



VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeals appeal: Paragraph 2 (7) of Schedule 6 to the Local Government Finance Act 1988; material change of circumstances; out of town retail park; locality; end allowances; seven appeals allowed; one appeal allowed in part.

APPEAL NUMBERS: (1) CHG100884814 (2) CHG100858599 (3) CHG100858494
(4) CHG100858575 (5) CHG100858632 (6) CHG100858555
(7) CHG101060381 (8) CHG100767004

RE: (1) 8 Market Street, Wellingborough NN8 1AN
(2) 46 Cheese Lane, Wellingborough NN8 1EX
(3) 43 Spring Lane, Wellingborough NN8 1EY
(4) 22 Spring Lane, Wellingborough, NN8 1EY
(5) 54-55 Cheese Lane, Wellingborough NN8 1EX
(6) 21 Spring Lane, Wellingborough NN8 1EY
(7) 40 Market Street, Wellingborough NN8 1AA
(8) 8-11 Corn Lane, Wellingborough NN8 1EZ
(collectively referred to as the 'subject properties')

BETWEEN: Barclays Bank Plc (1)
Swansgate Property Limited (2, 3, 4, 5 and 6)
National Westminster Bank Plc (7) Appellants
Poundland Limited (8)

and

Joanne Moore
(Valuation Officer) Respondent

SITTING: Remotely using Microsoft Teams on 12 June 2024

BEFORE: Dr S Penni MBE (Senior Member) and Miss R Punia (Member)

CLERK: Mr A Johnson

APPEARANCES:

Mr M Donmall of 1 Crown Row Chambers (counsel for the Respondent)
Mr S Griffin of Jones Lang LaSalle - for appeals (1), (2), (3), (4) (5) and (6)
Mr B Miklasz of Cushman and Wakefield - for appeal (7)
Miss S Nicholls of Colliers International - for appeal (8)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals in respect of properties (1), (2), (3), (4), (5), (6) and (7) were allowed and their rating list entries were reduced by 10%. The appeal in respect of property (8) was allowed in part and its rating list entry was reduced by 10%. The effective date for all of the reductions was 28 June 2019.

Introduction

2. Proposals were submitted by Jones Lang LaSalle, Cushman and Wakefield and Colliers International on behalf of their respective clients in respect of the subject properties which were situated in Wellingborough. All had been made on the grounds that their entries shown in the rating list were inaccurate as a result of a material change of circumstances in the locality and, with one exception, reductions were sought in respect of each assessment with effect from 28 June 2019. The exception was 8-11 Corn Lane (Poundland) for which an earlier effective date of 28 July 2017 had been sought.
3. The Valuation Officer issued decision notices in response to each of the challenges which advised that they had not been well-founded. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, appeals were submitted to this Tribunal on the grounds that the valuation of each property was not reasonable. The appeals were received on 19 January 2024 for appeals (1), (2), (3), (4), (5) and (6), 23 November 2023 for appeal (7) and 17 November 2023 for appeal (8).
4. Rushden Lakes is a large shopping, entertainment and leisure complex located on the edge of Rushden, approximately five or six miles by car from Wellingborough. When it opened, Rushden Lakes consisted of approximately 380,000 square feet of space set within grounds containing retail and leisure facilities, and a site of special scientific interest. Phase two of the development was completed in June 2019 which added more retail and leisure facilities. This increased the overall space to approximately 550,000 square feet.
5. The grounds of all eight appeals were that the assessments of the subject properties did not reflect the effects of the opening of Rushden Lakes Shopping Centre in July 2017 and its subsequent expansion in June 2019. It was argued that the opening and further expansion had drawn footfall and revenue away from the surrounding town centres which should be reflected in end allowances for each of the subject properties.
6. Mr Donmall attended the remote hearing as counsel for the respondent, Mr Griffin attended on behalf of Barclays Bank Plc and Swansgate Property Ltd, Mr Miklasz attended on behalf of National Westminster Bank Plc and Miss Nicholls attended on behalf of Poundland Ltd.

7. This decision and statement of reasons is not a verbatim record of the proceedings and it should not be read in such a manner.

Relevant Law

8. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (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.
9. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014.
10. In each case, these proposals had been submitted in accordance with Regulation 4(1)(b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009:

the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled;

11. 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.

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
12. The material day (the date by which physical factors had to be taken into account) is provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). In respect of the subject properties, the material day was the date the accuracy or otherwise of the information that the Valuation Officer held was confirmed by the ratepayer, in accordance with Regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, as confirmed by the Valuation Officer's notice of acknowledgement under Regulation 4D. The material day in respect of appeal (1) was 4 August 2021, for appeals (2), (3), (4), (5) and (6) it was 26 May 2021, for appeal (7) it was 16 March 2023 and for appeal (8) it was 21 September 2020. As these dates show, at the material day for each appeal, Rushden Lakes was in its extended state.
13. A skeleton argument had been submitted to the Tribunal prior to the remote hearing on behalf of the respondent by its counsel, Mr Donmall. It was clear from its contents that Mr Donmall intended to relitigate a legal point regarding the locality issue. This legal point has already been considered and determined during a remote hearing on 29 May 2024 in respect of three properties in Kettering and one in Corby (numbered CHG100884839, CHG100767493, CHG100767019 and CHG100884846). The decision was issued on 5 June 2024 and, as it was found to be persuasive, it was considered unnecessary to relitigate this point. At the outset of the remote hearing the panel set out its (and the VTE's) position:

On 29 May 2024, four similar appeals, arising from challenges relating to the same material change of circumstances being the effect of the Rushden Lakes Shopping Centre on the appeal properties, were heard by Mr Levy sitting alone.

In the earlier proceedings, Mr Levy was invited by the respondent to determine, as a preliminary issue, if the Rushden Lakes Shopping Centre fell within the same locality as Kettering and Corby Town Centres. Having heard competing arguments from the same parties, who appear before this

panel today and having taken advice from the tribunal's Registrar and Chief Clerk, Mr Levy determined that the appeal properties, in the appeals before him, fell within the same locality.

Mr Levy's written reasoned decision was released on 5 June 2024. This written decision confirmed his oral decision on the preliminary issue which he announced at the hearing. Having determined the preliminary issue, it was not necessary for Mr Levy to consider any valuation evidence, before he went on to dispose of the appeals as rateable values for the affected properties were agreed once the locality issue was resolved.

Following the release of Mr Levy's tribunal decision, it was open to the Valuation Officer to appeal it to the Upper Tribunal. To date, the tribunal's understanding is that no appeal has been made.

In the respondent's skeleton argument, the respondent seeks to raise the same preliminary issue that was aired at length before Mr Levy. Having had regard to the skeleton arguments that were put before Mr Levy the panel has noted that, the arguments that the Valuation Officer intends to raise today are no different to those that were heard and rejected by Mr Levy, at the earlier hearing.

Although the respondent's counsel is correct to point out that the tribunal is not legally bound by its earlier decisions, he fails to point out that earlier tribunal panel decisions can be highly persuasive. This is especially the case, if the earlier tribunal decision was made by a legally qualified member, in determining a legal issue or point of law. Having read Mr Levy's written decision, the panel is satisfied that he has given proper judicial consideration to all of the arguments that the respondent's counsel put forward on 29 May 2024 and seeks to repeat here.

The panel has read the evidence bundles and has noted that the appeal properties in Wellingborough are situated closer to the Rushden Lakes Shopping Centre than both Kettering and Corby. As Mr Levy has previously determined that Kettering and Corby fall within the same locality, as the Rushden Lakes Shopping Centre, common sense suggests that Wellingborough also falls within the same locality.

Instead of undertaking the appropriate course of action and appealing Mr Levy's earlier tribunal decision, the respondent is seeking to play one tribunal panel off against another, in the hope of securing a different outcome. The panel is of the opinion that the respondent's behaviour is irregular and disrespectful to the tribunal. The panel is therefore not minded to allow the respondent to re-litigate the same point of law that has been decided by one of its colleagues.

As far as this panel is concerned, it is important that earlier tribunal decisions, where points of law have been decided, are respected and

followed by other panels, unless an obvious error of law is identified. This panel is satisfied that Mr Levy did not err in law as regards the preliminary issue he was asked to determine relating to locality. As a corollary, Mr Levy's decision has set a precedent which this panel is minded to follow.

In view of the foregoing, the panel does not consider it appropriate to waste judicial time and hear legal submissions from the respondent's counsel on the locality issue, as Mr Levy has already decided the point in favour of Kettering and Corby and Wellingborough is nearer than both to Rushden Lakes.

The panel will therefore immediately proceed on to the disposal of the appeals and understands that 10% allowances have been agreed between the parties but there may be an effective date issue in relation to 8/11 Corn Lane.

14. Mr Donmall, having listened to the above, stated on behalf of the respondent that no disrespect had been intended. He said that the respondent thought it appropriate to pursue the matter, as they had originally requested that the tribunal hear one appeal from each town as lead cases, with the remaining appeals stayed. The request was rejected. Mr Donmall pointed out that Mr Levy dealt with Kettering and Corby but not Wellingborough and in further mitigation, he referred to the close proximity of the tribunal listings which meant that the respondent had not had sufficient time to lodge an appeal against Mr Levy's decision to the Upper Tribunal.
15. Whilst it was accepted that the respondent had made a formal application for an appeal from each of the five town centres, being Corby, Kettering, Northampton, Rushden and Wellingborough to be selected as lead appeals to establish which towns fell within the locality and which towns did not, once the application was rejected by the President, his decision should have been respected.
16. As previously stated, Mr Levy had determined, after lengthy submissions that both Corby and Kettering fell within the same locality as Rushden Lakes. Wellingborough was closer to Rushden Lakes in comparison to both Corby and Kettering, so Mr Donmall's explanation as to why the respondent saw fit to try and re-litigate the same arguments that were previously aired two weeks ago before Mr Levy was somewhat lame. The fact that the hearings were in such close proximity only emphasised how inappropriate the respondent's actions were in trying to re-run the same legal arguments before a different panel.
17. Moreover, the respondent's conduct had caused inconvenience to the tribunal, by wasting valuable judicial time, given that the legal point had already been decided. Inconvenience was also caused to the appellants' representatives, who were forced to appear to protect the interests of their clients, even though valuation issues had been prior agreed. The panel was aware that there was another panel hearing scheduled for 27 June 2024, where appeals relating to the effect of Rushden Lakes on shops within Northampton town centre were listed, and it was hoped that the respondent would learn to respect earlier

tribunal decisions, in relation to Rushden Lakes, and not endeavour to repeat the same shenanigans witnessed here.

Disposal of the appeals

18. Following the panel's refusal to allow the respondent to re-run the same legal arguments put forward on 29 May 2024 it proceeded to dispose of the appeals in line with the parties' agreed valuations. Reductions of 10% had been agreed in respect of the adverse effect of Rushden Lakes. The revised list entries are set out below, having been confirmed by the parties during the remote hearing. The effective date had, with one exception, been agreed between the parties as 28 June 2019. The exception related to the appeal in respect of Poundland as Miss Nicholls had originally sought an effective date of 28 July 2017 on behalf of her client.
19. When asked, Miss Nicholls advised the panel that whilst she intended to argue that the effective date for Poundland should be 28 July 2017, she respected the fact that Mr Levy had decided the same effective date issue on 29 May 2024. With this in mind, the panel determined that the effective date for the reduced entry for Poundland was 28 June 2019 because the material date was post the extension of Rushden Lakes. Therefore regulation 14(1B) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 stipulates that the effective date was the date the circumstances giving rise to when the proposed alteration first occurred. This was 28 June 2019.

Order

20. In accordance with regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entries in the rating list with effect from 28 June 2019 as follows:

8 Market Street, Wellingborough NN8 1AN	£68,000
46 Cheese Lane, Wellingborough NN8 1EX	£37,250
43 Spring Lane, Wellingborough NN8 1EY	£21,000
22 Spring Lane, Wellingborough, NN8 1EY	£14,250
54-55 Cheese Lane, Wellingborough NN8 1EX	£63,000
21 Spring Lane, Wellingborough NN8 1EY	£4,900
40 Market Street, Wellingborough NN8 1AA	£66,500
8-11 Corn Lane, Wellingborough NN8 1EZ	£101,000

21. In accordance with regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

22. As the grounds of each appeal have been made out the appellants are, in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, entitled to refunds of the fees paid fee. Refunds will take approximately six weeks to process.

Right of further appeal

23. Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the remote 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.

Date issued to parties: 24 June 2024