

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating appeal; 2017 rating list; office and premises; allowances for disruption caused by building works; appeal dismissed.

RE: Grd Flr 10, Grosvenor Street, London W1K 4DH

APPEAL NUMBERS: CHG100147132

BETWEEN:	Moorfield Group Ltd	Appellant
	Represented by Montagu Evans	
	and	
	Andrew Ricketts	Respondent
	(Valuation Officer)	

PANEL: Mr K Everett (Presiding Senior Member)
Mr K Sutch (Senior Member)

CLERK: Mr J Massey

HEARING: Remote Hearing No.3 : 6 June 2023

APPEARANCES: Mr A Khoshan of Montagu Evans representing the Appellant
Mr A Byfield, representing for the Respondent

Summary of decision

1. Appeal dismissed. The entry remained the same within the Rating List.

Introduction

2. The appeal arose in respect of a proposal to alter the 2017 non-domestic rating list for a two material changes in circumstance (MCCs). The check was submitted on 16 May 2019 and was completed on 31 July 2019.
3. The challenge was submitted on 26 November 2019 and the valuation officer (VO) determined that it was not well founded and issued a challenge decision to this effect on 24 May 2021. An appeal to this Tribunal was received on 22 September 2021.

4. Grd Flr 10, Grosvenor Street, London W1K 4DH (the 'subject property') entered the 2017 Rating List as 'office and premises' at rateable value (RV) £415,000 effective from 1 April 2017. Further to a reduction in the price per m² from £1025.00 to £871.25 the RV has been amended to £352,500.
5. The subject property is a ground floor office with an internal area of 405.9 m², located on the ground floor at the rear of 10 Grosvenor Street. It is accessed via a central atrium from Grosvenor Street and overlooks Brook's Mews which runs along the rear of the building.
6. The first MCC related to works being carried out on Claridge's Hotel, 47-57 Brook Street, London W1A 2JQ which commenced in February 2016. The scope of the development included the removal of rooftop plant rooms, a two-storey extension and excavation of a sub-basement level.
7. The second MCC was in relation to works being carried out on 73-75 Grosvenor Street, London W1K 3BQ. These works commenced in January 2019 and included an extension at rear third, fourth and fifth floor levels, roof extension, replacement of façade, and installation of balconies at the rear of the building on Grosvenor Hill.
8. The appellant asserted that the two sets of building works taking place close to the subject property warranted an allowance of 5% to reflect the intensity of the disturbance for each and sought a reduction to RV £318,000 with effect from 1 January 2019. The respondent contended that the disturbance resulting from the two sets of building works would not have had a meaningful effect on the enjoyment and potential rental bid of the subject property at the material day of 16 May 2019 and defended the revised RV of £352,500.
9. Mr Khoshan 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), he stated that he was instructed under a conditional based fee and 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 the client's case.
10. 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).
11. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.
12. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

13. The issue for the panel to consider was whether the RV of the subject hereditament had been affected by the works within the locality. The appellant sought a total allowance of 10% with regards to the assessment with effect from 1 January 2019. However, Mr Byfield had stated that no allowance was justified and that the current RV of £352,500 was reasonable.

Evidence and submissions

14. Mr Khoshan described the proximity of, and the disturbances caused by both sets of building works. He stated that 73-75 Grosvenor Street was located across the road and approximately 12 metres from the entrance of 10 Grosvenor Street. The works on Claridge's Hotel were located to the rear of the subject property, on the other side of Brook's Mews and approximately 47 metres from the rear of the subject property.
15. He asserted that the building works at both sites caused significant disturbance and disruption to the subject property, including:
 - Noise from the sites including hammering and drilling;
 - Unsightly scaffolding and hoarding;
 - Obstruction of the pavement along both Grosvenor Street and Brook's Mews;
 - Obstruction of the road along both Grosvenor Street and Brook's Mews;
 - Increased traffic including heavy plant vehicles and machinery.
16. In support of his case, he had provided photographs of both sites taken on 28 March 2019, which he considered demonstrated the extent of the works and their proximity to the subject property.
17. After the conclusion of the challenge, Mr Khoshan had provided details of three settlements which he considered were not available at the time of the challenge. The respondent did not object to the inclusion of this late evidence and it was therefore allowed by the panel. 3rd Floor East, 15-16 Brook's Mews and 1st Floor, 15-16 Brook's Mews were situated approximately 4 metres from the subject property, and temporary allowances of 5% and 12.5% respectively had been agreed in respect of the building works on the hotel. A temporary allowance of 6% had been agreed in respect of 1st Floor, 50 Grosvenor Hill to reflect the effect of the disturbance caused by the building works on 73-75 Grosvenor Street.
18. Mr Byfield agreed that the material day on which to consider the physical matters affecting the locality of the subject property was 16 May 2019 - the date the accuracy of the check was confirmed. He did not consider that the disturbance caused by either set of building works would result in the hypothetical tenant and landlord, at the material day agreeing a reduced rental bid.
19. He described the subject property as a sealed office, in a busy location, and any additional noise caused by the building works at both sites would be minimal as would the effects of any dust produced by the works. He also considered that the location of the subject property at the rear of the building ensured that it would have been shielded from the majority of the noise and dust caused by the works opposite the front of the building at 73-75 Grosvenor Street. Additionally, he stated that the obstruction to the road and pavement was on the other side of the road from the subject property and would have had a minimal effect on access to the subject property.
20. He also referred to the distance proximity of the works being carried out on Claridge's Hotel, which were on the other side of Brook's Mews and approximately 47 metres from the rear of the subject property. Again, he stated that the subject property was a sealed unit which would have minimised the effect of any additional noise and dust produced by these works. He stated that the effect of any obstruction to the road and pavement on the other side of

Brook's Mews would have had a minimal effect on the subject property, particularly at it was not accessed via Brook's Mews.

Decision and reasons

21. 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. In doing so, it is required to consider matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation as they were on the "material day".
22. The panel was satisfied that the material day in these proceedings was 16 May 2019. In order for the appeal to succeed, the panel considered that it must be demonstrated that the disturbance caused by the building works at the material day would be reflected in a reduced rental bid being agreed by a hypothetical landlord and a hypothetical tenant.
23. The panel considered the location plans and photographs provided by both parties. In considering the effects of the building works on 73-75 Grosvenor Street, the panel noted that there was scaffolding and fencing covering the pavement and part of the road across from the subject property, but no obstruction to the pavement directly outside the entrance to the subject building. It considered that there was minimal, if any, obstruction caused to the access to 10 Grosvenor Street. It also noted that the subject property was located to the rear of 10 Grosvenor Street, shielded from the street by two retail premises fronting Grosvenor Street. There was no evidence before it that a temporary allowance had been sought or applied for the retail premises, or any other part of 10 Grosvenor Street in respect of these works.
24. The panel noted the allowance of 6% agreed for 1st Floor, 50 Grosvenor Hill in respect of the 73-75 Grosvenor Street building works. Grosvenor Hill ran to the rear of 73-75 Grosvenor Street and 50 Grosvenor Hill was facing the rear of 73-75 Grosvenor Street. Although there was no photographic evidence of this, the description of the works at 73-75 Grosvenor Street indicated that most of the works were being carried out to the rear of the property and the panel was satisfied that the disruption would have been greater on Grosvenor Hill. Taking this into consideration, the panel did not consider that the application of a temporary allowance in respect of 1st Floor, 50 Grosvenor Hill indicated that such an allowance should be applied in respect of the subject property.
25. Having considered both parties' evidence, the panel was satisfied that the overall disturbance experienced by the subject property as a result of building works on 73-75 Grosvenor Street was minimal and did not warrant a temporary allowance.
26. Turning to the building works at Claridge's Hotel, the panel noted that they were located approximately 47 metres from the closest part of the rear of the subject property, on the other side of Brook's Mews. The panel considered that as the hotel had stayed open for the duration of the works, the impact of the works would have been minimised by the contractors. There was scaffolding and hoardings outside the hotel and some obstruction of the pavement and road outside the hotel and evidence of construction deliveries taking place. The panel noted that access to the subject property was not from Brook's Mews, and therefore did not consider that obstruction of the road and pavement on Brook's Mews would have had an impact on the subject property. The building works were not in close proximity to the subject property, and the panel considered that the effect on the subject property of dust or any additional noise would have been slight, and also reduced by the fact that it was

a sealed unit. It considered that the hypothetical tenant, having entered the subject property from Grosvenor Street, would barely be aware of the works at Claridge's Hotel unless looking out of the window towards the works.

27. The appellant had referred to the fact that allowances ranging from 5% to 12.5% had been applied in respect of properties within 15-16 Brook's Mews which was only 4 metres away from the subject property. However, the panel considered that at its closest point, 15-16 Brook's Mews was approximately 20 metres from the Claridge's construction works, and the impact would have been significantly more. As the entrance to 15-16 Brook's Mews was on Brook's Mews and was much closer to the hotel, the panel considered that the effect of the obstruction of the road and pavement would also have been much greater than at the subject property.

28. Having considered both parties' evidence, the panel was satisfied that the overall disturbance experienced by the subject property as a result of building works on Claridge's Hotel was minimal and did not warrant a temporary allowance.

29. Accordingly, the appeal failed and must be dismissed.

Date: 23 June 2023

Appeal number: CHG100147132

Right of appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.