THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: *rating valuation, material change, Local Government Finance Act 1988, traffic flows, trade figures, amusement park, material day, appeal dismissed.*

Re: Alton Towers Ltd, Farley Lane, Alton, Stoke – On – Trent, ST10 4BZ

APPEAL NO: 343526937167/541N10

BETWEEN: Merlin Entertainments Group Ltd Appellant

and

Mr W Cox Respondent

(Valuation Officer)

BEFORE: Mr G Garland

SITTING AT: The Tribunal Offices, 2nd Floor, 120 Leman Street, London, E1 8EU

ON: 13 February 2018

APPEARANCES:

The Appellant was represented by Cain Ormondroyd as advocate.

The Respondent Valuation Officer was represented by Hui Ling McCarthy as advocate.

Summary of Decision

1. The appeal is dismissed as there has not been a '*material change of circumstances'* that meets the requirements set out in para. 2(7) of Schedule 6 to the Local Government Finance Act 1988 (LGFA 1988).

Introduction

2. Alton Towers Resort comprises the UK's largest theme park and resort, aimed at both thrill seekers and the family market. The hereditament incorporates over 50 rides and attractions, catering for all age groups from pre-school upwards, as well as a variety of hotel and lodge accommodation including an indoor water park, spa and banqueting/conference centre.

3. Alton Towers appeared in the 2010 Rating List as follows:

   Description: Theme park and premises

   Rateable Value (RV): £6,625,000 with effect from 11 April 2015.

4. The assessment was increased from the previously agreed compiled list entry of £6,320,000 RV to reflect the addition of the Enchanted Forest Lodge development. The assessment at the time of the appeal was discussed and agreed between Wayne Cox and Charles Wilford at the time. The hereditament appears in the 2017 Rating List at RV £8,380,000 with effect from 1 April 2017.

5. Alton Towers has been assessed for rating purposes having regard to the receipts and expenditure method of valuation. This involved the consideration of historic and projected management accounts and receipts information in order to assess the fair maintainable trade the hereditament would be able to sustain at the antecedent valuation date. The valuation applies differential rental bids to separate income streams, where appropriate, to take account of the relative risks and costs associated with each element of the business.

This approach follows the recommended method of valuation set out in the Rating Manual published by the Valuation Office Agency.

6. It was agreed between the parties that, subsequent to the serious incident involving The Smiler ride at Alton Towers on 2nd June 2015 there has been a decline in annual visitor numbers to the park. However, the respondent argued that whilst the annual number of visitors fell the same was not necessarily true when the monthly and daily figures were scrutinised more closely. The crash resulted in serious injury to five passengers, including two who underwent leg amputations. An investigation into the crash revealed that the tragic accident was a result of human error when an operator manually overrode the ride safety system (according to the respondent). The respondent also advised that the appellant admitted breaching health and safety laws under s.3(1) of the Health and Safety at Work Act 1974. The ride re-opened on 19 March 2016.

7. The proposal and material day in this appeal was 24 March 2016. The proposal was made under regulation 4(1)(b) of the Non-Domestic Rating (Alteration of Lists and Appeals) England Regulations 2009 to alter the list on the ground that the rateable value of the hereditament was inaccurate '*by reason of a material change in circumstances which occurred on or after the day on which the list was compiled*'. Regulation 3 defines '*material change of circumstances'* as a change in any of the matters mentioned in para. 2(7) of Sch. 6 to the LGFA 1988.

Preliminary Issue

8. The preliminary issue I have been asked to decide is:

   "Was the attitude of members of the public to thrill rides in general, and to thrill rides at Alton Towers in particular, as a result of The Smiler crash, a matter which was physically manifest in the locality of the hereditament at the material day such that it falls within LGFA 1988, sch 6 para 2(7)(d)?"

9. Valuation for rating purposes is governed by LGFA 1988, schedule 6. Schedule 6 para 2(1) explains that the RV of a hereditament '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'. This is calculated on three assumptions and for the purpose of this appeal the first only is relevant:

'(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made.'

10. That day is 1 April 2008, the antecedent valuation date (AVD), as specified in schedule 6 paragraph 2(3) of the LGFA 1988 and the Rating Lists (Valuation Date) (England) Order 2008. As at that date The Smiler crash had not happened. However, the Act goes on to make provision for later value significant events to be taken into account in the valuation.

11. The Act provides, at Schedule 6 paragraph 2(6) – (7), insofar as material to this appeal:

'(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-

…

(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.'

12. As mentioned earlier, the material day is the 24 March 2016. By this date, The Smiler incident, and its consequences in terms of reduced visitor numbers, had happened. The question was therefore whether at the material day there was a relevant 'matter' falling within paragraph 2(7)(d) which allows the consequences of The Smiler crash to be reflected in the valuation. The

appellant contends that there is, by direct application of a decision of the Lands Tribunal.

Decision and Reasons

13. In deciding this preliminary point, I have adopted the approach to this issue taken by appellant's counsel, which seems to me to be correct. In the appeal of *Kendrick* v. *Valuation Officer* [2009] RA 145, the wording and meaning of paragraph 2(7)(d) was considered in detail. The ratepayer operated lounges at Heathrow Airport for 'commercially important passengers'. It was said that business had been affected by the events of 11 September 2001, and that this reduction in business fell within the terms of sub-para (7)(d). The then President of the Upper Tribunal identified two questions which must be addressed. First what was the matter? Second, is it 'physically manifest' in the locality? I have similarly addressed those two questions when deciding this appeal.

What was the matter?

14. The appellant stated that the matter in this appeal was the attitude of the public to thrill rides. In *Kendrick* the Lands Tribunal addressed this question as follows:

"The VT appears to have treated as the matters for this purpose the events of 11 September, but clearly they could not be. They were a past happening, not matters that existed at the material day. Whilst past events could not constitute matters for this purpose, I can see that the consequences of such events, if they endured at the material day, could be said to do so. Thus, the attitude of air passengers to air travel as the result of the events of 11 September could, I am prepared to accept, qualify as a sub-paragraph (7)(d) matter, provided, of course, that it was physically manifest in the locality of the hereditament. This accords with the observations of Rix LJ in Chiltern-Merryweather (Listing Officer) v Hunt [2008] EWCA Civ 1025 [2008] RA 357 that the matters in sub-paragraph (7)(d) would appear to include such matters

as changes in economic conditions where the effects are observable "on the ground" in the locality".

15. Counsel for the appellant said that the attitude of members of the public to thrill rides in general, and to thrill rides at Alton Towers in particular, as a result of the Smiler crash were such matters.

16. There is no doubt that attendances did reduce following the incident and persisted at the material day. However, what was not known is how much of that was down to a change in attitude of members of the public to thrill rides, the weather, better alternatives, pricing policy, the possible lack of new appealing rides or a lack of confidence in the site owners (as opposed to the park or thrill rides). Indeed, no evidence was put forward that thrill rides at other locations, although on a smaller scale, in England had suffered similar falls. Or to put into the terms of the *Kendrick*, how much of the evidence of the change was masked by other factors? Indeed, counsel for the respondent drew to my attention the very point on masking in respect of the lounges at Heathrow Airport:

"…It is, I have to say, as a matter of impression extremely difficult to see how mere observation of the movement of passengers in and about the lounges and aircraft movements at the airport could reveal anything about the factors that had caused the numbers to be as they were. The level of movements must inevitably be the outcome of a vast range of economic and other factors…"

17. I have difficulty in correlating all of the reduction purely down to the crash, but having said that it must be common sense that it would have had some impact.

18. The respondent also takes issue in respect of whether there was an actual reduction in visitors on the material day, as purely on the same day for the previous two years attendances had been lower. Mr Wilford, a partner at Gerald Eve LLP, informed me that the 24 March 2016 was Maundy Thursday, whereas clearly the 24 March wasn't in the previous years. I am satisfied that when comparing 'like with like' there was clear evidence of a fall in attendance

numbers on Maundy Thursday (material day) compared to earlier years. It is part of a pattern of falling attendances which is accepted by the respondent for the period in question following the incident, it bucks the earlier trend and indeed tourism levels in England which were up due to 'staycations'. It is clear to me that when viewing the evidence as a whole, together with that at the material day there was a fall in attendances.

19. I find for the appellant on this point, as to do otherwise would instigate a dogmatic, possibly bureaucratic approach to this issue, with ratepayers having to submit a number of proposals to ensure that on the material day the matter existed whilst in reality everyone accepts the reduction existed for a significant period of time including when the proposal was made. A common sense and realistic approach has to be adopted.

Is the matter 'physically manifest' in the locality?

20. This point has been much harder to decide. As mentioned above it is clear that there was an immediate, substantial and sustained reduction to visitor numbers to Alton Towers. However, I agree with counsel for the respondent that what needs to be considered are physical matters in the locality. They are quite distinct from those at the appeal hereditament. Indeed, the construction of the legislation distinguishes between physical changes to the hereditament (7)(a) and those in the locality (7)(d).

21. Therefore, I need to disregard car park usage, the reductions in visitor numbers, resort accommodation and ride queue times and I am only left with traffic volumes in the locality of Alton Towers (and possibly reductions in business for one taxi company and two B&Bs). It is accepted by both parties that the only change to traffic volumes has been a reduction in vehicles visiting Alton Towers. The records are not complete but given the reduction in attendance numbers, and no suggestion that alternative transport modes were being used, it must have been the case. The reason for the reduction is clearly at least partly masked by factors other than the public attitude to thrill rides (see paragraph 16). On this point, just as in *Kendrick,* it is difficult to find in favour of the appellant. It cannot be said that it would be observable on the

ground that the reduction in traffic numbers was purely down to the attitude of the public to thrill rides. Clearly other factors were also at play. If relevant, a similar answer can be found in respect of the reductions in numbers visiting B&Bs and using the taxi firm. It seems to me that though there was reductions in visitors immediately after the crash the physical manifestations of any reduction were hard to see in the locality or attribute in a major way to the incident.

22. Furthermore, if I am wrong on that point there is another reason not to allow the preliminary point. I say that because it seems to me that, as proposed by counsel for the respondent, there cannot be a causative link between the change in the locality and the actions of the ratepayer in respect of the hereditament.

23. The actions of the ratepayer which are as a direct result of activity taken at the hereditament must fall under (7)(a) to be taken into consideration and cannot, however skilfully argued by counsel, fall within (7)(d). This point was not considered in *Kendrick* as it was not relevant.

24. In this case there was no physical change to the hereditament. The ride remained and it was tenant's chattels that were damaged. If it had been a change to the physical state of the hereditament then, if the appellant is correct, two proposals could have been made, one in respect of the change to the hereditament and the other due to the lack of traffic in the locality. This cannot be right in law.

25. It may be that at a revaluation, such matters can be taken into consideration where there appears only one potential occupier but that is not the matter before me in this appeal.

26. The press has recently highlighted difficulties faced by a certain charity and the impact it has had on donations and sales in shops. If the appellant was correct, it seems to me that the charity could produce a similar argument on the basis of footfall crossing the threshold of their shops despite the footfall in the area not changing. This cannot be right and undermines a fundamental rating principal of valuing 'vacant and to let'.

27. In conclusion I find that there has not been a change in accordance with Schedule 6 paragraph 2 (6) – (7) of the LGFA 1998. The appeal is therefore dismissed.

28. I am grateful to both counsel for their professional and succinct submissions which assisted greatly.

President

Registrar

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