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: CHG101127737

RE: 8-9 Wood Street, Stratford-Upon-Avon CV37 6JE
(the “subject property”)

BETWEEN: SPECSAVERS OPTICAL SUPERSTORES LIMITED — Appellant

and

(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: Thursday 30 January 2025

BEFORE: Mr CM Taylor, Presiding Senior Member
Mrs PA Crowther-Newman, Senior Member

CLERK: Mr R Patel

APPEARANCES: Mr S Keogh of GL Hearn (representative of the appellant)
Mrs J Smith (representative of 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 £67,500 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 located at 3-4 Wood Street, Stratford -Upon-Avon on 17 April 2020.

Introduction

3. This appeal had been brought in respect of the following: Specsavers Optical Superstores Ltd, 8-9 Wood Street, Stratford upon Avon CV37 6JE, which was entered in the 2017 Rating List as Shop and Premises at an RV of £67,500, with effect from 1 April 2017.

4. The challenge proposal submitted by GL Hearn on behalf of the appellant was received by the Valuation Officer on 12 September 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 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 Debenhams. The appellant's representative proposed a reduced assessment of £54,000 RV with an end allowance of 20% for the material change of circumstances on the grounds that the £67,500 RV shown in the 2017 Rating List was excessive.

5. The VO issued a challenge case decision notice on 7 March 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 17 June 2024 proposing an assessment for the subject property of £54,000 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 7 March 2023. The effective date, if the appeal was successful, was 17 April 2020. The antecedent valuation date (AVD) was 1 April 2015.

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

Background

9. The grounds of the appeal was that the RV of the subject property did not reflect the closure on 17 April 2020 of Debenhams, also situated on Wood Street, Stratford-Upon Avon. 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.

10. The subject property was a retail store located in Wood Street, Stratford-Upon Avon stated to be in the retail high street area of the town centre. The respondent had stated that Stratford-Upon-Avon town centre benefitted from a strong tourism trade which ensures that footfall is

strong, such that the retail offering in the locality remains firm even without Debenhams in occupation.

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

Preliminary issue

12. Both parties had exchanged and submitted late evidence on 29 and 30 January 2025, which was not in accordance with the Standard Directions for the exchange of evidence. In addition, the appellant now sought a reduction in RV to £65,000, based on an end allowance of 5%, rather than 20% originally sought. The clerk had forwarded all this information to the panel in advance of the hearing. Mr Keogh stated that the late evidence submitted by Mrs Smith was not of particular relevance to this appeal, with which she agreed. Mrs Smith raised no objection to the late evidence submitted by the appellant.

13. The panel considered the matter in light of the Upper Tribunal's judgment in Simpsons Mall Ltd etc v Jones (VO) UKUT [2017] having regard to Denton v TH White Ltd [2014] as follows:
    - Stage 1: Does the panel conclude that the breach is not serious or significant. If so, relief from sanctions should usually be granted.
    - Stage 2: The panel needs to consider why the failure or default occurred. The burden is on the defaulting party to persuade the Tribunal to grant relief from sanctions. The defaulting party must explain what happened and why.
    - Stage 3: The panel must consider all the circumstances of the case, including:
      a. The need for litigation to be conducted efficiently & at a proportionate cost
      b. The failure to grant a sanction may leave an inaccuracy being uncorrected
      c. The need to enforce compliance with rules, directions and orders. Such matters, however, are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice

14. The panel concluded, in light of the above, it was fair and just to consider the substantive issues, taking into account this 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 with the panel determining that it would be in the interests of justice to include the appellant's revised and additional evidence.

15. During the hearing, the respondent called upon an expert witness. The information which the expert witness had started to verbally submit at the hearing had not been exchanged between the parties, in advance of the hearing. After a short adjournment, the respondent's representative confirmed she no longer required the expert witness to address the panel. For the record, the panel disregarded all matters referred to by the expert witness.

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 an allowance of 5% to the RV of the subject property to account for the effect of the departure of Debenhams in April 2020, located on the same street as the subject property, at 3-4 Wood Street, which the respondent stated was in the prime retail high street. Debenhams was described as an anchor store being a shop and premises of 3604m^2 over three floors, with its vacation stated to have a detrimental impact on footfall and desirability of units in the locality.

19. The appellant's representative stated if the subject property was situated within Bell Court, within a shopping centre location, rather than in the high street location of Wood Street, being of significant size, as the proportion of the anchor store closure was greater than 50% of shopping centre floor space, an allowance of 7.5% would have been made, under the

framework agreed between the respondent and rating agents. This framework was agreed in respect of shopping centre hereditaments, and not those situated on high streets.

20. The respondent submitted that the retail offering in the locality was strong even without the occupation of Debenhams, stating the impact of its closure to be negligible due to the volume of high-quality retail in the locality.

21. The appellant had stated that vacant units that were 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 the increase in vacancy rates in this retail area. This in turn has led to a reduction in demand for retail units in the area and subsequent reduction in rental levels, warranting an end allowance to the RV.

22. There was no information detailing the occupancy of retail properties within the high street area of Stratford-Upon-Avon 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 Debenhams. Vacancy figures provided for Stratford-Upon-Avon started from 2019 rather than the AVD, making it difficult to compare levels at AVD and at the material day. The respondent argued that vacancy levels following the Debenhams closure went from 12.3% in 2020 to 15.9% in 2021 before dropping back to 13.4% in 2022, with there being no evidence to suggest the temporary increase in 2021 had anything to do with the Debenhams closure.

23. The respondent's representative stated at the AVD there was demand for, and that there would have been several large department store occupiers in the market at that time, for a vacant unit in a prime high street location, such as 3-4 Wood Street. She stated that any hypothetical tenant considering occupation of any of the other units in the locality would assume a large unit such as 3-4 Wood Street would be let in a reasonable amount of time and as such, the vacant unit would not reduce any potential rental bid.

24. The respondent's representative contended that no allowance should be given to the subject property as a result of the departure of Debenhams. She stated that retail demand was robust in high streets at the AVD. 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.

25. In its written submission, the appellant stated that evidence would be produced to show that changes to material matters including: an increase in the number of vacant retail units in the locality; the closure of anchor stores in the locality; and reductions in pedestrian footfall in the locality, have reduced the attractiveness and the value of the subject property. The first of these issues has been referred to in paragraph 22 above. With regard to the latter point, the panel noted that no information on the footfall post the closure of Debenhams has been provided. Additionally, there was no data provided to suggest that there has been a loss in trade as a direct result of the closure of Debenhams. The rent passing on the subject property was £91,000 per annum agreed on 03 February 2019 and 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.

26. 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. Comments were made about an agreed framework under which settlements had been agreed, however as aforementioned in paragraph 19 above, this framework did not relate to properties in high street locations.

27. Notwithstanding, the appellant's representative had provided evidence of settlements in high street locations where allowances at the rate sought by the appellant had been awarded. There were four such examples, at Harrow, Portsmouth, Bournemouth and Nuneaton. The anchor or large retailer stores that had been vacated in these locations were all significantly larger in size than the Debenhams in Stratford-Upon-Avon, with the Debenhams at Harrow being over five times larger in size. However, in the absence of information about the relative area's in relation to their respective high street areas this alone was not a factor that the panel attached weight to. Nevertheless, the panel noted that the allowances at Bournemouth and Portsmouth were made as a result of the closure of three and two large retailers/anchor stores, respectively.

28. Moreover, the respondent's representative argued that the allowances given at these four locations were in respect of town types with a rating description of being either a 'small town' in the case of Nuneaton, or as "sub-regional weak town' ' in respect of the other three towns. On this basis she argued the subject property did not warrant an allowance. 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 Stratford-Upon-Avon was not a typical market town being internationally renowned, attracting a large volume of tourists, with the retail area in which the subject property was located consisting of an eclectic and interesting mix of retail shops. She stated that the subject property's location was in a more resilient town, and not comparable to the town and city centres of Nuneaton, Bournemouth and Portsmouth.

29. The panel attached very little weight to the agreed reductions to RVs for premises at Harrow, Portsmouth, Bournemouth 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. The subject appeal was located in Stratford-Upon-Avon, so settlement evidence relating to premises in these other locations did not offer the panel any assistance in valuing the subject hereditaments on Wood Street, Stratford-Upon-Avon, a different locality. The evidence, be that of an increased number of vacant units or of a decline in customers or trade following a material change of circumstance event at these other locations may have justified a 5% reduction. Similarly, an allowance in this instance would need to be supported by evidence.

30. 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 masked or caused by economic factors which cannot be taken into consideration. The panel found that to be the case in this appeal. The material day followed the UK Government's first coronavirus lockdown, with significant measures still in place which the panel found would have clearly affected footfall at shopping centres. 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 Debenhams at 3-4 Wood Street, as opposed to economic factors which must be disregarded.

31. In the subject appeal, the panel found that the departure of Debenhams did not justify an allowance to the RV for the subject property. The panel agreed with the respondent that the evidence provided did not substantiate that the RVs of the subject property warranted a reduction as the vacancy rates in the high street area of Stratford-Upon-Avon, which was not as marked as the national average, was more a result of the pandemic, than the impact of the closure of Debenhams. The impact would have been masked by economic factors and the Covid-19 pandemic and were to be disregarded for the purposes of valuation.

32. The basket of evidence including the comparative vacancy rates and agreed settlements, on which the appellant was reliant, did not support the contention that the loss of the anchor store was of significant detriment. The panel found that whilst Debenhams was a significant operator in the high street area of Stratford-Upon-Avon, the town itself, which attracted and drew in customers, be they locals or tourists, signified that the locality was more robust than the area's in which allowances had been awarded. Without evidence to the contrary, to demonstrate the impact on trade, footfall, or vacancy rates as a result of the closure of the Debenhams store on the same street, the panel determined that the decision of the respondent not to award an allowance to be both fair and reasonable.

Disposal

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

Date issued to parties: 28 February 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.
