VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; bank and premises; Paragraph 2 (7) (d) of Schedule 6 to the Local Government Finance Act 1988; Material change of circumstances; Opening and subsequent expansion of the Rushden Lakes Shopping Centre; within the locality; appeal dismissed.

APPEAL NUMBER:	CHG101061020	
RE:	National Westminster Bank Plc,43 High Street, Rushden NN10 0QE (the “subject property”)	
BETWEEN:	National Westminster Bank	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Thursday 27 June 2024	
BEFORE:	Gary Garland	
CLERK:	David Slater (Registrar and Chief Clerk)	
APPEARANCES:	Nicholas Walton from Cushman and Wakefield (Appellant’s representative) Richard Hitchens (Valuation Officer’s representative)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed as there was no factual evidence to support any reduction in assessment.

Introduction

2. The appeal property was a bank and premises, owned and formerly occupied by the National Westminster Bank. The property was built around 1889 and was located in Rushden town centre. I was informed that Rushden was known as a small market town, albeit the fifth largest town in Northamptonshire.

3. The existing assessment for the appeal property was £20,000 Rateable Value with effect from 1 April 2017.

4. The appeal arose from a proposal that was served on the Valuation Officer on 12 May 2023. It was made under Regulation 4(1)(b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 on the basis that the rateable value shown in the list for a hereditament was inaccurate by reason of a material change in 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 and the subsequent expansion of the Rushden Lakes Shopping Centre. It was claimed that Rushden Lakes had had an adverse impact on the appeal property which justified a reduced assessment. An allowance of 17% was originally sought for the negative effect of Rushden Lakes but at the hearing Mr Walton informed me that he was now seeking a reduced allowance of 12½%. Unlike the situation with the Northampton town centre appeals that were brought before me previously, in this case, the respondent was not prepared to concede any allowance and sought a dismissal of the appeal.

5. The Valuation Officer's challenge decision, which notified the appellant that the proposal had been treated as not well founded, was issued on 24 July 2023. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. The appellant appealed the Valuation Officer's challenge decision notice, in accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, on the grounds that the valuation for the appeal hereditament was not reasonable. This appeal was received by the tribunal on 23 November 2023.

6. The material date for the purposes of this appeal was 16 March 2023 and the agreed effective date, if the appeal was successful, was 28 June 2019.

7. Mr Walton appeared before me in a dual capacity as both an Advocate and an Expert Witness. In respect of the latter, he assured me that he was not instructed under any conditional or success related fee arrangement.

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

Preliminary Issue

9. I allowed Mr Hitchens to read out the Valuation Officer's prepared statement, in which he explained that whilst the respondent respected the two earlier tribunal decisions, in relation to the same material change of circumstances but affecting different towns, they did not accept that Rushden Lakes was in the same locality as the appeal property before me or those that were before the earlier panels.

10. Having previously read Steven Levy's decision, following the hearing on 29 May 2024, and the panel's decision from the subsequent hearing held on 12 June 2024, I quickly came to the conclusion that the locality issue had been correctly decided.

11. In Mr Levy's written judgment, he eloquently analysed the relevant law, the authorities, together with past custom and practice before arriving at his decision on the locality issue. I found Mr Levy's decision-making sound and fully agreed with his reasons for his determination that both Kettering and Corby fell within the same locality as Rushden Lakes. I

had therefore no difficulty in endorsing Mr Levy's decision, which clearly sets out the tribunal's position on the matter.

12. Following the release of Mr Levy's written decision, I was somewhat surprised to learn that the respondent had sought to relitigate exactly the same legal arguments before a different panel, chaired by Dr Penni, on 12 June 2024. That panel, I was pleased to note, robustly dealt with the matter, and refused to allow the respondent's attempt to play one panel off against another to succeed. Dr Penni's panel was dealing with appeals from the Wellingborough area, which was closer than both Kettering and Corby to Rushden Lakes. Dr Penni therefore gave an oral decision, subsequently confirmed in writing, that Wellingborough was in the same locality as Rushden Lakes, to quickly dispose of the preliminary locality issue.

13. As regards this appeal before me, the respondent has quite wisely chosen not to attempt to relitigate the same legal arguments, regarding the locality issue, as it would have wasted valuable tribunal time given the settled position of the tribunal on this matter. In any event, I was surprised by the respondent asking me to consider the locality issue in this case as the appeal property was situated only two miles away from Rushden Lakes, arguably well within reasonable walking distance for the average person.

Relevant Law

14. 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,

Discussion

15. Although no photographs were presented before me, Rushden was described as a small market town with a more localised retail offering. According to Mr Walton, there were no specialist clothing retailers but there were a number of charity shops, a tattoo parlour and other stores that provided a truly local service.

16. Mr Walton contended that Rushden town centre would have been adversely affected by the opening of Rushden Lakes. Having regard to end allowances conceded and agreed elsewhere, as Rushden was closer to Rushden Lakes, he was seeking an allowance of 12½% for his client.

17. Mr Hitchens contended that because of the localised nature of the Rushden town centre's retail offering, no allowance was applicable. He was of the opinion that Rushden town centre may even have benefited from the opening of Rushden Lakes. This was because some visitors to Rushden Lakes may have stopped off in Rushden town centre on their way to the retail park or on their way back.

18. Mr Walton informed me that his client's property had closed around two years ago. However, this was largely due to the reduced customer demand, following the increase in on line banking services, as opposed to any negative impact from Rushden Lakes.

19. Whilst I was prepared to accept that the opening and the subsequent expansion of Rushden Lakes was a potential material change of circumstances, no evidence was presented before me to show the state of affairs before Rushden Lakes existed or post its expansion. In other words, there was no factual evidence put before me to show whether Rushden Lakes had had any effect on the Rushden town centre at all whether negative or positive.

20. Mr Walton conceded that he had found evidence impossible to find. The parish council was not able to assist him. Because of the type of shops that were there in Rushden, pedestrian footfall figures were not recorded. Car parking was free, so he was not able to show if car park usage had declined, as a result of Rushden Lakes. He said the current unoccupancy rate was around 14% but was unable to advise me whether that had increased or declined since the opening of Rushden Lakes. No details of trade/turnover were available either.

21. I was informed that the appeal that was before me was the only one that had been made, in respect of Rushden Lakes impact on Rushden town centre. Mr Walton suggested that the reason for that was that there was little or no incentive for other local ratepayers to appeal. This was because they had little or no rate liability, since they were either in receipt of small business rates relief, as the assessments were very low or they qualified for charitable relief.

22. Mr Walton argued that a 12½% allowance would be fair, in the appeal case, because 10% was conceded for shops within Wellingborough town centre, 7½% for shops in Northampton town centre and 5% for shops in Corby town centre. Given that Rushden was nearer a higher end allowance was applicable.

23. The outcome of this type of appeal was and must be 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 Walton's client, this case did not even begin to have a basis upon which the tribunal could act.

24. 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, others may not have been. 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.

Disposal

25. As Mr Walton had no relevant evidence to support his submission, I was left with no alternative but to dismiss the appeal.

PRESIDENT

Date issued to parties: 1 July 2024

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.
