

THE VALUATION TRIBUNAL FOR ENGLAND



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

RE: 2nd Floor New Baltic House, 65 Fenchurch Street, London, EC3M 4BE

APPEAL NUMBER: CHG100220335

BETWEEN:	Blake Turner LLP Represented Altus Group	Appellant
	and Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mrs S Nix (Presiding Senior Member)
Mr A Hussain (Senior Member)

CLERK: Mr J Massey

HEARING: Remote Hearing No.2 : 28 November 2023

APPEARANCES: Mr S Carter of Altus Group representing the appellant.
Mr K Abbaas 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 material change in circumstance (MCC). A check was submitted on 14 February 2020 and was completed on 13 May 2020.
3. The challenge was submitted on 7 May 2020 and the valuation officer (VO) determined that it was not well founded and issued a challenge decision to this effect on 14 October 2021. An appeal to this Tribunal was received on 11 February 2022.

4. 2nd Floor New Baltic House, 65 Fenchurch Street, London, EC3M 4BE (the “subject property”) entered the 2017 Rating List as ‘office and premises’ at rateable value (RV) £46,250 effective from 1 April 2017.
5. The subject property is a second floor office with an internal area of 405.9 m², situated within a mixed use building providing retail space on the basement and ground floors and office space on the upper floors.
6. The MCC related to works being carried out for the development of ‘Gotham City’, 40 Leadenhall Street (the “building works”), which is located opposite the subject property. The appellant asserted that the building works taking place warranted an allowance of 5% to reflect the intensity of the disturbance and sought a reduction to RV £44,000 with effect from 4 February 2019. The respondent contended that the disturbance resulting from the 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 14 February 2020 and defended the existing RV of £46,250.
7. Mr Carter 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.
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). The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.
9. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

10. The issue for the panel to consider was whether the RV of the subject hereditament had been affected by the works within the locality.

Evidence and submissions

11. Mr Carter referred to the proximity of, and the disturbances caused by, the building works, which he described as one of the largest development schemes ever to have been granted permission in the City of London. The total site area of Gotham City is approximately 2.5 acres and at their closest point the works were located across the road and approximately 18 metres from the subject property. He stated that demolition of the existing five buildings lasted for over a year after the works commenced on 4 February 2019. Construction of the new building required extensive piling as it was 35 storeys in parts.
12. He asserted that the building works caused significant disturbance and disruption to the subject property, including:

- Noise from the site including piling, hammering and drilling;
- Visual disturbance in the form of unsightly scaffolding and hoarding;
- Vibrations and dust caused by the operation of heavy plant and other construction machinery.

13. In support of his case, he referred to the allowances which had been agreed on three other buildings in the locality as a result of the 'Gotham City' works which he considered supported a 5% allowance for the subject property.
14. Mr Abbaas stated that the building works had been in progress for about twelve months at the time of the material day, 14 February 2020, by which time the majority of the heavy works would have been completed. He therefore did not consider that the disturbance caused by the building works would result in the hypothetical tenant and landlord, at the material day agreeing a reduced rental bid.
15. He referred to the rent passing on the subject property, which had been agreed on a lease renewal on 31 May 2019 at £69,165 per annum. He considered that even taking into account the market increase in the four years since the AVD, the rent agreed was far in excess of the current RV of £46,250. He considered that the rent agreed indicated that the effect of the building works was not a factor taken into account when agreeing the rent in 2019.
16. He described the subject property as a sealed office, in a busy location, and any additional noise caused by the building works would be minimal as would the effects of any dust produced by the works. He also considered that the location of the subject property, which was set back from the road and approximately 20 metres from the edge of the building works, would have reduced the effects of the majority of the noise and dust caused by the works opposite. Additionally, he stated that any 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. He provided photographs of the building works and their proximity to the subject building from Google Maps taken in May 2019 which he considered demonstrated that there was very little disruption to the subject property at this time.

Decision and reasons

17. 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".
18. The panel was satisfied that the material day in these proceedings was 14 February 2020. 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.
19. The panel considered that little weight could be attributed to the rent agreed on the appeal property in May 2019. This was four years after the AVD and would have reflected market values prevailing at that time. Neither party provided any evidence to demonstrate the differential in rents between 1 April 2015 and 31 May 2019 from which the panel could deduce whether or not the building works had any effect on the rent agreed on the subject property.

20. The panel went on to consider the comparable assessments provided by the appellant. He had referred to a 7.5% allowance applied to offices on the 2nd and 3rd floors of 68-71 Fenchurch Street, which were next door but one to the subject property and slightly further away from the building works. A 10% allowance had been applied to offices on the third floor of 107 Fenchurch Street which was on the same side of the road as the building works and much closer (4.7m). An allowance of 2.5% has been applied to office premises in 104-106 Leadenhall Street, which was opposite the northern side of the building works and approximately 26m away.
21. The panel noted that the appellant had provided photographs of the view of the building works taken from 104-106 Leadenhall Street in May 2019, and of the proximity of 107 Fenchurch Street to the building works taken in February and May 2019. The only photographs of the subject property included in his evidence showed it in January 2021 and September 2022.
22. Although the panel was aware that at the material day, the building works were scheduled to continue for another four years, it was satisfied on the balance of probabilities, that by this date, much of the heavy works would have been completed. The subject property is in a busy part of the City of London and noise and other pollution would be prevalent even were it not for the building works. Whilst the appellant had shown pictures of the subject property's windows with catches on them, the panel was satisfied that the subject property was effectively a sealed building with double glazing and air conditioning. This would mitigate the effect of both the normal levels of noise and pollution as well as any additional noise and pollution caused by the building works.
23. The panel noted that 68-71 Fenchurch Street was not a sealed building, and the effect of the building works would have been much more noticeable than at the subject property. The material day for 68-71 Fenchurch Street was 4 February 2019, at which point the heavy demolition works were just starting.
24. The panel also noted that 107 Fenchurch Street was adjacent to the building works and on the same side of the road and therefore much closer than the appeal property. 104-106 Leadenhall Street was not on the same side of the road as the building works and was further away than the subject property. However, the panel was satisfied that the material day for 104-106 Leadenhall Street was 4 February 2019, at which point the heavy demolition and piling works had not commenced.
25. Taking these factors into consideration, the panel did not consider that the application of temporary allowances in respect of 68-71 Fenchurch Street, 107 Fenchurch Street and 104-106 Leadenhall Street indicated that such an allowance should be applied in respect of the subject property.
26. Having considered both parties' evidence, the panel was not satisfied that sufficient evidence had been provided by the appellant to demonstrate that the intensity of works at the material day was sufficient to convince the hypothetical landlord to lower the rent or the hypothetical tenant to ask for a reduced rent. It was clear from the submissions and the photographs provided that the heavy works were coming to an end, and the panel was satisfied that any adverse effects of the remaining works would have been mitigated by the fact that the subject property was effectively a sealed office. The appeal was therefore dismissed.

Date: 15 December 2023

Appeal number: CHG100220335

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.