THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Appeal; 2017 Rating List; Office and Premises; Level of allowance to reflect the effects of the Tram works coupled with the effects of the redevelopment of Paradise Circus; Whether the sum of two separate allowances reflects the rent reduction which would be agreed as a result of the combined works at the Material date; Appeal allowed in part.

Re: 4th Floor, Latham House, Paradise Street, Birmingham, B1 2BJ

APPEAL No: CHG100039032

BETWEEN:	Horton Estate Ltd represented by Colliers International	Appellant
and	Dal S Virk (Valuation Officer)	Respondent

BEFORE: Mrs J Ellis (Senior Member sitting alone)

CLERK: Mr J Massey

REMOTE HEARING: 14 April 2021

APPEARANCES:

Ms S Nicholls of Colliers International representing the Appellant
The Respondent Valuation Officer was represented by Ms C Bower

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Summary of decision

1. Appeal allowed in part.

Introduction

2. The President of the Valuation Tribunal for England (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 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) the VTE may determine the form of any hearing.

3. Therefore, in pursuance of Regulation (6)(3)(g) 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.

4. As Ms Nicholls appeared on behalf of the Appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with her 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).

5. Ms Nicholls declared that she was not instructed under any conditional fee arrangement. Ms Nicholls confirmed that she understood and accepted that her duty was to the Tribunal in giving her evidence and 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.

6. The appeal had originally been heard on 16 February 2021 in front of a two-member panel. As the panel was unable to agree on the decision the case was reheard at this tribunal before a single senior member in accordance with the Tribunal Business arrangements contained with the Consolidated Practice statement April 2017 (as amended).

7. This was a 2017 Rating List appeal in respect of 4th Floor Latham House, Paradise Street, Birmingham, B1 2BJ which had originally been entered in the rating list with effect from 1 April 2017 as Office and Premises, at Rateable Value (RV) £50,000.

8. The Appellant had challenged the assessment of the appeal property on 25 July 2018 on the grounds that there had been a change to the surrounding area with effect from 5 September 2017 on the basis that ‘the hereditament has been affected by the construction and extension of the tram line through Victoria Square and along Paradise Street’.. The Appellant was seeking a 15% reduction in the appeal property’s assessment, to reflect the disruption to the subject building and its locality. This was in addition to a reduction of 15% which was already in place with effect from 1 April 2017 due to the disruption caused by the demolition and redevelopment of the nearby Paradise Circus.

9. The appeal was made to the Tribunal on 30 March 2020 following the Valuation Officer’s Challenge Case Decision Notice of 19 December 2019, in which it was stated that the proposal was not well-founded and the current Rating List entry was considered to be reasonable.

10. The subject hereditament is situated within Latham House, an office building located on Paradise Street in Birmingham. It measured 357.74m^2 and had been valued in the 2017 Rating List at £164.73 per m^2.

11. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties’ evidence. 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 an indication that that statement or item of evidence has been overlooked.

Issue

12. There is a 15% end allowance already applied to the assessment to take into account the disruption caused by the demolition and redevelopment works at Paradise Circus which has resulted in the current assessment of RV £50,000 for the subject hereditament. The Appellant contended that an additional allowance of 15% is applicable with effect from 5 September 2017 to reflect the disruption caused by the tram work, reducing the assessment to RV £42,500. The respondent Valuation Officer (VO) considered that the 15% allowance already applied was sufficient to compensate for the residual works at Paradise Circus and the new Tram works and therefore the existing assessment of RV £50,000 was reasonable.

Preliminary matters

13. This appeal was previously adjourned from a hearing on 21 October 2020 as a result of the introduction of late evidence by the Respondent. This late evidence consisted of an agreement made on a 2017 Rating List appeal for a neighbouring property which had been sent to the Appellant's representative two days before that hearing. The panel sitting at this previous hearing allowed this new evidence as it considered that it was not available at the time the challenge was being considered. As Ms Nicholls had requested further details of the agreement made, and time to consider this new evidence, the panel adjourned the hearing in order for Ms Bower to provide additional information and for both parties to make a response or further submissions in respect of this new evidence. Bespoke directions were issued to provide a timeline for the submissions and relisting of the appeal.

14. Following the exchange of evidence in accordance with these directions, Ms Nichols submitted additional evidence of agreements made for allowances for tram works in respect of three assessments at Victoria Square House, Victoria Square , Birmingham. Ms Bower had informed the Tribunal that she had no objection to these agreements being entered as evidence at the hearing, which by that time had been set for 16 February 2021. I am therefore satisfied that the evidence of settlements for the three premises in Victoria Square House should be considered.

Evidence and submissions

15. The allowance in place from 1 April 2017 of 15% is in respect of the redevelopment of Paradise Circus, located opposite the appeal building, which commenced in January 2015 and carried forward from 2010 List until 23 November 2018. This included the demolition of Fletchers walk in December 2017.

16. Ms Nicholls considered that there is an established principle by way of an RSA (Rating Surveyors' Association) agreement for the 2010 List that offices along the spine of tram works would receive a 15% allowance to reflect the disturbance caused by nose, dust, vibrations, restricted access, changes to road layout and poor pedestrian access for the duration of the works. In support of this she provided a list of Offices along the spine of tram works which had been given a 15% allowance. She went on to provide details of three assessments of retail premises on Pinfold Street where a 20% allowance had been applied for tram works in respect of both the 2010 List and the 2017 List, and argued that the allowances of 15% for offices along the spine of tram works should apply to the 2017 List. She also provided details of a number of offices, including the subject premises, where the allowances for the demolition and redevelopment of Paradise Circus had been carried forward from the 2010 List to the current List.

17. Ms Nicholls argued that a hypothetical tenant would seek multiple reductions in rent for multiple material changes, and she stated that this had been accepted by the Respondent as it had applied reductions for tram works and additional allowances for concurrent works for numerous hereditaments of which she provided details. In support of this she also provided a copy of a recent Upper Tribunal case *HostSoho Ltd v Jackson (VO) [2019] UKUT 0166 (LC)* in which it was held that multiple MCCs would have a greater effect on rental value than a single MCC and that the VO had not taken a ‘stand back and look’ approach.

18. To Illustrate the effects of the combined works at the material day, Ms Nicholls had provided photographs of the exterior of the subject building, showing Paradise Circus works, then the addition of the tram works. She also provided six video clips which she stated illustrated the noise and disruption from both inside and outside of the subject building.

19. Further to the adjournment of the original hearing of this appeal, Ms Nicholls provided details of allowances formally agreed on three assessments in Victoria Square House ranging from 13.03% to 14.77% as a result of a staggered allowance devised by the VO, based on a 15% allowance for property along the spine of the tram works. The introduction of this late evidence had been agreed by the respondent VO as it was not available at the time of the challenge.

20. The Respondent described the timeline of the tram works. Phase 1 of westside extension to the tram route runs for 840 metres from Grand Central through Victoria Square to Centenary Square, with initial works starting from July 2017 and completion due in late 2019. Paradise Circus was closed temporarily from 3 September 2018 to facilitate works on the tram route which runs along Paradise Street past the front of the appeal property. Phase 2 works from Centenary Square along Broad Street for 1.35 km commenced in 2019 but are not in the immediate vicinity of the subject premises and not directly relevant to this appeal.

21. Mrs Bower stated that there was significant disruption caused to the subject property by the Paradise Circus works, which had been reflected by the 15% allowance already applied. Whilst she accepted that the commencement of the Tram works had created disturbance to the subject building, she did not consider that the overall effect was any more at the material day than it was at 1 April 2017. She considered that a hypothetical tenant coming to the scene at the material day on 9 February 2018 would not see any additional disruption than at 1 April 2017. In fact the hypothetical tenant would have been aware of the upcoming tram works and the likely extent of disruption to ensue, and would have accounted for this in their rental bid.

22. Ms Bower argued that at the AVD in 2015 the planning process for impending tram works and the public enquiry and was complete. With this in mind, and the disruption caused by the recent 2012 tram works, prospective tenants would have taken these upcoming works into account when formulating their rental bids. The allowances agreed in respect of the 2010 List were done so with a backdrop of rents agreed in April 2008, when there would have been no recent experience of such works and the disruption caused. She maintained that the allowances agreed in the 2010 List would already be reflected in the rents agreed for the 2017 List and further allowances in respect of the tram works to the extent of those agreed on the 2010 List would therefore not be appropriate.

23. In support of this, she referred to two rents agreed on other assessments within the subject building around the material day.

- Part 1st Floor, Latham House (111m^2 ITMS) lease renewal £20,500 per annum (pa) with effect from 1 February 2018. This was a five year lease with a three year break clause which she had analysed to £184.70 per m^2.
- Ground and part 1st Floor, Latham House (627m^2 ITMS) lease renewal £108,500 pa with effect from 1 June 2018. This was a five year lease with a three year break clause which she had analysed to £152.90 per m^2.

The subject property had been assessed at £164.75 per m^2, which with the 15% allowance for Paradise Circus works applied, reduced to £140 per m^2. She provided a market report suggesting that prime Birmingham city centre office rents rose by approximately 10% between 2015 and 2018. She had then adjusted the discounted rate for the subject premises to allow for this increase, which produced an equivalent rate at 2018 values (+10%) of £154.00 per m^2. She argued that the rents agreed on the two other premises in Latham House in 2018 would have taken into account the effects of both sets of works and did not justify any reduction in addition to the 15% already in place.

24. Ms Bower referred to that the recent agreement made in respect of 35 Paradise Street next door to subject property which had been submitted as late evidence by the VO at the original hearing on 21 October 2020, and accepted by the panel. She stated that this agreement indicated that an allowance of 15% to compensate for the disruption caused by both sets of works is reasonable. Whilst she accepted that the ratepayer was unrepresented and would not necessarily be aware of other challenges ongoing, she considered that this agreement was good evidence of the reduction that would be agreed by a hypothetical tenant and landlord in light of the combined works. She argued that whilst there was some overlap of the two sets of works, the ratepayer had accepted that the net effect of both sets of works was no more intense than before or after the overlapping period.

25. She stated that the challenge had been concluded swiftly due to financial hardship cited by the ratepayer for 35 Paradise Street, but contended that the allowance offered of 15% would have been applied whether or not the Ratepayer decided to proceed to an appeal.

26. In referring to the 20% allowances applied to three retail premises on Pinfold Street, she argued that the tram works were more intensive in this location, with concrete being poured into the basement areas. She also argued that these agreements were in respect of retail premises, where the potential loss of trade due to disruption would be at the forefront of the hypothetical tenant's mind when making a rental bid.

27. With regard to the level of allowances granted for assessments in Victoria Square House, Ms Bower maintained that this building was impacted by the tram works on two sides – Pinfold Street and Victoria Square – whereas Latham House was only impacted on one side so the overall impact would have been less sever. She also stated that Victoria Square House is in a pedestrianised area so the impact would be more noticeable as the occupiers would not be used to traffic noise and disruption and also the narrow streets around VSH would intensify the effect of the noise created by the works.

Decision and reasons

28. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions as set out in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

29. I have determined that my jurisdiction in the appeal before me is limited to whether or not there has been a material change in circumstances as set out in The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations") which set out a number of grounds on which the list may be altered in regulation 4, including the following at 4(1)(b):

    "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."

    A "material change of circumstances" is defined by regulation 3(1) of the 2009 Regulations as "a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the [1988] Act". Those matters are, insofar as relevant here:

    "(a) matters affecting the physical state or physical enjoyment of the hereditament,
    (b) the mode or category of occupation of the hereditament,
    (c) the use or occupation of other premises situated in the locality of 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…"

30. Under regulation 3 (7) (b)(i) of The Non-Domestic (Material Day for List Alterations) Regulations 1992 in conjunction with regulation 4C of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulation 2009, in cases where a material change of circumstances has been cited, the material day was the date the appellant confirmed the information held by the Valuation Officer under the "check" process. The date the Respondent received confirmation of the accuracy of the details of the check was 9 February 2018. This is the date I had to view the matters affecting the physical state or enjoyment of the appeal property and its locality, and whether a hypothetical tenant would reduce their rental bid, and indeed whether the hypothetical landlord would concede to such a reduction due to the disruption apparent from the building works at this date.

31. Whilst an allowance of 15% had been applied for the Paradise Circus works, I am of the opinion that this would reflect the average disruption caused over the period of these works. For the earlier part of the works, the disruption would have been more intense in terms of demolition and ground works, which would warrant a higher allowance than 15%, whilst towards the end of the works, activities would have been more confined to interior fitting out of the new development, which would be less intrusive on the subject property and warrant a lower allowance. I am satisfied that it is reasonable to assume that the allowance of 15% was agreed on the basis of the average level of disturbance caused over the period of the Paradise Circus works. In order to determine the correct allowance for the combined works, I am required to look at the physical situation at the material day of 9 February 2018. At this stage, the Paradise Circus works were nearing completion, whilst the tram works had only recently commenced. Having considered the combined effect of the two sets of works at the material day, I am of the opinion that there had been a material change in circumstances at

the material day and am therefore required to determine what allowance is reasonable to reflect the combined effect of these two sets of construction works.

32. Ms Bower had argued that the existing reduction of 15% was sufficient to reflect the disturbance caused by the combined works, and that this was supported by the rents agreed close to the material day on two assessments within Latham House. Having adjusted these rents for growth of approximately 10% between the AVD and the material day she considered that the lower of these rents agreed by the tenants on these renewals close to the material day reflected that a combined reduction of around 16% on the assessment was reasonable. Whilst I place some weight on this evidence, I am mindful that they do not represent new tenants coming fresh to the scene. The rents were agreed by existing tenants who were to some extent accustomed to the disruption and would be aware of the benefits when the works are all complete, compared to the disruption of relocating to different premises. I do not consider that the rents agreed would necessary reflect those that would be agreed by new tenants and therefore do not find this evidence to be conclusive.

33. Having considered the agreement reached for 35 Paradise Street of a 15% allowance. There was some discussion between the parties as to whether this reflected the combined works, or solely tram works. The Respondent contended that it reflected the combined works, and that the Ratepayer for 35 Paradise Street did not consider the effect of the combined works were any more severe than the Paradise Circus works. I do consider that had the Ratepayer for 35 Paradise Street been professionally represented, and aware of the 130 or so other challenges outstanding in respect of the tram works, they may not have settled for 15% combined allowance offered by the Valuation Officer. I am therefore of the opinion that a tone has not been set for a 15% allowance to reflect the combined effects of the two sets of works in the immediate vicinity of the subject property.

34. In light of the Upper Tribunal case *HostSoho Ltd v Jackson (VO) [2019] UKUT 0166 (LC)* referred to by Ms Nicholls, I am required to consider the totality of the impact caused by both sets of works, and step back and look at the impact and what rent reduction would be agreed at the material date. I do not agree however that this would simply be an aggregate of allowances already agreed or applied for each of the separate MCCs on either the subject premises or other assessments.

35. Having considered the evidence before me, I am satisfied that at the material day of 9 February 2018, there were works ongoing in respect of the Paradise Circus development. Although a 15% allowance had been awarded for the total duration of the Paradise Circus works, I consider that by the material day, these works were less intrusive on the subject property than at their peak, and I am of the opinion, that on their own these works would have resulted in the hypothetical tenant negotiating a reduction of 7.5% for the remainder of the works, taking account of their intensity, and remaining duration. I then went on to consider the tram works which had commenced some four months prior to the material day.

36. There clearly is justification for an allowance to be applied in respect of the tram works, as evidenced by the photographs and video clips provided by the Appellant, as well as the assessment evidence provided by both parties. The intermittent road closures, noise, vibration and dust has been ongoing for the period of both sets of works and the Appellant had cited allowances granted of 20% for premises on Pinfold Street for the tram works, which had not been impacted by the Paradise Circus works.

37. In considering the agreed allowances provided by the parties for the tram works on the 2017 List, I do not consider that the impact on the subject premises would be as severe as experienced on Pinfold Street, and would be more in line with the range of agreements provided for Victoria Square House, for which I understand a staggered tram works allowance of 12.5% to 15% had been agreed for assessments depending on their proximity to the works. I consider that the overall impact of the tram works would have been more intense at Victoria Square House, and therefore the tram works allowance applicable for the subject premises would fall at the lower end of this scale.

38. Therefore from 5 September 2017, when the tram works commenced, I consider that a combined allowance of 20% is reasonable to reflect the overall effect of both sets of work, resulting in a reduced RV of £47,072 rounded to £47,000. The appeal is therefore allowed in part.

Order

39. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for 4th Floor, Latham House, Paradise Street, Birmingham, B1 2BJ to £47,000 with effect from 5 September 2017, within 2 weeks of the date of this Order.

40. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009.

Appeal No: CHG100039032
Dated: 19 May 2021