THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; offices and premises; construction works in the locality; comparable properties; appeals allowed in part.

RE: Lower Ground Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH
Ground Floor part, Grimaldi House, 28 St James's Square, London SW1Y 4JH
First Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH
Second Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH
Third Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH
Fourth Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH
Fifth Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH
Sixth Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH
Seventh Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

APPEAL NUMBERS: CHG100189442, CHG100189617, CHG100189496, CHG100189604, CHG100189426, CHG100189427, CHG100189426, CHG100189432 & CHG100189436

BETWEEN:	Grimaldi Agencies UK Limited	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mrs J Ellis (Senior Member)
Miss L Westwell

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 24 May 2022

APPEARANCES:
Mr A Marshall of Conneely Tribe for the appellant
Mr J Baccas for the respondent

Summary of decisions

1. Appeals allowed in part; an end allowance of 30% was awarded to each assessment with effect from 5 December 2017.

Introduction

2. This hearing related to nine appeals, all of which were made following a challenge against the 2017 rating list entries, on the basis that the assessments had been adversely affected by works in the locality.

3. The appeal properties are valued as ‘offices and premises’ and are situated in St James’s Square, which is one of London’s historic garden squares, located in St James’s to the north of Pall Mall and south of Piccadilly/Jermyn Street. The assessments were originally shown in the rating list with effect from 1 April 2017 as follows:

    - Lower Ground Floor, Grimaldi House - £55,500 RV
    - Ground Floor part, Grimaldi House - £98,000 RV
    - First Floor, Grimaldi House - £140,000 RV
    - Second Floor, Grimaldi House - £140,000 RV
    - Third Floor, Grimaldi House - £139,000 RV
    - Fourth Floor, Grimaldi House - £136,000 RV
    - Fifth Floor, Grimaldi House - £136,000 RV
    - Sixth Floor, Grimaldi House - £125,000 RV
    - Seventh Floor, Grimaldi House - £104,000 RV

4. Challenges had been submitted by the appellant’s representative. An end adjustment of 37.5% was proposed to account for the material change of circumstances (MCC) with effect from 5 December 2017.

5. The Valuation Officer (VO) made the decision to allow a 20% reduction to each of the above assessments with effect from 5 December 2017. Mr Marshall did not consider this allowance to be sufficient given the intensity of the works and the impact on the appeal property. Consequently, the challenged decision was appealed to this Tribunal.

6. Mr Marshall 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 included a statement that he was instructed under a contingency based fee.

7. Mr Marshall 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.

8. 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).

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

10. Mr Bacca's, for the VO, also appeared in a dual role as advocate and expert witness.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

12. The issue concerned the RV of the appeal properties and, specifically, the extent, if any, to which their assessments were affected by the works within the locality. The appellant sought an allowance of 37.5% for each assessment. The VO considered a 20% reduction to be fair and reasonable.

Evidence and submissions

13. To comply with the evidential restrictions imposed on such appeals, in accordance with regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the parties agreed, in writing, for the nine appeals to be consolidated and for the evidence held for each appeal to be admissible for each appeal.

14. In accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268), the material day is the date on which the ratepayer confirms the accuracy of the information included in check. For all nine appeals, the material date was 20 December 2018.

15. A bundle of evidence was provided for each of these appeals, which comprised of the information exchanged between the parties during the challenge stage of the process; which broadly included details of the scheme of works in the locality; the appellant's case; the VO's decision; decisions of the Valuation Tribunal, Upper Tribunal and Lands Tribunal; client testimonial; location plans; photographs; reference to caselaw and the definition of rateable value.

16. The MCC's referred to within the appellant's case were as follows:

    1) Conway Materials and Plant Storage Compound which was situated opposite the appeal building. This compound was in continuous use by

contractors Conway in support of civil engineering, repair and construction work connected with Westminster City Council's St James's Public Realm Improvement Scheme; a major and comprehensive scheme of street improvement works being carried out in and around Jermyn Street, Waterloo Place, St James's Square and Pall Mall. The compound was operational with effect from 30 May 2017 and was decommissioned in January 2019 following completion of the Jermyn Street phase of the public realm improvement scheme.

2) 24-25 St James's Square- Major Construction and Refurbishment Works & Vertical Extension. The reconstruction of the office building at numbers 24-25 St James's Square to the West of the subject property, situated next-door-but-one from the building and commencing on 2 October 2017; nearing completion as of December 2019.

3) 30 St James's Square- Major Construction Works. The complete demolition and reconstruction behind a retained period facade of the next-door property immediately adjacent to the appeal building on the party wall. 30 St James' Square was deleted from the Rating List on the 5 December 2017 and is currently ongoing.

4) Norfolk House 31 St James's Square situated diagonally opposite the subject premises. This was in the pipeline at the Material Day as Planning Permission was in place and amended consent under consideration for the complete demolition and reconstruction of Norfolk House behind retained facades. This is a very substantial scheme of reconstruction with a substantial frontage on St James's Square plus ancillary works such as the construction if a substantial electrical substation in the road at the corner of the Square Garden. The hypothetical tenant contemplating the likely duration of disruptive building works on the material day and the earliest date when a cessation could be expected, would have taken note and account of this significant forthcoming scheme. It is a very comprehensive reconstruction and far larger than either of the two schemes referred to and capable of generating a great deal of further disruption. Norfolk house was removed from the Rating List from 1 April 2019 with the main demolition work commencing on 19 September 2019 and is the subject of further Check Submissions.

17. Mr Marshall provided further detail of the works to demonstrate the intensity, which included public work schemes, Council's decisions, and planning consent. He considered the amount being sought was not unprecedented when there are multiple MCC's impacting the property at the material date. He referred to other assessments where up to 50% had been allowed. He referred to comparable properties and previous decisions reached by the Upper Tribunal and Lands Tribunal. He provided evidence of reductions for access restrictions, pavement extension and non-adjacent building works. Furthermore, his position, having regard to case law, was that future changes would have been considered by the hypothetical tenant as at the material

date. As such he considered his proposed reduction of 37.5% to be supported and reasonable.

18. The VO's response as outlined in its challenge decision was as follows:

    1) Conway Materials and Plant Storage Compound at the South East Corner St. James's Square, located opposite the building. The effective day was 30th May 2017 and completion January 2019. From the evidence provided from the agent and the material day of the case we are of the opinion that minimal disturbance is to be had due to the nearing of completion of works and the nature of the hereditament.

    2) 24- 25 St James's Square. Major Construction and Refurbishment Works & Vertical Extension. Next door but one to the appeal property and the effective day was 2 October 2017 and completion December 2019. From the evidence provided by the agent we can see that works causing significant blight in the area however it does not share a wall with the subject, there is a building between acting as a buffer. Furthermore, there have been no Check or challenges at number 26 St James's Square which is party wall to the works.

    3) 30 St James's Square. Major Construction Works. Next door building and effective day was 5 December 2017, and the work is ongoing. 20% allowance has been given on this MCC.

    4) Norfolk House 31 St James's Square Diagonally Opposite the subject premises. Future works in the pipeline at the Material Day and Planning Permission. No works has begun yet.

19. Mr Baccas, for the VO submitted that he agreed that the hypothetical tenant's bid would be impacted by the works as at the material date. However, based on the stage of the works as at the material date and based on his comments regarding the comparable properties put forward by the appellant, he considered the 20% allowance to be fair and reasonable. At the hearing, he submitted that in his expert opinion, 15% had been granted in respect of 30 St James's Square and 5% for 24-25 St James's square.

20. Mr Baccas therefore sought confirmation of the 20% allowance agreed by the VO.

Decision and reasons

21. Matters which constitute a material change of circumstances are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988.

22. When valuing having regard to the material day, the valuation arrived to, had to conform with the rateable value definition provided in paragraph 2(1) to Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999:

"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;
>
> 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.

23. Therefore, having regard to the above, in reaching its decision, the panel considered, would the material change in circumstances affect the hypothetical tenants bid? In doing so, economic factors must be considered as at the antecedent valuation date of 1 April 2015, whereas the physical factors are as they existed on the material date.

24. In accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268), the material day is the date on which the ratepayer confirms the accuracy of the information included in check. For all nine appeals, the material date was 20 December 2018.

25. As at the material day, Conway Materials and Plant Storage Compound at the South East Corner St. James's Square only had a month of works remaining. As such, it is a reasonable conclusion that the hypothetical tenant fresh to the scene wouldn't expect a rent reduction as the tenant would know that the works were almost at an end, similarly, the hypothetical landlord would not need to concede one to attract a tenant.

26. 24-25 St James's Square had another year of works as at the material date, and the works at 30 St James's Square were ongoing.

27. Having regard to the length of the works and the details and photographs provided, the panel was satisfied that the MCC's for 24-25 St James's Square and 30 St James's Square were severe both in terms of their duration and intensity. The panel found that the disturbances would have had an adverse impact on the appeal property and thus impact the hypothetical tenants bid. This was also agreed by both parties as demonstrated by the reduction of

20% allowed by the VO. Therefore, the issue before it was the level of allowance to be applied and if whether, based on the evidence brought, the % allowance proposed was supported.

28. In reaching its decision, the panel attached weight to the Upper Tribunals judgment for First – Fourth Floors, 8 Berwick Street (*Hostsoho Limited v David Jackson (VO)* [2019] UKUT 0166). A 25% reduction was allowed for two sets of works, which supported that the allowance would likely be higher where multiple factors are impacting the property. In that case, the panel noted that the works were immediately opposite the property subject to appeal and in respect of the development on Walkers Court, at the southern end of Berwick Street. The works were ongoing as at the material date, similar to the appeal property. Following this decision, settlements were also agreed for 12 and 13 Berwick Street at 25%.

29. The panel found that the appeal properties building shared a wall with the property undergoing major construction (30 St James's Square) so therefore could be considered greater in intensity.

30. During the hearing, Mr Baccas submitted that in his expert opinion, 5% of the 20% allowed was in respect of 24-25 St James's Square. It was therefore the VO's overall position that 15% was allowed for 30 St James's Square. The panel considered the intensity of the works, attached weight to the occupier's impact statement which provided insight to the disturbances, some of which included, noise and vibrations, breaches to the party wall, limited access, construction traffic, scaffolding and dust and debris. In the panel's view, and together with the *Hostsoho Limited v David Jackson* judgment, it found this evidence supported that the 20% agreed for all the MCC's impacting the appeal property appeared unreasonable.

31. In respect of 24-25 St James's Square, the VO questioned the impact of the disturbance and submitted that were no check or challenges submitted for number 26 St James's Square, which is the party wall to the works. Mr Marshall submitted that he had approached the owners / occupiers, but due to experience of rating challenges taking a long time to conclude, and the property was in the process of being sold, they did not wish to submit a challenge. The panel accepted this explanation, and, in any case, there was clear evidence of allowances being provided when the works were non-adjacent, but it accepted that it would affect the appeal property to a lesser degree.

32. Turning to Norfolk House 31 St James's Square which had planning permission granted for extensive works. The VO had included an allowance for this as it was a future change. In respect of the hypothetical tenant looking forward from the material day, the panel was satisfied that Mr Marshall had demonstrated with case law, that future considerations would be in the mind of the hypothetical tenant. In *Berrill v Hill* RA/34/99 the Upper Tribunal member, PH Clarke, made reference to Lord Wilberforce in *Dawkins (V0) v Ash Brothers and Heaton Ltd* [1969] 2 AC 336) stated at paragraph 24:

> “The works affecting the appeal property are those works which affected the property on 21 March 1997 but regard can be had to possible future changes in the scale of those works. In Dawkins (V0) v Ash Brothers and Heaton Limited Lord Wilberforce said page 386A): -
>
> > ““But it would surely be unreasonable to suppose that the hypothetical tenant is so inescapably imprisoned in the present that no anticipation is permitted of what is to come. Whether the test is what would influence his judgment, or what intrinsic qualities the hereditament possesses, any occupier in real life has to ascertain and to consider whatever may make his tenancy more or less advantageous over the period for which he takes it. I appreciate that the statutory hypothesis as to the length of the tenancy may have a bearing on what the tenant may take into account, but, apart from this, it would seem clear that any occupier would take into account, not only any immediately actual defects or disadvantages...but disadvantages or advantages, which he can see coming.”

33. In the same paragraph PH Clarke went on to say:

> “...It is clear therefore that at the date of the proposal, the Tramlink works affecting the appeal property were minor. Future works can, however, be taken into account and would have been in the minds of the hypothetical landlord and the hypothetical tenant negotiating the annual rent (rateable value) on 21 March 1997. The works in progress at that time do not justify a 30% reduction but the future intensification of those works might justify this reduction, or as argued by Mr Berrill, a higher figure.”

34. The assessments in Norfolk House were removed from the Rating List with effect from 1 April 2019, four months post the material day. Looking forward to the future, there was a huge set of works about to take place at Norfolk House which could reasonably be expected to take three years. These works commenced on 1 April 2019 and the planning permission was available as at the material day, therefore the panel was satisfied that it would have been in the minds of both the hypothetical landlord and the hypothetical tenant.

35. In conclusion, the panel found that an allowance higher than 20% was warranted, however, it was not persuaded that the 37.5% was supported by the evidence provided. Considering each MCC and attaching weight to the allowances agreed at Berwick Steet, it found the disturbances would have significantly impacted the hypothetical landlord and tenant negotiations at AVD.

36. In view of the foregoing, the panel found that a 30% allowance was reasonable, and the appeal was therefore allowed in part.

Order

37. Under the provisions of regulations 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 entries in the rating list to show the following:

    Lower Ground Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £39,000 rateable value effective from 5 December 2017

    Ground Floor part, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £68,500 rateable value effective from 5 December 2017

    First Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £98,500 rateable value effective from 5 December 2017

    Second Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £98,000 rateable value effective from 5 December 2017

    Third Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £97,000 rateable value effective from 5 December 2017

    Fourth Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £95,000 rateable value effective from 5 December 2017

    Fifth Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £95,500 rateable value effective from 5 December 2017

    Sixth Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £87,500 rateable value effective from 5 December 2017

    Seventh Floor, Grimaldi House, 28 St James's Square, London SW1Y 4JH

    £73,000 rateable value effective from 5 December 2017

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

Refund of fee

39. 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: 20 June 2022

Appeal numbers: CHG100189442, CHG100189617, CHG100189496, CHG100189604, CHG100189426, CHG100189427, CHG100189426, CHG100189432 & CHG100189436