THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Office and premises; allowance for disruption caused by building works; Hostsoho Ltd v Jackson (VO) [2019] UKUT 0166 (LC)*; appeal allowed in part.*

RE: Ground to Third Floors, 13 Manette Street, London, W1D 4AW

APPEAL NUMBER: CHG100073496

BETWEEN:	Not to Scale Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mrs X Holt (Senior Member)
Ms J V Barnes

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 3 on 9 March 2021

APPEARANCES: Mr H Makhdumi from Evans and Payne (Appellant's representative)
Mr C Cates (Valuation Officer's representative)

Summary of decision

1. Appeal allowed in part. The entry is reduced to Rateable Value £45,500 with effect from 15 May 2017.

Introduction

2. This appeal has been brought in respect of the following: Ground to Third Floors, 13 Manette Street, London, W1D 4AW (the 'appeal property'), which was entered in the 2017 rating list as 'Office and premises' at rateable value £56,500 effective from 1 April 2017. The appellant was initially seeking a reduction of 35% due to disruption caused by building works, although conceded that a 25% reduction was more realistic.

3. The appeal property was built in the 1960s and had not been developed. It therefore only had single glazed windows and no air conditioning. It was occupied by a film editing company. The appeal property was on the edge of a redevelopment where the property opposite was to be demolished and then replaced by the construction of new retail and leisure units.

4. 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.

5. 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 practice.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Makhdumi from Evans and Payne made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is a material change of circumstances appeal so the material day is 6 October 2017 being the date that the Valuation Office Agency (VOA) received the check submission. The appeal to this Tribunal was made on 8 December 2020 following the Valuation Officer's Decision Notice of 14 August 2020 in respect of the appeal property (hereditament).

8. Mr Makhdumi had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Makhdumi's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

9. The panel 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 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).

10. 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 it being overlooked.

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Issues

11. The issue for determination is the level of allowance that should be granted for disruption caused by building works opposite the appeal property.

Evidence and submissions

12. The appellant's representative had provided the Tribunal with both parties' submissions. The evidence included the following: the appellant's statement of case, photographs of the appeal property and those of other building works that had taken place, a video showing the disruption caused by the works, details of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, copies of correspondence that had passed between the parties and the Upper Tribunal judgment of *Hostsoho Ltd v Jackson (VO)* [2019] UKUT 0166 (LC).

13. The Ilona Rose House development was a mix of new retail stores, restaurants, residential properties and offices. It involved the demolition of the existing property opposite the appeal property and then rebuilding a new property with four basement levels and eight floors of office accommodation. The timeline of the development stated that the works were going to be completed by the winter of 2020 although it was understood that the works were still ongoing.

14. Mr Makhdumi had argued that larger allowances had been granted in respect of the following properties. The VOA provided its comments in respect of the nature of the works, or the description of the hereditament:

136 Charing Cross Road	30% - shop and due to Crossrail works
Basement and ground floor, 78 Marylebone Lane	30% - shop
Ground and Entresol Floors, 15 Terminus Place	It was a shop and was given a 50% allowance due to Victoria station works. Road closed for 4 years.
20 Hanover Square	27.5% - serviced office and due to Crossrail works. Some received different allowances
Ground Floor, 17 Terminus Place	It was a shop and was given a 30% allowance due to Victoria station works. Road closed for 4 years.
Ground Floor, 22 Soho Square	17.5% then additional 5% - due to Crossrail works
7th and 8th Floors, 25 Soho Square	17.5% - due to Crossrail works
17 Hanover Square	20% - due to Crossrail works
5 Dean Street	22.5% - due to Crossrail works
7 Soho Square	20% - due to Crossrail works and shared party wall development
Ground Floor 67-69 George Street,	22.22% - due to VT decision and shared party wall development. Retail shop
Ground and First Floor Rear 32 North Row	17.5% - due to VT decision. Retail shop
Ground to Fifth Floor, 6 Princes Gate	20% shared party wall development
32 Great Windmill Street	17.5% - restaurant

10 Rathbone Place	25% - for building works opposite
1 – 10 Moorgate Place	25% - due to VT decision. Also included aspects of *Monk* decision.
4 Tenterden Street	22.5% - due to Crossrail works
61 Southward Street	25% - due to works in the same building.

15. The VOA had granted a 15% allowance but Mr Makhdumi contended that the disturbance was such that a larger allowance should be granted.

16. He explained that the road where the appeal property was situated was closed as it became the entrance to the building site, so deliveries had to be made away from the appeal property; on some days the noise was so bad that staff had to be sent home and that they could not meet any clients which caused difficulties for the appellant due to the nature of the business. Because of the disturbance caused by the demolition works, the landlord had given the appellant £60,000 as compensation, a rent free period of eight months and accepted early surrender of the lease. Mr Makhdumi argued that this demonstrated the extent of the disruption caused to the appellant company.

17. Mr Makhdumi also raised an issue about the effective date. He contended and asked for the reduction to be awarded from 15 May 2017 as that is when the demolition first started. However, when the VOA awarded the 15% allowance, it had been awarded from 1 April 2017. But, as the VOA had applied the reduction from 1 April, his client ended up being worse off due to the loss of transitional relief.

18. Given all of the above, he asked the panel to allow the appeal by awarding an additional 10% allowance and ordering the VOA to award the allowance from 15 May 2017.

19. Mr Cates was representing the VOA as advocate and expert witness.

20. He contended that the landlord wanted the lease to end early as the appeal property fronted the redevelopment and therefore it was convenient for the parties. It was not due to the disruption caused by the redevelopment works.

21. The VOA had conceded that there was disruption caused by the demolition and building works and had already allowed a 15% allowance. However, Mr Cates contended that there was not enough evidence to support a larger allowance being granted and he asked the panel to dismiss the appeal.

Decision and reasons

22. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would have agreed, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

23. There was another important date for rating appeals and that was known as the ‘material day.’ This was the date on which the physical factors had to be taken into account.

24. The term ‘rateable value’ is defined in 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;
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> 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.”

25. As the grounds of the appeal referred to a material change of circumstances, the panel also had regard to paragraph 2 (6) and (7) of Schedule 6 of the Local Government Finance Act 1988 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.
>
> (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.

26. The material date for this appeal is 6 October 2017.

27. As the VOA had already awarded an allowance, there was no dispute about whether or not there had been a material change of circumstances or that the appeal property had been affected by the disturbance. It was just to what extent the appeal property had been affected.

28. Mr Makhdumi went through his evidence bundle and highlighted the following properties that he had identified, where a greater allowance had been granted:

a) 32 Great Windmill Street. It was a restaurant and had been granted a 17.5% allowance whilst a neighbouring property was demolished;
b) Ground to Fifth Floor, 6 Princes Gate. It was an office and had been granted a 20% allowance for neighbouring building works;
c) Ground Floor, 8 Smarts Place. It was an office and had been granted a 12.5% allowance for disturbance when a property opposite was being refurbished;
d) Ground and First Floor, 32 North Row. It was a shop which had been granted a 17.5% allowance for disturbance due to building works opposite;
e) Ground Floor, 22 Soho Square, London. It was an office which had been granted a 25.5% allowance for Crossrail and party wall works; and
f) Ground Floor, 67-69 George Street. It was a shop and had been granted a 22.2% allowance for redevelopment works for an adjoining property.

29. He also referred to the Upper Tribunal judgment of *Hostsoho Ltd v Jackson (VO)* where a 25% allowance had been granted for disturbance. However, he conceded that this allowance was granted for multiple works that were taking place in that particular locality.

30. The panel found the photographs contained within Mr Makhdumi's evidence bundle very helpful as they showed the locations of both the works and the relevant property.

31. Mr Cates argued that the allowance is not given as compensation for the building works, and that the appellant company had been given a significant amount of compensation by the landlord, who also owned the land that was being redeveloped. He also suggested that the reason for the landlord offering to end the lease early was because it wanted the appellant company to move out of the appeal property as it was on the edge of the development. However, the panel applied little weight to Mr Cate's argument as he provided no evidence to support this.

32. He also argued that the appellant could have minimised the impact of the disruption by having air conditioning units; he produced some photographs which showed that the windows of the appeal property were closed and therefore it minimised any disruption. He also argued that the allowances for those assessments highlighted by Mr Makhdumi were restaurants or shops and not offices and that the disruption would be worse for restaurants as people go there to rest and relax.

33. Given all of the above, the panel noted that the allowances on Mr Makhdumi's examples ranged from 12.5% up to 25.5%. However, the 25% allowance granted for Ground Floor, 22 Soho Square and 8 Berwick Street in the Upper Tribunal

judgment were for multiple works. As the appeal property was affected by just one set of works, the panel concluded that a 25% allowance was not justified.

34. However, a 12.5% allowance was granted for Ground Floor, 8 Smarts Place where there was refurbishment work taking place on a property opposite and those assessments where demolition and rebuilding works were taking place varied from 17.5% to 22.2%. It also noticed that 32 Great Windmill Street which was a restaurant had been granted a 17.5% allowance. Whilst Mr Cates argued that a restaurant was where people go for rest and relaxation, the panel concluded that the restaurant would be more popular during the evening when building works were not being undertaken. However, an office was going to be occupied during the demolition and building works.

35. Given all of the above, the panel concluded that a 20% allowance should be granted (an additional 5% on top of the 15% already allowed by the VOA), 2.5% for lack of access and 2.5% for disruption caused by the works, until the appellant company vacated the appeal property on 2 January 2019, for the following reasons:
    a) the appeal property was undeveloped and therefore only had single glazing;
    b) it did not have air conditioning;
    c) it heard how the noise was so bad that staff had to be sent home on some days;
    d) the landlord accepted that the disturbance was so bad that it agreed to the early surrender of the appeal property;
    e) allowances for other comparable works were at or around the same level; and
    f) the road where the appeal property was located was very narrow, with the boarding being situated very close to the appeal property and deliveries had to be made further away from the appeal property.

36. It also granted the additional allowance from 15 May 2017 as that is when the actual demolition started, the overt act. The revised valuation is as follows:

Floor	Description	Area	£ per m^2	Value
Ground	Offices	57.40	380.00	21,812
First	Offices	34.80	380.00	13,224
Second	Offices	34.80	361.00	12,563
Third	Offices	27.40	342.00	9,371
			Sub-total	56,970
Less 17.5% allowance for Ilona Rose House development				9,970
	Less 2.5% allowance for lack of access			1,424
		Total		45,576
		Rateable value say		45,500

Order

37. 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 £45,500 with effect from 15 May 2017 until 2 January 2019.

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

Refund of appeal fees

39. As the ground of the appeal has been made out, 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: 8 April 2021

Appeal number: CHG100073496