THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Appeal; 2017 Rating List; Office and Premises; Material change of circumstances; Allowance to reflect the effects of the construction of a new development in the area; Comparable properties; Appeal dismissed

Re: 3rd Floor, 11-13 Crosswall, London EC3N 2JY

APPEAL NO: CHG100066626

BETWEEN:	Ameresco Ltd	Appellant
	And	
	Valuation Officer	Respondent

PANEL: Mr A Khurram (Senior Member)
Mrs E Moir

CLERK: Mr G Wayman

REMOTE HEARING: 18 February 2021

APPEARANCES:

Mr C Mann of Altus Group representing the appellant
The Respondent Valuation Officer was represented by Mr C Cates

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Summary of Decision

1. Appeal Dismissed.

Introduction

2. This was a 2017 Rating List appeal it was originally entered into the rating list as Office and Premises 3rd Floor 11-13, Crosswall, London EC3N 2JY with a Rateable Value (RV) of £79,500 with effect from 1 April 2017. The appellant had challenged the assessment of the appeal property on 9 January 2019 on the grounds that there had been a change to the surrounding area with effect from 1 October 2017, when work commenced for the development of the neighbouring site. The appellant was seeking a 17.5% reduction in the appeal property's assessment, to reflect the disruption to the appeal property and its locality.

3. The appeal was made to the Tribunal following the Valuation Officer's Challenge Case Decision Notice of 24 July 2020, in which the appeal property's assessment was reduced and the rating list altered from 1 October 2017 to RV £71,500 in effect, accepting that the development would cause significant disruption and incorporating a 10% allowance in the appeal property's assessment to reflect this.

4. The subject hereditament is situated within a property that comprises a building of steel frame construction with office space arranged over the various floors. It is located on the corner of Crosswall and Vine Street which is close to Fenchurch Street station in the City of London.

5. 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.

6. 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.

7. Mr Mann 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), Mr Mann's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

8. Mr Mann in his declaration 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. The panel was presented with extra photographs and maps that were not exchanged at the challenge stage. It was confirmed by both parties that they agreed this extra evidence should be placed before the panel. Under these circumstances the panel accepted the evidence and took it into account.

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

Issue

13. The sole issue in dispute related to the level of allowance to be applied in the appeal property’s assessment to reflect the disruption caused by the demolition and construction works taking place on the adjacent site.

Decision and Reasons

14. 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 of the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

15. The parties contended that the material day for this appeal was 14 May 2018 the date the check was submitted. However, under regulation 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, which was the 14 September 2018. This is the date the panel had to view the matters affecting the physical state or enjoyment of the appeal property and its locality, at which time the development known as *demolition and development Emperor House & Roman Wall House, 35-36 Vine Street & 1-2 Crutched Friars, London EC3* had started on 1 October 2017. The panel found that the list was altered on 11 September 2018 following the check and the RV reduced to £75,500 with effect from 1 October 2017.

16. Mr Mann contended that the subject hereditament has been negatively affected by a material change of circumstances (MCC). This MCC is for the development known as demolition and development of Emperor House and Roman Wall House 35-36 Vine Street and 1-2 Crutched Friars London EC3.

17. Mr Mann stated that the MCC comprised work to the party wall to the western side of the subject hereditament so the disturbance was magnified. The building site wrapped around the subject property and also impacted from the rear. To compound matters, the entrance to the subject building was also right next door to the building site so that amenity was also impacted.

18. The development entailed the entire demolition of all the existing buildings and the rebuild of a new 25,439 sq m mixed use building. Due to the size of the development, piling had been undertaken which was particularly intrusive in terms of the additional noise and vibrations. The new building was to be arranged over basement, lower ground, ground and ten upper floors.

19. The building works commenced on the 1 October 2017, the works are ongoing and are due to continue for some time with a proposed finish in 2021. Due to the significant disturbance, the subject property's hypothetical rental value, and hence its Rateable Value, are impacted.

20. Mr Mann's contention was that the 10% allowance granted as a result of the challenge decision was not enough and it did not reflect the extent of the works. This is a major development involving full demolition, piling, and excavation down to basement level and the building of 11 upper floors. The development is substantial and will dwarf the subject building when works are completed.

21. Mr Mann submitted details of various schemes within London EC3 area that had resulted in allowances in the assessments of properties situated in close proximity to the development. Broadly, these allowances ranged between 8% and 22.50%, and were dependent on the severity and duration of the schemes, some allowances were given for a party wall affected by disturbance.

22. Mr Mann placed most weight on the 8% allowance granted to part 2nd floor, 7-17 Jewry Street, London EC3N 2EX for the same MCC as at the appeal property. This property was across the road from the appeal property and at a distance of 11 metres. Parts of this office were not directly opposite the works. This evidence, in Mr Mann's opinion, indicated that the subject property should have a much higher allowance as it was right next to the works and therefore more affected by the development.

23. Mr Mann held that the best comparable properties were: 24 Creechurch Lane EC3A 5AY as this was very similar to the subject property with a party wall on one side and the development wrapped around two sides. An allowance of 17.5% had been granted on this property:- 25 Fenchurch Avenue EC3M 5AD. This property had a larger floorplate and did not have a party wall to the development and had also been granted 17 ½ % allowance.

24. Mr Mann pointed out that his evidence suggested that party wall MCCs of a similar scale to the development next to the subject property should be at least 15%, as is standard in the City of London. It was his opinion that there should be a slight adjustment to reflect the wrap around effect of the development on the subject property.

25. Mr Mann contended that the negative impact of the MCC on the subject property meant that an end allowance of 17 ½ % should be applied to reflect the disturbance caused from 1 October 2017, when the work started.

26. The Valuation Officer (VO) informed the panel that the appeal property did not share a wall with the demolished building on the development. Therefore, the works were not to a party wall but to an adjacent wall, consequently in his opinion the impact of any disturbance would not be as severe.

27. The panel was also informed that a new lease on the 3rd floor began in December 2017, after the works had started in October 2017. It was established that the new tenant did not receive any allowance on the rent for the ongoing works. The panel was also informed that there was more than one interested party in taking on a new lease on the 3rd floor. Therefore despite the ongoing works several interested parties were willing to take on the lease with no rent reduction.

28. The VO also pointed out that the development was situated on a site of approximately 0.9 acres. This meant it benefitted from space to allow the development to take place without intruding onto the neighbouring streets thereby keeping the disturbance contained. The entrance to the site was not near to the subject property.

29. The panel was also informed that when developing the site an additional length of Roman Wall was uncovered and as such the developer had to take care in removing the old building in order to preserve the wall. In the VO's opinion this resulted in constraints on the developer which meant they took more care in their work, in turn resulting in less disruption.

30. The VO referred to Mr Mann's comparable evidence in which he placed most weight on 24 Creechurch Lane and 25 Fenchurch Avenue. The VO informed the panel that the allowance of 17 ½% on these properties were for a combined allowance on two separate MCCs.

31. The VO contended that the level of allowance requested by Mr Mann was excessive and the allowance of 17 ½ % granted to other properties seemed to have been awarded for properties where there were two MCCs taking place. It was the VO's opinion that the level of allowance (10%) which had been given to the first floor and offered to the other floors in this building should be confirmed by the panel and he requested the appeal to be dismissed.

32. The panel initially considered all the comparable evidence presented by Mr Mann, and it found that Mr Mann placed more weight on 24 Creechurch Lane and 25 Fenchurch Avenue. He considered these properties suffered from a similar disadvantage to the subject property. However, the panel found that the allowance of 17 ½ % granted on these properties were for two separate MCCs. Consequently, the panel was of the opinion that these properties were not directly comparable, so placed little weight on this comparable evidence presented by Mr Mann.

33. The panel looked at the details and photographs of the subject property and surrounding area. Whilst it was in no doubt that the adjacent development was substantial and that it would have an impact on the subject property and its locality, it was satisfied that the allowance of 10% adopted by the VO was fair and reasonable.

34. In reaching this decision, the panel had regard to the fact that part 2nd floor, 7-17 Jewry Street, London EC3N 2EX which was located 11 metres away and had been granted an allowance of 8%. The panel considered that the subject property being located closer, would only be slightly more affected by the works.

35. The development was not in a tight or congested site, which would mean the works were contained in the site, therefore creating less disruptions on the neighbouring street. Also being on a larger site any noise and echoes would be kept to a minimum. The panel also had regard to the fact that due to the discovery of a small part of the Roman Wall on site it had now become a site of special architectural interest, placing constraints on the developer which meant more care was taken, which in turn caused less disruption.

36. It was also established that the subject property did not share a wall (party wall) with the building that was removed, the works were to an adjacent wall. The panel considered that as this wall was not a party wall, the nuisance factor would not be constant.

37. The panel further found that the ongoing works did not seem to devalue the subject property as it was noted that a rental bid had been made on the 3rd floor in December 2017, three months after the works started. No rental allowance was given within the rental agreement for the works and the panel was also informed that several parties were interested in leasing this floor.

38. Given the above, and the fact that the nearby property of part 2nd floor, 7-17 Jewry Street, London EC3N 2EX had been granted an 8% allowance , the panel did not find that the appellant's representative had demonstrated that the 10% allowance adopted by the Valuation Officer was insufficient to reflect all of the disruption caused by the development in the appeal property's locality, and therefore the appeal was dismissed.

Appeal No: CHG100066626

Dated: 9 March 2021