THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2010 rating list; office and premises; material change of circumstances; building works at neighbouring office; whether the pre-MCC entry was undervalued; whether internal staircase should be excluded from the valuation; appeal allowed in part.

RE: 4th to 6th Floors, 211 Old Street, London EC1V 9NR

APPEAL NUMBER: 557028426861/537N10

BETWEEN:	Farfetch UK Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mr A Backway (Chairman and Senior Member)[1]

CLERK: Mr D Mulgrew

HEARING: Remote hearing No.2 on 26 March 2021

APPEARANCES: Mr D Clarke (Colliers International) (Appellant's representative)
Mr C Cates (Respondent's representative)

Summary of decision

1. Appeal allowed in part. The rateable value was reduced from £680,000 to £640,000 with effect from 21 December 2015.

Introduction

2. This appeal has been brought in respect of the following: 4th to 6th Floors, 211 Old Street, London EC1V 9NR (the "appeal property"), which was entered in the 2010 rating list as "office and premises" at rateable value £680,000 effective from 21 December 2015.

[1] In accordance with Tribunal Business Arrangements, Mr A Backway was authorised by the Tribunal's President to decide the appeals for the hearing on 26 March 2021 sitting alone.

3. The appeal arose following a proposal received by the Valuation Officer on 23 January 2017, which disputed the rateable value because of a material change of circumstances (MCC), namely:

> "The hereditament shown in the 2010 rating list has been materially affected by adjacent redevelopment works at 207 Old Street with effect from 21 December 2015. This has resulted in noise, dust, vibration and loss of amenity. The entry shown in the rating list is unfair, incorrect, excessive and bad in law and should be reduced to £1."

4. No alteration was made to the rating list as a result of the proposal and the Valuation Officer referred the matter to the Tribunal as an appeal under regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No.2268).

5. The President of the VTE is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with the relevant legislation[2]. The VTE may determine the form of any hearing.

6. Therefore, in pursuance of the relevant regulation[3] the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

7. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as it being overlooked.

Issues

8. There were two issues which I was required to consider in this appeal.

9. Firstly, whether the area occupied by an internal staircase installed by the tenant should be excluded from the valuation.

10. Secondly, whether there should be an allowance for the MCC. The appellant sought an allowance of 10%. The Valuation Officer believed that a 3% allowance might have been warranted, but because he was of the view the appeal property was underassessed he wanted the appeal to be dismissed.

Evidence and submissions

11. At the hearing, the appellant's representative sought a reduction to rateable value £600,000, but the Valuation Officer was of the opinion that the existing assessment was undervalued as his revised valuation was at £960,000; consequently the Valuation Officer wanted the appeal to be dismissed.

[2] Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers).
[3] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

12. The appellant's submission included a statement of case, rebuttal statement, rental evidence and analysis, description of the appeal property and its locality, the planning design and access statement for the development, construction management plan, piling works report, proposed valuation, comparable assessments with allowances, plans and photographs.

13. The Valuation Officer's bundle included the originating proposal form, statutory basis of valuation, appeal history, description of the appeal property, existing and revised valuations, a list of comparable properties with allowances, plans, photographs, economic timeline graph and a Central London rental growth graph.

14. Both parties have referred to a number of tribunal and court judgments. They included:

- *Borough Machines Ltd v Mooney (VO)* [1977] RA 324
- *Specialeyes plc v Felgate (VO)* [1994] RA 338
- *Dorothy Perkins Retail Ltd V Casey (VO)* [1994] RA 391
- *O'Brien v Harwood (VO)* [2003] RA 244
- *National Australia Group Europe Ltd v Golding (VO)* [VTE, 599018430900/088N10, 7 March 2012]
- *Cantillon Capital Management v Dunlevy (VO)* [VTE, 599019062653/539N10, 14 August 2013]
- *Bloomsberg LP v Dunlevey (VO)* [VTE, 503018685043/539N10, 22 May 2013]
- *Manning (VO)* [2014] UKUT 0476 (LC) RA/37/2013
- *Cobham plc v Dunlevey (VO)* [VTE, 599024399462/538N10, 9 March 2015]
- *Standard Bank plc v Jackson (VO)* [VTE, 503023300120/521N10, 27 January 2017]
- *Hostsoho Ltd v Jackson (VO)* [2019] UKUT 0166 (LC)

15. In addition, I also had regard to *VTE v Jackson (VO)* [2020] UKUT 0078 (LC), which post-dates the parties' respective statements of case.

16. Both parties' representatives appeared in a dual role of advocate and expert witness. Neither representative had personally prepared the statements of case that had been submitted.

17. The appellant's representative, in appearing as expert witness, declared that he would receive a conditional fee if the rateable value was reduced because of the panel's decision.

18. However, he also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

19. I accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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).

20. It was therefore appropriate when hearing the evidence to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue.

Decision and reasons

21. The term "rateable value" was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of all entries in the 2010 rating list, the Rating Lists (Valuation Date) (England) Order 2008 (SI 2008 No.216) required the rental levels to be taken as at 1 April 2008, the antecedent valuation date (AVD).

22. On the issue of the internal staircase, Mr Clarke referred me to the RICS Code of Measuring Practice (6^{th} Edition) and the Valuation Office Agency Code of Measuring Practice. The area taken by staircases was not to be included in net internal area (NIA). He referred me to case law and helpfully gave the breakdown of the difference between the parties which amounted to 45.19m^2:

Floor	Description	Original area (m^2)	Revised area (m^2)
Fourth	Office	1,135.00	1,118.50
Fifth	Office	1,135.00	1,120.65
Sixth	Office	1,135.00	1,120.65
Total		3,405.00	3,359.81

23. Mr Clarke was of the view that because there were other stairs in the building, the addition of a further staircase would not add value.

24. Mr Cates agreed that the staircase should be removed from NIA, but the Valuation Officer took a no loss, no gain approach. In his view, he argued it was inconceivable that expenditure by a tenant to alter a property with the consent of the landlord to reduce floor area, could be valued at less than a property without such expenditure.

25. I had regard to the case law which both parties have referred to. I was aware that the appellant's statement of case had been prepared in February 2019. My clerk referred me to a more recent Upper Tribunal judgment in *VTE v Jackson (VO)* [2020] UKUT 0078 (LC), which both parties representatives were aware of, where the issue of an internal staircase in an office building had been considered.

26. In the Upper Tribunal decision, it was stated that the common trends in some office buildings, are “statement” reception areas and internal connections affording access between floors without staff having to resort to common parts. These facilitate breakout areas, or three-dimensional meeting spaces where staff can sit on stairs or gather on galleried areas to be addressed by their superiors.

27. The Upper Tribunal had decided there was no evidence that the hypothetical tenant at the AVD would pay more for the whole premises with the benefit of internal stairs than without it. However, the Upper Tribunal was satisfied that the hypothetical tenant would not expect to pay less for the whole premises with the facility and security benefits that an internal staircase would bring, even had the building as configured been relatively novel at the AVD. So, no allowance or addition was made due to the lack of valuation evidence at the AVD.

28. A useful reminder was provided to me at paragraph 31:

> “… As ever, valuation is an art and not a science, and it will be a matter of professional judgment in each case.”

29. In the instant appeal, I have had regard to the fact that the actual occupier had installed the staircase, no doubt at considerable cost. Mr Clarke was unable to inform me how much the work had cost. Ultimately though, the occupier had taken a decision to improve the property and pay for the installation of a staircase, and at the same time forego office space. I also had regard to the landlord’s position; I shared the concern of the Valuation Officer that a landlord would not allow a tenant to make changes if it would result in a lower valued property.

30. When considering the appeal property at the material day (23 January 2017) but reflecting on values at the AVD, I have not been provided with any evidence that such works would add value at that time as they may have been novel with little demand. The Valuation Officer’s approach that the effect of the internal staircase is value neutral appeared to be a very reasonable approach which I accept and confirm in this case.

31. Turning to the MCC issue. The appeal property comprises the fourth to sixth floors of “The Warehouse”, 211 Old Street. It is a 10 storey building, with office accommodation on the first to ninth floors. The Warehouse is a substantial circa 1960s concrete frame building which was converted into office space at some point in the latter part of the 20th century. The property is linked closely to, and situated to the rear of, a building known as “The Tower” (207 Old Street), a 1980s, originally 16 storey (with two storeys of plant) and now 17 storey concrete frame office building.

32. Prior to 2013, the buildings were linked physically, and access to The Warehouse was provided by walking through the inside of The Tower. Now, a reception area sits in-between The Warehouse and The Tower.

33. The main floorplate of The Warehouse was approximately 12.5m from the works being carried out at The Tower.

34. The entire site, encompassing The Tower, The Warehouse and the car park and external areas were granted planning permission in December 2013 for a significant development of the area. The plans included the refurbishment

involving a full strip back of both The Tower and The Warehouse, as well as side and vertical extensions to both buildings. In addition to this, two further structures were constructed, “The Studio”, which has been entered into the list as 8 Baldwin Street, and “The South Studio”, a much smaller unit for A1/A4 Retail uses.

35. Phase 1 of this development began in January 2014, and involved the refurbishment and both partial side and vertical extension of The Warehouse to provide two further floors. In addition, The Studio and The South Studio were constructed.

36. During the period of phase 1 of the works, The Tower, a sealed concrete frame office building, was afforded a 10% overall allowance for the works involved in phase 1.

37. Phase 2 of this development began once phase 1 had finished, and involved the refurbishment and vertical extension of The Tower to provide one further storey, and convert the two storeys at the top previously reserved for plant to office space. As with The Warehouse, The Tower was fully stripped back to the frame, with side and vertical extensions. The development commenced in 2015 and finished in August 2018.

38. With regard to allowances, both parties agreed that the MCC had caused some disturbance and would have had an impact on rental value.

39. Mr Clarke wanted a 10% overall allowance and Mr Cates stated that the Valuation Officer considered a 3% allowance would have been appropriate, had the appeal property not been undervalued to begin with. The representatives for the parties raised a number of arguments to support their opposing views, supported by evidence.

40. Mr Clarke highlighted the imposing presence of The Tower, arguing that the works would cause visual blight above and beyond standard building works. Mr Cates, however, referred to the photographs to show there were no windows on the side of The Warehouse facing the works. I agree that there are no windows at that end except those within the core excluded space.

41. During phase 2 of this development, both The Studio and The Warehouse were occupied. The Studio has an agreed allowance of 6% for the works at The Tower. The Studio is a modern, sealed office building shielded from The Tower, set further, and extending further, away from The Tower than the appeal property. The settlement at this property had a big influence on my decision.

42. Both parties also referred to other comparable properties to show the type of end allowances which have been agreed for similar works. Mr Clarke referred to some exceeding 10% and Mr Cates referred to settlements at less than 10%. While I took the evidence into account, I did not find it persuasive other than to show allowances could be made to rating assessments.

43. Mr Clarke also referred to the rents agreed during the work highlighting rent free periods of up to 20 months. I noted this but also the Valuation Officer’s comments that the evidence was perhaps more relevant for the 2017 rating list.

44. I am satisfied that an allowance was warranted but decided to reduce the assessment of the appeal property by 6%. In reaching this conclusion I

considered 10% to be too high because by the material day most of the heavy work had been completed. A hypothetical landlord and tenant would have had regard to that. Additionally, The Warehouse had a larger floorplate than The Tower and a lot of the office space was further away from the disturbance.

45. However, an allowance was needed because of general disturbance outside the building and the level of additional background noise and vibration. There remained hoardings to the reception entrance and I was able to ascertain that the appeal property only had single glazed windows. The appeal property, being a converted workshop had limited floor to ceiling height preventing the installation of cable ducts at floor level or air conditioning in the ceiling. Heating was by the traditional 'wet' piping and radiators. Opening windows was the only method of cooling therefore disturbance would be caused when office windows were opened for ventilation and cooling.

46. Having considered all the evidence, I have decided that a 6% allowance would be reasonable. This takes into account the period and extent of the remaining works and draws on the settled appeals in respect of The Studio, agreed at 6% for the same building works.

47. I then considered the Valuation Officer's argument that the rateable value should not be reduced because he was of the belief that the appeal property was underassessed.

48. The Valuation Officer had referred to a range of comparable refurbished buildings which had been settled at unit prices between £220/m^2 and £265/m^2. The Valuation Officer further argued that the appeal property would be more desirable. The appellant's rebuttal statement is critical because the Valuation Officer had not discussed this during the discussion period.

49. I was not persuaded on the Valuation Officer's argument. The appeal property had been assessed at £200/m^2 when it was entered into the list at that rate from 21 December 2015. It appeared to me that this took into account the several disadvantages outlined in paragraph 45 at the appeal property.

50. The Valuation Officer had assessed it at £200/m^2 at the appropriate time and was now trying to put forward a different professional opinion. I did not consider £200/m^2 to be too low given that The Studio was brought into the rating list in August 2016 at £184.80/m^2, and notably that it was a modern sealed building. The Valuation Officer had still agreed a 6% allowance for the same MCC. The Valuation Officer had also altered the 2010 rating list during 2017 for the seventh floor of The Warehouse and had kept the unit price at £200/m^2.

51. In view of the foregoing, my decision to apply a 6% allowance results in the following valuation:

Floor	Description	Area (m^2)	£ per m^2	Value (£)
Fourth	Office	1,118.50	200	223,700
Fifth	Office	1,120.65	200	224,130
Sixth	Office	1,120.65	200	224,130
Fourth	Internal staircase	16.50	200	3,300
Fifth	Internal staircase	14.35	200	2,870
Sixth	Internal staircase	14.35	200	2,870
			Sub-total	681,000
	Less 6% allowance			-40,860
			Total	640,140
			RV	640,000

52. The appeal was therefore allowed in part.

Order

53. 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 entry in the rating list to rateable value £640,000 with effect from 21 December 2015.

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

Date: 12 April 2021

Appeal number: 557028426861/537N10