THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Appeals; 2017 Rating List; Office and Premises; Jurisdiction limited to Material change of circumstances; Allowance to reflect the effects of the construction of a new development in the area; Comparable properties; Works substantially complete at Material dates; Appeals dismissed

Re: *(1)* Part 1st Floor ,24 Lombard Street,London,EC3V 9AJ
(2) 2nd, 3rd, Part 4th & Part 5th Floors, 24 Lombard Street,London,EC3V 9AJ
(3) Part 1st Floor, Mitsubishi Trust International,24 Lombard Street, London,EC3V 9AJ
(4) 4th Flr East, 24 Lombard Street,London,EC3V 9AJ

APPEAL NOs: *(1)*CHG100074549, *(2)* CHG100095942, *(3)* CHG100095877, *(4)* CHG100096101

BETWEEN: Mitsubishi UFJ Trust & Banking Corporation — Appellant

and

David Jackson (Valuation Officer) — Respondent

BEFORE: Mrs M Cole (Senior Member sitting alone)

CLERK: Mr J Massey

REMOTE HEARING: 9 March 2021

APPEARANCES:

Mr Elliot Jones of CBRE representing the appellant
The Respondent Valuation Officer was represented by Mr Guljar Singh

---

Summary of decisions

1. Appeals dismissed.

Introduction

2. My fellow member was not in attendance and we had not been able to arrange for a replacement at short notice. However, the tribunal's business arrangements permitted me to hear this appeal alone.

3. 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.

4. 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.

5. Mr Jones 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 Jones' declaration of truth included a statement that he was instructed under a conditional fee arrangement.

6. Mr Jones 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.

7. I 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).

8. I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

9. These were 2017 Rating List appeals in respect of the hereditaments shown in the table below which had each originally been entered in the rating list with effect from 1 April 2017 as Office and Premises, at the Rateable Values (RV) detailed in the table below.

10. The Appellant had challenged the assessment of the appeal properties on the dates below on the grounds that there had been a change to the surrounding area with effect from 1 April 2017 due to ongoing works for the demolition and construction of a new building on a neighbouring site at 30-32 Lombard Street. The Appellant was seeking a 12.5% reduction in the appeal properties' assessments, to reflect the disruption to the subject building and its locality. A reduction in the rate adopted for all the appeal properties of £375.00 per m^2 to £300.00 per m^2 was also sought, which would result in the RVs detailed in the 2nd column of the table below.

11. The appeals were made to the Tribunal following the Valuation Officer's Challenge Case Decision Notices, in which the appeal properties' assessments were reduced and the rating list altered as detailed in the 3rd column of the table below.

Property Address (Original RV):	Date challenge received – RV Sought	Date of challenge decision notice - RV Proposed by VOA
Part 1st Floor, 24 Lombard Street, London, EC3V 9AJ (£95,000)	14 February 2019 £57,500	26 August 2020 £78,000
2nd, 3rd, Part 4th & Part 5th Floors, 24 Lombard Street, London, EC3V 9AJ (£1,010,000)	9 May 2019 £670,000	6 November 2020 £870,000
Part 1st Floor, Mitsubishi Trust International, 24 Lombard Street, London, EC3V 9AJ (£236,000)	8 May 2019 £142,000	6 November 2020 £193,000
4th Floor East, 24 Lombard Street, London, EC3V 9AJ (£123,000)	8 May 2019 £74,500	6 November 2020 £98,500

12. The subject hereditaments are all situated within 24 Lombard Street, a Grade-II listed office building constructed in the 1920s of Portland Stone and granite in modified classical style. The accommodation is arranged over eight floors, including sub-basement and basement and was refurbished in the 1980s. It is located on the south side of Lombard Street between Nicholas Lane and Clements Lane, in close proximity to Monument and Bank Underground stations.

13. 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

14. At the commencement of the hearing, the clerk advised the parties and I that the Tribunal is limited by the proposal as to what grounds of appeal can be considered by the Tribunal. In these appeals, the proposals, or challenge forms had been completed by the Appellant's agent, and each of them under the first section had a single box ticked – signifying that 'There has been a change to the property or the surrounding area which has made the rateable value incorrect'. Further on in the challenge forms, the section requesting information regarding a change to the property or surrounding area had been completed with a description of the change to the surrounding area which the Appellant was contending made the RV incorrect. The final section of the challenge forms requested a statement explaining why the rating list should be altered. This had been completed with a contention that a 15% allowance was applicable due to the disturbance caused by the building works adjacent to the property. A further dispute was raised in this section seeking a revised main space rate of £300 per m^2 in the final sentence of this statement.

15. From the information on the Challenge forms, it was clear to me that the box which had been ticked effectively made these challenges Material Change in Circumstances (MCC) appeals, and the Tribunal Clerk advised me in open tribunal that I was limited to considering the sole issue of whether or not, as at the material days for these appeals, there had been a material change since the entries in the List were made for these properties on 1 April 2017. If I find

there had been a material change then I am required to determine the level of allowance to be applied in the appeal properties' assessments to reflect the disruption caused by the demolition and construction works taking place on the adjacent site. Both parties were asked to comment on the advice given to me by the Tribunal Clerk but provided no argument as to why I should consider the accuracy of the compiled list assessments in these appeals.

16. As I have determined that I have no jurisdiction to determine the accuracy of the compiled list entries of the appeal assessments I cannot consider the underlying basis of assessment unless I determine that, at the material day there had been a significant change in intensity of the building works which were already under way at the 1 April 2017.

17. In these appeals, the allowance being sought by the Appellant for disruption due to the works on 30-32 Lombard Street was 12.5% for each of the appeal properties. Further to the challenges, the Respondent VO had conceded that an allowance of 7.5% was applicable for 4th Floor East, 24 Lombard Street, London, EC3V 9AJ and 5% for the other three properties.

Decision and reasons

18. The appeal hereditaments must be valued for the purpose of non-domestic rating on the basis of the rent at which they 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).

19. I have determined that my jurisdiction in the appeals before me is limited to whether or not there has been a new 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."

20. 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…"

21. The parties contended that the material day for the appeals was 1 April 2017, the date of the entries in the current list. However, 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 dates each of the checks were completed on each of the appeal properties are as follows:

Part 1st Floor, 24 Lombard Street, London, EC3V 9AJ: 6 November 2017
2nd, 3rd, Part 4th & Part 5th Floors, 24 Lombard Street, London, EC3V 9AJ: 14 March 2018
Part 1st Floor, Mitsubishi Trust International, 24 Lombard Street, London, EC3V 9AJ: 14 March 2018
4th Floor East, 24 Lombard Street, London, EC3V 9AJ: 9 April 2018.

22. These are the dates I had to view the matters affecting the physical state or enjoyment of each 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 those dates.

23. According to the submissions of both parties, the works to demolish the existing 1960s office premises at 30-32 Lombard Street commenced on or shortly after 1 October 2015. Subsequent to the demolition of the existing building, the project involved the construction of a new office building of 58,000 ft^2, which according to original estimates was expected to be completed in early 2018.

24. Mr Jones in his submission had provided a number of photographs depicting the progress of the works. One set of photographs, taken in July 2016 showed that the original building had been demolished, and work appeared to have commenced on the foundations for the new structure. Many of the other photographs provided were of an indeterminate date and showed the new building at various stages of construction. One further photograph was taken in September 2017 showing the framework of the new building to be substantially complete.

25. According to the Respondent, the photographs provided by the Appellant showed that by November 2017, a substantial amount of external cladding was in place. Mr Jones stated that whilst much of the heavy construction work had been completed by this date, the disrupted access to the appeal properties, and the disturbance due to noise and dust from the works had an appreciable effect on their enjoyment, and this was exacerbated by the fact that there was no secondary glazing fitted to the appeal building.

26. Mr Jones had provided details of a number of assessments to support his assertion that the adjacent building works warranted a reduction of 12.5%. However I found these related to reductions given in the 2010 list to different buildings due to different building works and I found these of little assistance in determining whether there had been a material change at the material days for these appeals.

27. Mr Jones argued that the 2010 list showed an allowance of 12.5% for the works on 30-32 Lombard Street, and argued that this should have been carried forward to the current list. If that was the case, the challenges should have been made in relation to the accuracy of the compiled list entries. Instead, the challenge proposals were made on the basis that there had been a material change of circumstances. However, I have established that there has been no change in any of the paragraph 2 (7) matters and therefore there was no new material change in circumstances.

28. In any event, I found that the works being carried out to complete 30-32 Lombard Street were nearing their end and major disruptive works had ceased by November 2017, which was before the relevant material dates for these appeals. The appeals are therefore dismissed.

Appeal Nos: CHG100074549, CHG100095942, CHG100095877, CHG100096101

Dated: 22 March 2021