 (LC). In *GPS and Others,* the appeals arose from proposals made on the grounds of a material change of circumstances (MCC). The MCC event was the opening the Highcross Shopping Centre in Leicester City centre.

Highcross was a £350 million extension to the Shires shopping centre. The appeal properties were based at the Fosse Park Retail Park which was situated just off junction 21 of the M1 motorway where it intersects with the M69. Fosse Park was around 4 miles away from Highcross. Although it was a different MCC event, in comparison to the appeal before the panel, the judgment recorded the evidence that the appellants in that case produced in support of their case. Ultimately, the Fosse Park appeals were successful and the appealed assessments were reduced by 10%. The trade data produced by the appellants had helped persuade the Upper Tribunal to determine that the hypothetical tenant would have reduced his rental bid as a result of the proposed fall in trade.

22. In contrast with *GPS and Others*, the appellant in this case had not produced any evidence of trade/turnover or customer numbers. This information would have been available and could have easily been acquired and the panel was left to draw its own conclusions, as to why the appellant did not choose to disclose it. In cases of this nature, the persuasive or legal burden of proof was on the appellant to prove its case. With this in mind, turnover figures for say the twelve months prior to the House of Fraser's closure, in comparison with the period of 12 months after the closure may have been a useful starting point. That said, a loss of turnover may not automatically secure a reduction in assessment, as it could have been argued that a different entrepreneur running a different retail business may have been more successful than the appellant. Any fall attributed to economic factors or a change of shopping habits since the Covid pandemic would have needed to be disregarded.

23. To overcome the above, turnover figures for a number of other retail outlets could have been sourced, especially as this was a test case, to prove that the closure of House of Fraser had adversely affected Grimsby as a whole as claimed.

24. In addition to having no turnover figures, the appellant had no evidence to show that pedestrian footfall within Grimsby had declined post the House of Fraser's closure. Nor had they obtained any other supporting evidence, for instance regarding the usage of car parks before and after the material change.

25. Ultimately, in the cold light of day, the appellant's case relied on its expert's subjective view that the closure of the House of Fraser had had an adverse effect on Grimsby town centre. However, this was counterbalanced by the respondent's expert, who was familiar with the locality, and his view was that it had had no impact whatsoever, since effectively the House of Fraser was dying on its feet, well before its closure, with only very limited stock (primarily menswear) on sale.

26. Although rental levels had declined since the antecedent valuation date, the panel determined, in the absence of any substantive evidence to prove to the contrary, that the fall was attributable solely to economic factors.

27. The outcome of this type of appeal was evidence driven. Appellant parties cannot expect the tribunal to simply award them an end allowance, simply for turning up. If they want their case to have a chance of being successful, they have to have some evidence that at least shows they have an arguable case. Unfortunately, for Mr Keogh's client, this case did not get off the starting block.

28. Just because end allowances have been conceded or applied elsewhere, it does not mean that the appeal property qualifies for an end allowance. Each locality was different and some may have been negatively affected by the closure of large stores, others may not have been. As previously stated, in cases of this nature, the persuasive or legal burden of proof was on

the appellant to prove their case and unfortunately, for the ratepayer, they had failed to discharge this burden.

Determination

29. As the appellant had no relevant evidence to substantiate its case for a reduced assessment, the panel dismissed the appeal.

Right of further appeal

30. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

31. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Miss AM Price (Chair)

Mrs A Taylor (Member)

30 May 2025

David Slater
Registrar & Chief Clerk
Date issued to the parties: 30 May 2025