VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; Offices and Premises;
Building works in locality; Comparable properties; Appeals allowed in part.

Re: Grd & 1st Flrs 1,Stanhope Gate, London, W1K 1AG
(Ent in Sth Audley St) 2nd Flr 1,Stanhope Gate, London, W1K 1AF
(Ent in Sth Audley St) 3rd Flr 1,Stanhope Gate, London, W1K 1AF

APPEAL NOS : CHG100065310; CHG100065339; CHG100076341

BETWEEN Evercore Partners International LLP (Appellant)

and

Mr D Jackson (Respondent)

(Valuation Officer)

BEFORE: Mrs A E Fielder (Senior member); Mr A Wheeler

REMOTE HEARING ON: Wednesday 13 January 2021

CLERK: Mr J Hewitson

APPEARANCES:

Mr C Poole (Altus Group - Representing the Appellant)

Mr C Cates (Representing the Respondent)

Summary of decisions

1. The appeals were allowed in part and the assessments were determined as follows:

Grd & 1st Flrs 1,Stanhope Gate, London, W1K 1AG
Rateable Value £610,000 wef 1 April 2017

(Ent in Sth Audley St) 2nd Flr 1,Stanhope Gate, London, W1K 1AF;
Rateable Value £472,500 wef 1 April 2017

(Ent in Sth Audley St) 3rd Flr 1,Stanhope Gate, London, W1K 1AF
Rateable Value £480,000 wef 1 April 2017

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. The hearing related to three appeals made against the 2017 rating list entries for the subject properties and had been made on the basis that the assessments had been adversely affected by close proximity to the demolition and ongoing development of Nos. 4 & 5-6 Stanhope Gate, London. The properties had been entered in the rating list at £640,000 (Grd & 1st Flrs); £497,500 (2nd Flr) and £497,500 (3rd Flr). At the challenge stage, the Valuation Officer decided that the proposals were not well-founded and stated that the existing entries were fair and reasonable.

5. Challenges had been submitted by the appellant's representative on 20 December 2018 (Grd & 1st Flrs); 24 December 2018 (2nd Flr) and 25 February 2019 (3rd Flr) and the VO Decision Notices were issued on 17 June 2020; 18 June 2020 and 30 July 2020 respectively.

6. The subject properties are part of an end of terrace six storey office building. It has frontages on Curzon Street, South Audley Street and Stanhope Gate. The property was built in about 2000 and there are six separate assessments within the property, including the three appeal hereditaments.

7. Mr Poole appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed under a conditional fee arrangement.

8. Mr Poole 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 the client's case.

9 The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE

functions – general) of the Procedure regulations and was 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).

10. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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 the panel by the parties should not be construed as an indication that the statement or item of evidence has been overlooked.

12. As a preliminary issue Mr Cates sought permission to include details of a decision of the VTE which he considered was pertinent. The decision related to a material change of circumstances (MCC) affecting offices in Canary Wharf. It had been his understanding that details of this decision would have been sent to the appellant's representative some time ago but he now acknowledged that this had not been done. It was only in the late afternoon on the day before the hearing that he had sent him a copy. Mr Poole objected to the inclusion of this evidence stating that because of the time he had received it he had only been able to briefly consider what did not appear to be a straightforward case. Without knowing the full background to the case and having the opportunity to establish the nature and extent of the works involved he did not believe that he could reasonably make any comment on the decision.

13. The panel noted that the decision, which had been made in November 2020, had been available for a reasonable amount of time and could have been provided to the appellant's representative with sufficient time for him to do the necessary background checks. This was not done and, when questioned the panel noted that Mr Cates stated that he would not be prejudiced if the additional evidence was excluded. Given this admission, the panel found it reasonable to exclude the evidence, taking the view that it would be prejudicial to the appellant to allow it to be introduced at this late stage. A brief adjournment was considered but rejected as the panel found that proper consideration could not have been given to the decision within such a timeframe and the panel considered it important to progress the appeal at this hearing and reach a decision if possible.

Issue

14. The issue between the parties concerned the RV of the appeal properties and, specifically, the extent, if any, to which their assessments were affected by a redevelopment scheme of nearby properties.

15. All relevant factual information was not disputed by the parties.

Decision and reasons

16. Mr Poole referred the panel to his submission and described the appeal properties and their location. He explained that the basic price of £975 pm^2 was not disputed and the only dispute related to the extent to which the nearby redevelopment affected the offices. He referred the panel to location plans and a series of photographs of the

appeal property and the immediate locality, clearly identifying the issues which, he argued, should be reflected in a reduction in the rateable values of the subject offices.

17. All three offices were the subject of 20 year leases commencing in 2000 with the current occupier taking an assignment of the leases in 2017, in respect of the ground and first floors and the second floor and in 2018 in respect of the third floor offices. The reviews in 2015 were at rents of £640,000 for the ground and first floors and £550,000 for the other two floors.

18. The redevelopment site related to 4-6 Stanhope Gate and was a substantial scheme which began in November 2015 and was approaching completion in autumn 2020. All the existing buildings were demolished and significant basement works were ongoing into 2018, involving continuing deep excavation to create four levels plus secant piling and other sub-structure works; vibration and general construction noise which carries significant distances including through the ground and into the subject. Mr Poole referred to comments that had been made by his client that had been included in his challenge supporting his submission in respect of the disruption that was incurred.

19. The material day for the ground and first and second floor hereditaments was stated to be 22 March 2018 and for the third floor was 25 February 2019 and this was not disputed by the VO. Mr Poole submitted that at the material day, a hypothetical tenant fresh to the scene would be able to see that a major residential development was in progress. At that date the sub structure was far from complete and the super structure had not been started and he argued that it would be evident that substantial building activity would continue for a number of years. Given the close proximity of these works, the closure of the pavement on the south side of the street, the routing of all site traffic alongside 1 Stanhope Gate and the loading and unloading of lorries alongside the building, he contended that it was not unreasonable that a rental discount would be agreed with the hypothetical landlord to reflect the impact of the works relative to renting a similar office without the disturbance from long term construction activity.

20. It was argued that in rejecting his appeal, the VO had failed to fully reflect that the building between the subject property and the redevelopment site was a relatively narrow building and that the site had generated a significant amount of noise and other disturbance over and above the usual day to day activity on Stanhope Street and Curzon Street.

21. Mr Poole contended that the VO in this case was failing to have regard to cases where he had granted 5% allowances for premises affected by relatively short-lived road and pavement resurfacing where the level of disruption could not be worse than at the subject location and on this basis he submitted that his proposed reductions of 10% were not unreasonable. To support this argument he referred to properties at 1st Floor 24 Old Bond Street, London and Basement & Gound Floor, Pollen House, 10-12 Cork Street, London. In addition 2 Audley Square, London which is nearby received a 12.5% allowance for the Audley Square car park works and is next door but one to the scheme. Furthermore, in an agreement reached in respect of second floor offices at 12 Stanhope Gate, a modern office building opposite the redevelopment site, an allowance of 7.16% had been made. The material date in that case was February 2019 and it was argued that this provided the best evidence to support his argument that a reduction was justified.

22. Mr Cates submitted that there was a difference between compiled list appeals and MCC appeals. The material day for a compiled list appeal in respect of the 2017 rating list was 1 April 2017 but for an MCC appeal the date was dependent on the check. Thus he stated that for an MCC there must be a physical change which has affected the building concerned. The physical state or physical enjoyment of the hereditament or the use or occupation of other premises in the locality are to be taken at the material day. In the present appeals, he argued that the material day for the third floor offices, being significantly later in the redevelopment and getting towards the end of the project, presented a different picture to that to be considered in respect of the other appeals.

23. It was submitted that the initial stages of a redevelopment scheme tend to be the time when disturbance is greatest. Often there are demolitions involved and subsequent groundworks with piling creating higher levels of noise, dust, vibration and fumes than towards the end of a development when the work comprises fitting out with relatively little external activity. Thus, Mr Cates argued that it was necessary to consider the position at the material day and, in this instance, he submitted that the worst of the problems were over, with the excavation and basement works almost complete and most of the heavy lifting having been and gone. There had been no appeals in respect of the 2010 rating list at the subject property and he considered this to be significant, given that this would, in his opinion, be the time, in the early stages of the scheme, that the disturbance would be at its greatest.

24. Having described the nature and extent of the redevelopment carried out at Nos 4 and 5-6 Stanhope Gate, Mr Cates argued that the property at 3 Stanhope Gate would shield the subject property from most of the noise generated from the works because it stands between the subject property and the works, is about 9 metres wide and appears to be a similar height and length.

25. In respect of the traffic, Mr Cates contended that traffic disruption is not specific to Stanhope Gate and the whole area will have been affected. He considered building works and road works are very much part of life in central London and by the material day, he contended that a substantial part of the works would have been completed.

26. Mr Cates acknowledged that allowances may be appropriate when the duration and extent of the works are such that major disruption is caused but he did not consider that the circumstances at the appeal property were comparable to those examples cited by the appellant's representative. In particular he considered the property opposite to the redevelopment site, where an allowance had been granted to be affected to a far greater extent.

27. Furthermore, the appellant had been looking to take occupation of the offices at a time when the works were ongoing and he did not consider that the reviews reflected this. Overall, he did not believe that a hypothetical landlord would accept a lower rental bid and considered the existing assessments to be correct.

28. In weighing the evidence the panel was mindful that the earliest material day was almost 2.5 years after the works commenced and accepted that in a scheme of this nature the maximum disturbance would be early in the redevelopment with the demolition works and extensive excavation works undertaken. However, this was not seen as being the only time when neighbouring properties could be affected.

29. From the photographic evidence, it could be seen that in the summer of 2018, there was still a large crane onsite and a substantial amount of the external works remained to be done. Roads were cordoned off to allow lorries to park and it was clear to the panel that the level of traffic congestion and general inconvenience went well beyond what would be regarded as the norm, notwithstanding that the site is in the centre of one of the world's largest cities.

30. The panel found that the level of disturbance was such that rental values would be affected. The fact that there was a building between the subject property and the redevelopment site was noted and did, the panel find, mitigate some of the noise, dust and vibration. However it did not, the panel find, remove the nuisance.

31. The panel recognised that in cases of this nature the level of any allowance is a matter of extent and duration to a large degree and it can often be difficulty to objectively assess the level of disturbance from one site to another.

32. In this case, however, the panel found the comparable provided by the appellant relating to 12 Stanhope Gate provided very good evidence. The material day in that case was February 2019 and thus, the circumstances prevailing at that time, would be very similar to those relevant to the third floor offices and would be less intrusive than those prevailing almost a year earlier. The panel found that the level of disturbance and the general noise and nuisance experienced by that property would be slightly worse than the subject property given that it was directly facing the redevelopment site with only the width of the road between them.

33. Having regard to the level of allowance that was agreed in that case the panel found that an allowance of 3.5% was reasonable to reflect the disturbance suffered by the third floor offices.

34. In respect of the ground and first floors and the second floor offices the panel recognised that the material day was in March 2018 and accepted that the level of disturbance at that time would be greater and the duration of the works would be longer. On this basis the panel found that an allowance of 5% was fair and reasonable for those two hereditaments.

35. Accordingly, the panel determined the assessments as follows:

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(Ent in Sth Audley St) 3rd Flr 1,Stanhope Gate, London, W1K 1AF
Rateable Value £480,000 wef 1 April 2017

Order

36. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show the following

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37. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process).

Date: 1 February 2021

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