VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeals; offices and premises; requests for allowances; material change in circumstance; appeal dismissed.

RE: 1st - 6th Floors, 25 Cabot Square, London E14 5AB

APPEAL NUMBER: CHG100057509

BETWEEN:	Morgan Stanley UK Group	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Ms J Routledge (Senior Member)
Ms J Barnes

CLERK: Mrs H Beresford

REMOTE HEARING ON: 27 October 2020

APPEARANCES: Mr L Fulcher (Appellant's representative Cushman and Wakefield)
Mr C Cates (Valuation Officer's representative)

Summary of decision

1. The appeal was dismissed.

Introduction

2. The appeal was brought in respect of 1st - 6th Floors, 25 Cabot Square, London E14 5AB, (the appeal property). The appeal property is a seventeen-storey office block built in 1991 and situated in Canary Wharf. The appellant occupies the 1st to 6th floor.

3. The appeal relates to disruption caused by noise and vibration as a result of a refurbishment on floors 7 to 18 commencing 11 June 2017 and continuing until 31 December 2018. The

appellant contends that whilst the work was not substantial enough to cause damage to the appeal property it had caused value significant disturbance to staff as they tried to work.

4. This was a 2017 Rating List appeal and the rateable value (RV) of the appeal hereditament was £6,270,000 with effect from 1 April 2017. The appellant submitted a proposal to the Valuation Officer against the appeal property's assessment on 6 March 2018, which indicated that there had been a material change of circumstance.

5. The Valuation Officer did not agree to reduce the assessment and issued a Challenge Case Decision Notice on 30 December 2019 making no allowance for the disruption. The appellant appealed to the Tribunal against the Decision Notice on 28 July 2020.

6. The appellant's representative, when appearing as expert witness, had declared that he will not receive a success related fee if the rateable value of the appeal property were to be reduced as a result of the panel's decision.

7. However, he had 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.

8. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (VTE) functions – general) of the Procedure regulations 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).

9. 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 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.

10. 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.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked

Issue

12. The issue in dispute concerned the entry in the 2017 Rating List for the appeal property and whether an allowance should be adopted to reflect disruption at the property.

Evidence and submissions

13. Mr Fulcher, the appellant's representative, had submitted a bundle which included: a statement of case; a revised valuation; the original challenge; images and photographs; rental evidence; evidence of allowances for other material change of circumstances; and a report into the noise and disruption caused by the works.

14. He contended that the extensive refurbishment carried out by the landlord of the property on floors 7 to 18 above the appeal property had had a significant impact on the staff trying to work on the floors below. He argued that the RV entry in the rating list should be reduced to reflect this for the period from 11 June 2017 to 31 December 2018. He asked for a reduction of 9% for the 5th and 6th floors, 4.5% for the 3rd and 4th floors and 2.5% for the 1st and 2nd floors. This resulted in an RV of £5,940,000 for the period in dispute.

15. Mr Cates, the Valuation Officer's representative, referred to the noise and vibration reports prepared by Ove Arup & Partners Ltd and submitted in evidence by the appellant. The report established that "During the measurement period, the measured vibration levels on Level 2 and Level 6 at 25 Cabot Square were highly unlikely to exceed the building damage and protection of artwork criteria". Mr Cates also referred to the summary in the report which stated, "No construction works were audible during three site visits". He contended that the works were not very disruptive and therefore he considered it unlikely that the degree of disturbance would have been sufficient to have had an adverse effect on the rental value from year to year.

16. Mr Cates argued that in his opinion no allowance was warranted, he believed that this was further supported by the fact that no rent reduction had been awarded by the landlord to the appellant to compensate for the disruption. He asked the panel to confirm the RV of £6,270,000 for the period of the works.

Decision and reasons

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

    (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. As the grounds of the appeal refer to a material change of circumstances, the panel had regard to paragraph 2 (6) and (7) of Schedule 6 which is as follows;

> (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.
>
> (6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.
>
> (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;
>
> (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.

19. The appellant’s representative had made his proposal to reduce the RV of the property on 6 March 2018, this was the material day and the day that the panel had to look at the matters affecting the physical state or physical enjoyment of the hereditament.

20. Mr Cates had argued that, at the material day, some nine months into the works the majority of any heavy works would have been completed. However, as no schedule of works had been provided in the evidence, the panel were not persuaded that this was the case; there was a further nine months of work to be carried out at this stage.

21. Mr Fulcher had provided evidence of allowances for noise and disruption which he believed had been awarded in comparable circumstances. However, the panel found that the disturbance in these cases was being made outside of the subject hereditament and not by the landlord within the property.

22. The panel were aware that in the subject situation an agreement had been made between the landlord and the contractors that work could only be carried on between the hours 8:00am to 12:00pm and 4:00pm to 6:00pm. It believed this was in consideration of the fact that Morgan Stanley was an international trading company and that business continued late into the evening to take into account the overseas trading markets. Therefore, the disruption did not affect a significant proportion of the working day.

23. The panel turned to the report which had been made by Ove Arup & Partners Ltd. It found that it was unable to attach any significant weight to this evidence. The report was somewhat inconclusive as to whether there had been any substantial noise or vibration as it

was stated that no noise had be witnessed during the site visits and that vibration levels were very unlikely to cause any damage.

24. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that there had been significant noise and disruption and the appeal was therefore dismissed.

Date: 17 November 2020

Appeal number: CHG100057509