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; three appeals allowed in part, one appeal dismissed.

APPEAL NUMBER:	(1) CHG100884839; (2) CHG100767493; (2) CHG100767019; (4) CHG100884846
RE:	(1) Barclays Bank plc, Market Place, Kettering NN16 0AH (2) 20/22 The Mall, Gold Street, Kettering NN16 8JL (3) Unit 1 at 36 The Mall, Gold Street, Kettering NN16 8JA (4) 1a Queen Square, Corby NN17 1PD (the "subject properties")

BETWEEN:	Barclays Bank PLC (1) & (4) and Poundland Limited (2) & (3)	Appellants
	and	
	Joanne Moore (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	29 May 2024
BEFORE:	Steven Levy, Senior Member (sitting alone)
CLERK:	David Slater (Registrar and Chief Clerk) – preliminary legal issue James Massey (Clerk) substantive valuation matter
APPEARANCES:	Matthew Donmall of One Crown Office Row (Counsel for the Respondent) Simon Griffin of Jones Lang LaSalle (representing Barclays Bank PLC) Ms Sam Nicholls of Colliers International (representing Poundland Limited)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals in relation to the hereditaments (1), (2) and (3) in Kettering are allowed in part and the list entries were reduced by 5% with effect from 28 June 2019 and the appeal in relation to the hereditament (4) in Corby is dismissed.

Introduction

2. My fellow member was not in attendance, as he had been taken ill on the morning of the sitting and we had not been able to arrange for a replacement at such short notice. However, paragraph 11 of the Valuation Tribunal for England's Tribunal Business Arrangements permitted me to hear these appeals alone :-

   HEARINGS WHERE A MEMBER IS UNABLE TO SIT

   > Where a panel member is allocated to a hearing and unable to sit for any reason, or fails to appear, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where a member gives notice of unavailability within one working day of the commencement of the hearing, to avoid postponing the hearing. In all other cases the hearing must be postponed unless the President directs otherwise.

   Barclays Bank PLC

3. Barclays Bank plc, Market Place, Kettering was a retail unit on the Market Place in Kettering, built in 1987 from block, brick and slate, comprising sales floor areas with a total area of 1001.20m^2 and was valued on a Zone A price of £200 per m^2. It had been entered in the 2017 Rating List being described as a Bank and Premises with at rateable value (RV) of £56,500 with effect from 1 April 2017.

4. 1a Queen Square, Corby, NN17 1PD was a unit in Corby, built between 1965 and 1971 in a primary retail location. It was a traditionally built unit, made from block, brick and slate comprising sales floor areas with a total area of 467.60m^2 and was valued on a Zone A price of £420 per m^2. It had been entered in the 2017 Rating List as a Bank and Premises with a RV of £82,500 with effect from 1 April 2017.

5. Proposals were submitted by Jones Lang LaSalle on behalf of Barclays bank PLC and were both received by the Valuation Officer on 2 December 2022. They had been made on the grounds that the entries shown in the rating list were inaccurate as a result of a material change of circumstances. A reduction in assessment(s) of 15% was sought with effect from 28 June 2019.

6. The Valuation Officer issued challenge case decision notices on 21 September 2023, which stated that based upon the evidence and information available, the proposals were not well founded. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuation for the hereditaments were not reasonable. The appeals were received by the Tribunal on 19 January 2024.

   Poundland Ltd

7. 20/22 The Mall, Gold Street, Kettering was a retail unit in the Newlands Shopping Centre in Kettering, built in 1978. It was a portal-built unit, made from block and concrete and consisted of a total area of 646.95m^2 and was valued on a Zone A price of £450 per m^2. It had been

entered in the 2017 Rating List as Shop and Premises with a RV of £82,000 with effect from 1 April 2017.

8. Unit 1 at 36 The Mall, Gold Street, Kettering was another retail unit in the Newlands Shopping Centre in Kettering, built in 2001. It was also portal-built, made from block and concrete and consisted of a total area of 729.30m^2 and was valued on an overall basis of £70.00 per m^2. It had been entered in the 2017 Rating List as Shop and Premises with a RV of £51,000 with effect from 1 April 2017.

9. Challenge proposals were submitted by Colliers International on behalf of Poundland Ltd and were both received by the Valuation Officer on 21 January 2022. They had been made on the grounds that the RV entries shown in the rating list on 28 July 2017 were wrong as a result of a material change of circumstances. A reduction in assessment(s) of 15% was proposed with effect from 28 July 2017.

10. The Valuation Officer issued challenge case decision notices on 19 July 2023, which stated that based upon the evidence and information available, the proposals were not well founded. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuation for the hereditaments were not reasonable. The appeals were received by the Tribunal on 20 November 2023 (2) and 17 November 2023 (3).

Rushden Lakes Shopping Centre

11. Rushden Lakes Shopping Centre was a large shopping, entertainment and leisure destination, located on the edge of Rushden, approximately 12 miles by car from the centre of Kettering and just over 20 miles from the centre of Corby. When it opened it consisted of approximately 380,000 square feet of retail space set within grounds containing outdoor leisure facilities and a site of special scientific interest. Phase two of Rushden Lakes was completed in June 2019 and comprised a large multi-screen cinema and other leisure facilities as well as additional retail space, resulting in overall retail and leisure space of around 550,000 square feet.

12. The grounds of all four appeals were that the RVs 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, as the opening and its further expansion had driven footfall and revenue away from the surrounding town centres, this should be reflected in an end allowance for each of the subject assessments.

13. Mr Donmall was advocate only for the respondent. Mr Griffin and Ms Nicholls appeared before me in a dual capacity as both advocate and expert witness. The clerk asked Mr Griffin and Ms Nicholls if there was a success related fee involved and if so whether its existence was compatible with her/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).

14. Mr Griffin declared that neither he nor his company were instructed under any conditional fee arrangement. It was established that Ms Nicholls' company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of my decision. However, Ms Nicholls declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she would comply with this as well as the

requirements of her professional body regardless of whether or not the evidence supported the client's case.

15. I accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was 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). I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

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

Relevant Law

17. 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; The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):
>
> 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.

18. 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 (SI 2014 No. 2841).

19. In each case, these proposals were made under Regulation 4 (1) (b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) which was as follows;

> 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;

20. 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.

21. The material day (the date by which physical factors had to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeals, the material day was the date the accuracy or otherwise of the check was confirmed. The material day for the Poundland appeals was confirmed by the parties to be 24 September 2020 for 20/22 The Mall, Gold Street, Kettering and 21 September 2020 for Unit 1 at 36 The Mall, Gold Street, Kettering. The material day for both Barclays appeals was confirmed by the parties to be 4 August 2021.

22. As can be seen from the above, as at the respective material day for each appeal, Rushden Lakes was in its extended state.

Application for ‘lead appeals’

23. Prior to the hearing, the Valuation Officer sought a postponement of these appeals and requested that five appeals, one drawn from Corby, Kettering, Rushden, Northampton and Wellingborough be heard as lead appeals, in order to establish if any were within the locality of Rushden Lakes. On behalf of their clients, Colliers International supported the application but Jones Lang LaSalle did not and were of the opinion that the listed appeals be heard.

24. The President considered and declined the Valuation Officer’s application. The Registrar informed the parties of the reasons why on 20 May 2024 which were as follows:

> If there is good reason why appeals should not be listed or they require special treatment/different hearing arrangements, parties need to be proactive and contact the tribunal before appeals are listed.
>
> Late applications like this only serve to delay of the dispensation of justice and if justice is delayed, it is denied. If the postponements were granted for the hearing on 29 May, it would be too late for the tribunal to list other appeals to be heard in their stead. Effective case management involves the efficient disposal of appeals, not

delaying matters when at face value there appears no justification to do so. These are not complex cases requiring special arrangements. They appear to be straightforward appeals, the outcome of which will be evidence driven.

The Valuation Officer's application appears silent on why there is a sudden change of approach as regards "locality". The VO's application is also undermined by the recent settlement via a Consent Order of an appeal which was due to be heard as complex where "locality" was flagged up as an issue.

The case I am referring to related to the Leeds and Bradford Airport. This was a MCC appeal due to the opening of Terminal 2 at Manchester Airport. Given the above, the tribunal sees no merit in staying MCC appeals for several months and it considers it would be unfair on affected ratepayers were it to do so.

The hearings will therefore proceed as scheduled and the appeals disposed of on their merits.

25. Following the receipt of the above communication from the Registrar, the Valuation Officer informed the clerk Mr Massey that they wished to argue the preliminary legal point and would be represented by Counsel.

Discussion on preliminary Issue regarding 'locality'

26. In view of the above, before I was able to give consideration to the substantive valuation issues arising from the appeals, I had to determine a preliminary legal issue as there was a dispute regarding what constituted the "locality" for the purposes of paragraph 2 (7) (d) of Schedule 6 to the Local Government Finance Act 1988 which was worded as follows;

> (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

27. Sub paragraph (7) (d) had two limbs, matters affecting the physical state of the locality was related to paragraph 2 (7) (a) i.e. matters affecting the physical state or physical enjoyment of the hereditament. It was the second limb that had always caused difficulty because it was less straightforward, as it only concerned factors which were physically manifest in the locality. In the past, Valuation Officers had always adopted a working rule which was to envisage the hypothetical landlord and tenant inspecting the appeal hereditament on the material day and then take into consideration all of the things that were physically observable or physically manifest in the locality of the hereditament. These matters may have included in relation to shops, traffic flow, pedestrian footfall or flow, car park usage, changes in occupation or use of other shops etc.

28. The word "locality" was not defined in the legislation. As the Valuation Officer's own rating manual explained, the Lands Tribunal has noted in several instances that locality was an imprecise term which it would not wish to identify. What will determine the extent of the locality would be dependent upon the facts of the case. The Appellants' representatives referred to the Valuation Office Agency's rating manual, because they could not understand why the Valuation Officer was not following its guidance, and the relevant extract from it has been reproduced below;

14. Locality

14.1 Both sub-paragraphs (d) and (e) require the change to be within the locality of the hereditament. Locality is not defined in the 1988 Act or in earlier legislation. It is therefore necessary to rely on case law.

14.2 In the leading case of K Shoe Shops Ltd -v- Hardy (VO) and Westminster CC, [1983] RA 245 (HL) 'locality' was taken to be an area within which there would be sufficient evidence to produce a reasonably expected rent and outside which that rent might be different, and the decision of the Lands Tribunal on this issue was not disturbed.

14.3 The issue in Morton (VO) -v- Synor Electronics Ltd, [1983] RA 204 (LT) was the value of industrial units and comparison with modern physically similar units in an adjoining valuation area or physically poorer units requiring adjustment but in closer proximity. In his decision the Member stated that:

"The term locality is not defined. I take the view that the extent of a locality is a matter of fact in each case and the boundaries are more likely to be defined by physical conditions affecting aspects of value than by areas of administration."

14.4 The decision in Shearson Lehman Brothers Ltd -v- Humphreys (VO), [1991] RA 125 (LT) which concerned the locality of office premises:

"Locality is not defined in the 1967 Act and must be given its ordinary meaning. In the context of section 20 'locality' may well include an area where one can expect to find comparable premises, transport facilities and other matters affecting the amenities of the locality, but that does not define the limits of the locality. In our view the limits of locality must remain imprecise and vary as to the circumstances in each case. It would be unwise to attempt any general definition."

14.5 'Locality' was considered in Jafton Properties Ltd -v- Prisk (VO), [1997]LT RA 137 (LT) which concerned over supply of office accommodation:

"Mr Bell defined the locality in these appeals as the City and the fringe in the Richard Saunders and Partners Floor Space Surveys. This is the area where tenants taking accommodation in or close to the appeal hereditament would look for accommodation. The valuation officer says that 'locality' is not bounded by a distinct line but is an area within which the physical factors may affect the value of a hereditament and where there are similar buildings to satisfy the demands of a potential occupier. The 'locality' in these appeals includes the area around the fringe of the City core but within the City boundary or close to it. It does not include the area to the south of the Thames. I do not think I should attempt any general definition of the word locality which must remain imprecise and vary with the different circumstances of every case.

For these appeals I prefer the valuation officer's definition and I accept his delineation of the 'locality' for the purposes of para 2(7)(d) and (e) of schedule 6…".

> 14.6 Thus the Lands Tribunal noted in several of the cases that 'locality' is an imprecise term and not something for which it would wish to provide a general definition. What is the locality for any case will depend on the facts of the case.
>
> 14.7 Finally, in Merlin Entertainments Group Ltd v Cox (Valuation Officer), [2018] RA/24/2018, the Upper Tribunal decided that the locality referred to an area external to the hereditament being valued and did not include the hereditament itself. Sub paras (a) and (d) were mutually exclusive. [Note: Alton Towers was an extensive hereditament extending to over 900 acres].

29. During proceedings, I was made aware that it had been custom and practice for at least 35 years, for out of town retail parks to be treated as falling within the locality of the surrounding town centres, for which allowances to reflect material changes of circumstances could be considered. If the evidence supported an allowance, reduced rating assessments were then agreed between the parties or on appeal determined by the Valuation Tribunal, the Lands Tribunal or the Upper Tribunal.

30. Over the years, valuation tribunals had considered and determined many thousands of appeals which arose from proposals which had been made based on the grounds that there had been a material change of circumstances relating to a paragraph 2 (7) (d) related matter. These included such issues like new retail developments and office over supply. Paragraph 2 (7) (d) had also been cited in relation to such matters including the effect of the smoking ban, foot and mouth disease and terrorist attacks, like the destruction of the World Trade Center in New York (see *the Appeal of Karen Kendrick (VO)* [2009] RA 145) and more recently in relation to a competitor's new ferry service between Ireland and France which affected the appellant's port hereditament in Holyhead, Wales in *Stena Line Ltd v Valuation Officer* [2024] VTW 680536358326/521NI17 & 684536358697/521NI17.

31. In the *Stena* case the (outside of the) locality point was raised by the Valuation Officer. In determining that the proposal was invalid, the Valuation Officer argued that the new ferry service was a matter which fell outside the common meaning of locality. In the event, the Valuation Tribunal for Wales rejected the Valuation Officer's argument and found that the Appellant was entitled to make the proposal which it determined to be statutorily compliant and validly made. I noted that the Welsh case concerned the question of validity. In England, for proposals made in relation to the 2017 and later Rating Lists, this tribunal no longer has any jurisdiction over the validity of the proposal. Following the amendment of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 8 which used to relate to invalidity of proposals has been revoked and substituted by a new regulation 8 entitled Incomplete Proposals. In accordance with the new Regulation 8, the Valuation Officer must refuse a proposal (an incomplete proposal) if it does not include the matters specified in regulation 6 (4) and if applicable regulation 6 (5) and (6). If the Valuation Officer determines that the proposal is incomplete, they must serve on the proposer a notice of refusal specifying the information which is missing and the date the notice is served. There is no right of appeal to this tribunal against the notice of refusal but the proposer can make a further proposal, within the period of 4 months beginning with the date on which a check was carried out in relation to the hereditament.

32. Amongst the information that the proposer was required to provide under regulation 6 (4) was the grounds of the proposal including the particulars on which each of the grounds was based,

details of the proposed alteration and its effective date, plus evidence to support the grounds of the proposal and a statement as to how the evidence supports the grounds of the proposal.

33. I mention the above because in each of the four cases listed before me, the Valuation Officer accepted that the proposals were complete. All of the proposals were supported by evidence, which subject to me finding against the Valuation Officer on the locality issue, meant that the respondent was prepared to concede 5% allowances in respect of the appeal properties in Kettering. However, no allowance had been conceded for the property in Corby.

34. In my opinion, the above has some relevance because the Valuation Officer, having reviewed the available evidence, had conceded that the expansion of the Rushden Lakes Shopping Centre had had an adverse effect on shops in Kettering Town Centre. They have looked at the evidence and decided that 5% was applicable but the Appellants are seeking 15%. With regard to Corby, the Valuation Officer had not been persuaded that any allowance was applicable and, if I found against the respondent on the locality issue, a dismissal of the Queen Square appeal was sought.

35. Against this backdrop, the Valuation Officer sought to effectively pull the rug from under the Appellants' feet by arguing that Rushden Lakes fell outside the locality of the appeal properties. Mr Donmall candidly conceded that, in the past, the Valuation Officer took a liberal view of what locality was and admitted that it was custom and practice for MCC allowances to be conceded even though the physical changes related to developments some distance away from the appeal properties.

36. Locality was not defined in the legislation and Mr Donmall advanced that there were no authorities to guide me on the point and neither the approach taken by the Valuation Officer(s) in the past nor the guidance in their own Rating Manual was helpful to the point I had to decide.

37. I was somewhat taken aback by the apparent disownment of several decades of custom and practice and the guidance from the learned authors of the Valuation Officer's own Rating Manual. There had been no legislative change like the introduction of the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021 which as explained in this tribunal's earlier decision in *Vistra Expansion and Others v Bunyan (VO)* [2022] VTE CHG100364424 had effectively pulled the rug from under the ratepayers' feet in relation to appeals that had been made on the grounds of a material change of circumstances, citing restrictions on movement during the pandemic which had resulted in unoccupied office buildings located in ghost towns.

38. I was aware of the Upper Tribunal's judgment in *GPS v Bird (VO)* [2013] UKUT 0527 (LC) where the appeals relating to retail units in Fosse Park were allowed and allowances awarded, based on a material change in the locality, that change being the expansion of the Highcross Shopping Centre in Leicester City Centre, which was recorded as being just over 4 miles away. Mr Donmall said that the Upper Tribunal's judgment in that case had no relevance because the locality point was not taken. In support of his argument that past custom and practice was not necessarily correct and should not therefore be followed, he referred me to what the former President of the Lands Tribunal had said in *Gallagher (VO) v Church of Jesus Christ of Latter-day Saints* 2005 RA/64/2004 in paragraph 49:

> It appears from Mr Radford's evidence that valuation officers have accorded exemption to a range of types of premises that would not, as a matter of first impression, appear to fall within the provisions of paragraph 11. They include seminaries and rabbinical colleges, a library housing religious texts and a local history collection, and an education centre for children visiting a cathedral. However, while it is appropriate that I should be made aware of any potential wider effects my decision in this case may have (and I have had regard to the evidence about other premises with this in mind), whether any premises fall within the scope of the exemption must depend on the facts of the particular case, and it is not possible or appropriate for me to form a view on whether relief was rightly accorded in these cases. In any event, since what I have to do is to determine, on the basis of a proper construction of the provisions, the extent to which the subject hereditament attracts relief, it is of no assistance for this purpose to know what valuation officers have done elsewhere since relief may or may not have been correctly given. The statutory exemptions are there to be applied in the terms in which they have been enacted, neither restrictively nor generously. If on a proper construction of the provisions the facts do not support exemption, that is an end of the matter.

39. Mr Donmall endeavoured to persuade me that "locality" meant the vicinity or the neighbourhood that was in a reasonable walking distance of the appeal properties. Therefore the locality did not extend beyond the town's boundaries. This proper construction of the word was in line with dictionary definitions, would satisfy a practical definition with which to apply the statutory provisions, be easy to apply and would give the term some meaning.

40. It appeared to me that what the Valuation Officer sought from me was either to endorse their view or set out clear parameters to guide them in future regarding where to draw the line where locality was an issue. So, if the physical change was within a x mile radius of the appeal property, it could potentially qualify for an allowance, but if it was further away than x, it would not.

41. I had no difficulty in rejecting the Valuation Officer's narrow view of what "locality" meant. We were no longer living in the middle ages when towns and cities were much smaller than they were today and when people seldom travelled beyond their immediate local area on a regular basis, because some often lacked the means to do so. The availability of reliable transport facilities and improved transport links in the modern world meant that people could travel large distances very quickly. The corollary of that was what constituted one's locality would be different from one person to another depending on the extent of their mobility and access to transport. The Valuation Officer's argument that the locality was restricted to what was in a reasonable walking distance of the appeal properties would only be justified if all potential shoppers, who visited the appeal shops were themselves based within the same reasonable walking distance. However, common sense told me that that simply would not be the case. The appeal shops would attract customers from outside the town centre boundaries. I was told that Kettering was 12 miles away from Rushden Lakes and Corby was at least 20 miles from it, the distances were not huge but at face value and without looking at the factual evidence, Rushden Lakes was likely to draw more customers and trade away from Kettering than Corby Town centre.

42. Ms Nicholls drew my attention to the promotional material produced for Rushden Lakes which had mapped out its target catchment areas. Kettering appeared to just outside the periphery of the Tertiary area, just inside the Quartenary whilst Corby was further afield in the latter.

43. In my judgment, a more purposive approach as opposed to the narrow interpretation of what locality means had to be applied. When Mr Donmall made his opening submissions, he appeared to focus squarely on the first limb of paragraph 2 (7) (d) and just have regard to matters affecting the physical state of the locality. However, as I mentioned earlier on, it was the second limb that often caused rating practitioners more difficulty i.e. though not affecting the physical state of the locality, are nonetheless physically manifest there.

44. Sometimes, the effect that the opening of an out of town retail park had on town centre locations was seismic. In the past, some retail parks have had the effect of decimating local town centres, as major multiples relocated to the retail park leaving their vacated unit behind and shoppers follow them migrating away from town centres, where parking was often expensive, to take advantage of free car parking. This hollowing out of town centres has been termed the doughnut effect and in the past the coming into existence of a retail park and/or its expansion has been accepted as being within the same locality as the towns which have been physically affected. There have been times when towns have been so badly affected that paragraph 2 (7) (e) has been engaged as well i.e...the use or occupation of other premises situated in the locality of the hereditament.

45. In addressing the second limb, Mr Donmall argued that Rushden Lakes was not physically manifest in the locality of the appeal properties. If something adversely effects the subject properties, but does not fall within the locality of the subjects, it highlighted the tension between matters which were physically manifest in the locality but which have arisen from events outside of the locality. He referred to paragraphs 132 to 134 of the Upper Tribunal's judgment in *Merlin Entertainment Ltd v Cox (VO)* [2018] RA 24 which he claimed supported the respondent's position that such matters would need to be addressed at the next revaluation.

> 132. Here, there is ambiguity in the wording of para. 2(7)(d) of LGFA 1988 as regards the phrase "matters …. which, though not affecting the physical state of the locality, are nonetheless physically manifest there". The appellant advances a very broad construction of this language, so as to embrace any matter, including any intangible or economic matter, so long as it produces or results in a consequence which is physically manifest in the locality. There is a tension between that construction on the one hand and on the other, the statutory principles that (a) revaluations are to take place every five years and (b) rateable values for those general revaluations (and any alterations in the interim) are to be assessed by reference to a common valuation date and economic circumstances subsisting on that date. How is the boundary to be drawn between those statutory matters which represent the reality principle and define the subject matter of a valuation, essentially the hereditament in the setting or context of its locality, and the application of the statutory valuation formula to those factors? Mr Ormondroyd relies on Parliamentary materials to show that it was the intention of Parliament to re-establish the law as had been stated by the Court of Appeal in Addis. He also relies on subsequent authorities which have followed this approach, which we consider below.

133. The Secretary of State and the Minister of State unequivocally stated that the purpose of the changes made to the 1967 Act and of what became schedule 6 to the LGFA was the same, namely to re-establish the law as it had previously been held to be by the Court of Appeal in Addis. This explicit statement of the purpose of the amendments to the 1988 Bill is analogous to the intention imputed to the legislature when the Barras principle is applied, (see eg. Bennion on Statutory Interpretation (7th edition) section 24.6). It should be taken to have included the essential reasoning of the Court of Appeal. As we have explained, that reasoning (1) rejected the notion that the statutory enactment of the reality principle in s. 20 applied to a mere change in economic circumstances, or other intangible matter, in the locality of a hereditament, but (2) accepted that s. 20 applied to something which was physically manifest in a locality as regards (a) other premises in that area or their use and occupation, or (b) transport services and facilities in that area or (c) other matters affecting the amenities of that area. The Court of Appeal did not accept that s. 20(1)(b) applied to any economic or intangible cause which has led to a physical change in the locality. It was the physical change in the locality to which s. 20(1)(b) (or the reality principle) applied, irrespective of the nature of the cause (or causes) which had led to that change. The appellant's argument is incompatible with the express and essential reasoning of the Court of Appeal and with the clearly stated purpose of the amendments made to the 1988 Bill.

134. The Secretary of State and the Minister of State also explained that the object of the legislation was to ensure that physical changes to the hereditament or its locality would be taken into account, but not changes in economic factors or in market conditions, or in the general level of market rents. The statement made on 4 July 1988 repeated that it was the purpose of the amendment to the 1988 Bill to confirm the position that "economic factors including the general level of market rents" would be taken as they were at the time of the last general revaluation. He then added an explanation of the new language in the Bill, "matters which, though not affecting the physical state of the locality, are nonetheless physically manifest there". He gave the "simple example" of a bus service as something which is "physically manifest" in an area. That accords with the way in which s. 20 of the 1967 Act had explicitly been drafted and with the reasoning of the Court of Appeal in Addis. The Minister then went on to explain that the Government was seeking to rule out changes "based on purely economic or market-related factors that have no effect on the value the occupier derives from his property". The examples he then gave dealt with changes in general market rents and conditions, in contrast to a physical change in the locality which affects the value of the benefit which a ratepayer derives from occupying his premises.

46. I was not persuaded that *Merlin* was an authority for the Valuation Officer to take such a blinkered view regarding the extent of the locality. My understanding of the background to *Merlin* was that the material change of circumstances upon which the Appellant relied related to a tragic accident relating to the smiler ride and the ensuing fall in visitor numbers to Alton Towers. The Appellant's case in *Merlin* was unsuccessful because the material change occurred within the boundary of the hereditament itself as opposed to a physical change in the locality. I did, however, find the following paragraphs 144 to 146 helpful;

144. When a list is compiled, it is plain that para. 2(7) requires the valuer to take into account as at the date of that list matters affecting the physical state of the hereditament and of the locality, the use of the hereditament, and the use or occupation of other premises in the locality. Those factors representing the intrinsic, physical characteristics of the hereditament define what is to be valued, taking into account also the intrinsic, physical characteristics of the locality.

145. Paragraph 2(7)(d) extends that exercise to include: - “matters….which, though not affecting the physical state of the locality, are nonetheless physically manifest there”

146. This provision does not simply refer in isolation to “any matter which is physically manifest in the locality”. Rather, this phrase has been carefully embedded as an extension to the preceding language of para. 2(7)(d). It applies to matters which, though not themselves affecting a locality’s physical state, nonetheless are “physically manifest there”. The colour and meaning of this phrase is influenced by its neighbours, or context (noscitur a sociis – Bennion on Statutory Interpretation (7th ed) section 23.1). When a rating list is compiled this extension of the reality principle only applies to matters which are themselves physically and obviously present in the locality. This language is descriptive of the physical attributes, or characteristics of the locality itself. It does not allow the valuer or tribunal to take as at the date when the list is compiled some economic or other intangible matter which has changed since the AVD simply because that matter has caused or resulted in some physical change in the locality since the AVD. Paragraph 2(7)(d) applies to a physical characteristic of the locality. It must be a matter which itself is physically manifest in the locality, or as Sir George Waller put it in Addis, “something associated physically with the locality” (our emphasis). Paragraph 2(7)(d) operates so as to take that physical matter as it was on a date postdating the AVD. When a list is compiled, the valuer should simply take the physical characteristics of the locality as they were on that date. He does not need to go further and investigate the economic causes of those matters as at the same date. Paragraph 2(7)(d) does not allow him to assume that those economic factors also subsisted at the AVD, if different from those which did in fact exist on the AVD. The legal approach is no different when it is necessary to determine whether a material change of circumstances has occurred in a para. 2(7)(d) matter after the list has been compiled.

47. When undertaking a revaluation exercise, the Valuation Officer will value properties based on a snapshot of time. Properties were valued as at the antecedent valuation date having regard to physical factors regarding the hereditament and its locality as at the material date which would have coincided with the date when the Rating List came into force. Then assuming that the list entries were accurate, the assessments for the hereditaments would then remain constant unless there was a change in a paragraph 2 (7) matter. As the above paragraphs in *Merlin* demonstrate if the changes that result were caused by purely economic factors, those changes cannot be addressed before the next revaluation.

48. Despite Mr Donmall’s efforts to convince me otherwise, I agreed with the Appellants’ representatives that Rushden Lakes fell within the catchment area of shoppers who would

frequent Kettering and Corby and paragraph 157 of *Merlin* made reference to the earlier Upper Tribunal Judgment in *GPS (Great Britain) Ltd v Bird* in which it was stated;

> 157. The addition (or subtraction) of retail floorspace in the locality of a town centre may also fall within para. 2(7). Such a change may have a beneficial or adverse effect on existing retail hereditaments in a town centre (see eg. GPS (Great Britain) Ltd v Bird [2013] UKUT 527 (LC); [2014] RA 145). Out of centre floorspace may abstract trade from town centre shops, whereas the insertion of a new shopping mall in the heart of a town's main retail area may considerably strengthen the attraction of existing shop units. It is the change in the provision of retail floorspace which represents the para. 2(7)(d) matter to be assessed as at the date on which the list is compiled, or subsequently on any relevant material day. Paragraph 2(7)(e) may also be engaged.

49. The following paragraph in *Merlin* highlighted the difficulties for ratepayers and their representatives when making appeals like the cases before me. Assuming that the physical change has occurred within the locality, sometimes the effects were masked or caused by economic factors which cannot be taken into consideration. Paragraph 158 stated;

> 158. No doubt para. 2(7)(d) changes such as these may also produce consequential changes, for example, in footfall or traffic flows on particular roads in a centre and these may be taken into account in any valuation which the legislation requires to be carried out. But it seems to us that it is likely to be misleading or unwise to focus on a change in footfall per se as a para. 2(7)(d) factor. Such a change may have nothing to do with any physical change in the state of the hereditament or its locality, or in services, facilities, amenities or other matters physically manifest in that area. Changes in footfall may simply be the product of changes in economic matters which are not themselves physically manifest in a town centre, such as changes in unemployment or spending power, whether on a national, regional or local basis. It is plain from the statutory framework of the LGFA 1988 that Parliament intended that matters of that kind be 38 taken into account in the quinquennial, general revaluations as at the antecedent valuation date, and not as at the date when the list is compiled (or the date of any subsequent alteration).

Conclusion on preliminary issue

50. Ultimately, having heard and considered the competing legal arguments from the parties, in my judgment, locality cannot legitimately be restricted to what constitutes a reasonable walking distance from the appeal properties. Many people drive or use public transport to reach what, in their minds, is their local main shopping centres. Having briefly perused the authorities, I can well understand the reasons why the Lands Tribunal has, on several occasions, refused to set clearly definable boundary limits.

51. In my judgment, it is impossible to come up with such a hard and fast rule to appease the Valuation Officer. Whether a new shopping development falls within the same locality will be case specific and will be dependent on the facts. Obviously, the further away from the appeal properties Rushden Lakes is, its impact, if any, will be reduced. As regards the appeals before me, I am satisfied that Rushden Lakes falls within the locality of the appeal properties. There was no requirement for Rushden Lakes to fall within the immediate locality as the word

immediate does not appear in the statute. A commonsense or purposive approach therefore needs to be undertaken and in my judgment when deciding whether or not a physical change falls within the locality, the following matters will need to be considered in future appeals where an out of town retail park is cited as the physical change;

(i) the nature of the retail hereditament, since not all hereditaments will be affected to the same extent. For instance, the local newsagent and convenience store serving a housing estate are unlikely to be affected by an out of town retail park.
(ii) if the shop is situated within a town centre, what is its catchment area and from where is its regular clientele drawn?
(iii) does the out of town retail park serve the same catchment area and does it directly compete for the same customers?
(iv) is the retail park within a reasonable travelling distance either by car or public transport from the appeal property?

Disposal of the appeals

52. Having announced my decision on the preliminary matter, the parties requested and I granted a brief adjournment so that they could review their respective positions and discuss possible settlement(s) of the substantive valuation matter(s).

53. When the hearing resumed, both Mr Griffin and Miss Nicholls advised me that, on behalf of their respective clients, they were prepared to accept the 5% end allowance that the Valuation Officer was prepared to concede for the appeal shops in Kettering. In the case of the Barclays Bank, Market Place appeal I was invited to make a determination of £53,500 Rateable Value with effect from 28 June 2019. Mr Griffin also advised me that he was no longer pursuing the appeal in respect of 1a Queen Square, Corby and invited me to dismiss this appeal, which I did.

54. With regard to the two Poundland appeals, Miss Nicholls also invited me to reduce the list entries by 5%, which the Valuation Officer was prepared to concede with effect from 28 June 2019, however, she argued that the effective date for any determination should be 28 July 2017 as that was the effective date proposed when both proposals were made.

55. Mr Donmall argued that the material date for both Poundland appeals was post the extension of Rushden Lakes and the 5% allowance that his client was prepared to concede reflected the Retail Park in its extended state. He argued that as I was required to value the hereditament(s) having regard to physical factors as at the material day, the effective date of any alteration was restricted to 28 June 2019 by regulation 14(1B) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 to the date when the circumstances giving rise to the alteration first occurred.

56. I was given advice in open tribunal by the Registrar that Mr Donmall was correct because it was fundamental that rating valuations had to be undertaken, having regard to the facts as they stood on the material day. Therefore, with the benefit of hindsight, if Miss Nicholls sought reduced assessments from an earlier effective date, in order to reflect the opening of Rushden Lakes, she or her employer should have submitted earlier challenge(s). By delaying the check and subsequent challenges until after the extension to Rushden Lakes had been completed, her clients had missed the boat for a possible reduction from an earlier effective date to reflect its initial opening. Miss Nicholls did not challenge the legal advice I was given. I therefore

determined that the entries for the Poundland shops should be reduced by 5% with effect from 28 June 2019.

57. The three Kettering appeals were therefore allowed as the existing valuations were unreasonable and the assessments were reduced by 5%. The Corby related appeal was dismissed.

Order

58. Under the provisions of 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:

Barclays Bank plc, Market Place, Kettering, NN16 0AH	RV £53,500
20/22 The Mall, Gold Street, Kettering, NN16 8JL	RV £78,000
Unit 1 at 36 The Mall, Gold Street, Kettering, NN16 8JA	RV £48,250

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

Refund of appeal fees

60. As the grounds of the appeal have been partially made out, a refund of the fees paid in respect of CHG100884839, CHG100767493 and CHG100767019 will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Right of further appeal

61. 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.

Date issued to parties: 10 June 2024