

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 5 November 2019

Subjects	Reference Number
Shop, 10 Strothers Lane, Inverness, IV	06/08/750445/1
The Appellants Holly Rose Ltd Represented By Mark Wilson, Director of the Appellants	The Respondent Assessor Represented By B J Gill, Advocate

INTRODUCTION

This was a Running Roll appeal (as opposed to a revaluation appeal). The Appellants sought to establish there had been a material change in circumstances justifying an adjustment in the Rateable Value of the subject from £21,000 to £15,000. He argued for the change to take effect from 1 April 2017.

The subjects are used to operate a Pizza Hut franchise. The subjects are located on the corner of Strothers Lane and Farraline Park, Inverness off Academy Street to the north east. The subjects occupy the ground floor of a four storey building. The subjects were entered in the Valuation Roll at £21,000, a valuation which the Assessor sought to defend.

EVIDENCE FOR THE APPELLANTS

The Appeal was lodged on 10 April 2018. For the Appellants, Mr Wilson began by stating the material change in circumstances upon which he founded occurred “shortly

after April 2017". The change in circumstances came about as a result of alterations in the parking arrangements in Strothers Lane and Farraline Park generally and around number 10 Strothers Lane in particular.

On Saturdays, the busiest time for the Appellants' business, they had up to 15 pizza delivery drivers, all of whom needed to be able to park their vehicles in close proximity to the premises.

Up to 2016 there was parking available on Farraline Park immediately outside the premises and across the street from the premises. There was also parking available across the Farraline Park/Strothers Lane junction from the premises outside what was then the main Inverness Post Office sorting office.

The Appellants produced Google Maps photographs of the locus dated September 2016. These appear to show double yellow lines limiting parking in these areas. Mr Wilson admitted to being unclear as to the nature of the restrictions imposed on parking there.

Mr Wilson said that changes to the parking arrangements were introduced in April 2019. He produced Google Maps photographs dated April 2019. It was not clear to the Committee in what material respects, if any, these photographs showed an alteration to the parking restrictions as between 2016 and 2019. Rather, the Committee understood the Appellants' position to be that more than any new parking restrictions, it was enhanced enforcement of the existing restrictions taking effect in April 2019 which were the cause of complaint by the Appellants.

The Appellants also sought to challenge the extent of the end allowance applied in arriving at the Rateable Value of the Appeal Subjects, the depth of the Zone A Rating within the subjects, signage restrictions and the effect on rateable value of the wrap around frontage of the subjects.

The Appellants were in discussion with their landlords regarding the level of rent. Those discussions were not concluded and so the outcome was unknown.

EVIDENCE FOR THE ASSESSOR

For the Assessor, Fiona Rostock, MRICS, spoke to parts of a precognition she had prepared and accompanying productions, all of which were made available to the Committee.

She noted this appeal, lodged on 10 April 2018, sought to rely on a material change of circumstances which latterly Mr Wilson, for the Appellants, seemed to say had taken effect in April 2019.

In any event, she was of the view that the Appellants' complaint was founded not on a change in the parking restrictions *per se* but on the manner in which those restrictions were enforced. In her opinion the hypothetical tenant would not decide whether to proceed with a lease of these, or any other, subjects on the basis of whether his staff or customers could or could not break the law with impunity.

She stated there was public parking available close to the Appeal Subjects at a cost of 50p per hour.

She also noted that the earliest possible effective date, for an appeal lodged on 10 April 2018, would be 1 April 2018, rather than 1 April 2017.

Mr Wilson chose not to cross-examine Mrs Rostock.

SUBMISSIONS FOR THE APPELLANTS

Mr Wilson repeated his belief that the change in availability of parking constituted a material change in circumstances affecting value. The more recent photographs he produced show little or no parking whereas the earlier photographs showed parked cars. The next door premises at No.9 Strothers Lane were now empty and the Post Office building across the street was now empty. These factors also impacted on the value of the subjects.

SUBMISSIONS FOR THE ASSESSOR

Mr Gill reminded the Committee that the effectiveness of a material change of circumstances is severely restricted in its scope. There was no evidence of a fall in rental value here. The Discussions the Appellants were having with their landlord over the level of rent was not evidence of a fall in rent. Mr Wilson had stated the discussions were ongoing and so the outcome could not be known.

The Appellants appeared to be complaining of a change in the way in which parking restrictions were policed rather than changes in the restrictions themselves. That is not something which could amount to a material change of circumstances.

More fundamentally, however, the difficulty faced by the Appellants was that their appeal, made on 10 April 2018, now appeared to be seeking to rely on changes which he says took effect from April 2019.

DISCUSSION & DECISION

There were a number of issues referred to by the Appellants which were not, and could not be, relevant matters for the Committee to take into account when considering this appeal. The extent of the end allowance applied in arriving at the Rateable Value in the Roll, the depth of the Zone A Rating within the subjects, signage restrictions and the effect on rateable value of the wrap around frontage of the subjects were all matters which could have been the subject of a revaluation appeal but no revaluation appeal was taken in this case. So, it is unnecessary and it would be inappropriate for the Committee to express a view on these matters. They cannot be relevant to this appeal based on a material change of circumstances. The same applies to the evidence given by Mr Wilson regarding the discussions he was having with the appellants' landlords. That was not evidence of a fall in rent because those discussions had not been concluded. While it was not a matter on which it required to give an opinion, the Committee observed that even if those discussions result in a reduction in the rent, that would not necessarily amount to a material change in circumstances. Instead, it might be a matter which would be reflected in the next revaluation.

By definition, this appeal could only have regard to a change or changes which took place between the present Roll coming into force in April 2017 and the date the appeal was lodged, 10 April 2018.

Therein lies the first difficulty for the Appellants. According to Mr Wilson's evidence the change upon which he sought to rely took effect in April 2019, 12 months after the appeal was lodged. For that reason alone, the appeal falls to be refused.

If the Appellants had surmounted that difficulty, the Committee would not have been satisfied that the nature and extent of the changes to the parking arrangements in the vicinity of the Appeal Subjects amounted to a material change of circumstances affecting the value of the subjects. Mr Wilson seemed to concede that such changes as there had been had been in the nature of changes to the manner in which the existing restrictions were being enforced rather than the imposition of new restrictions. A change in the enforcement of regulations rather than the imposition of fresh regulations is not a matter which the hypothetical tenant would have in mind when deciding on a lease of subjects.

For all of these reasons the Committee refused the Appeal with the effect that the Rateable Value of the subjects remains £21,000.