THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; material change of circumstances; reasonableness of the rateable value; showroom and premises; whether there should be an end allowance following disturbance created by nearby building redevelopment/refurbishments; appeal dismissed.

RE: 10 Clifford Street, London W1S 2LJ

APPEAL NUMBER: CHG100315195

BETWEEN:	Eskenazi Limited	Appellant
	and	
	The Valuation Officer	Respondent

BEFORE:	Dr J Johnson (Senior Member sitting alone)
CLERK:	Mr A Johnson Tech IRRV
HEARING:	26 September 2022 (conducted remotely via Microsoft Teams)
APPEARANCES:	Ms A Toor of CBRE Limited (representing the Appellant) Mr S Gokensel (representing the Respondent)

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was dismissed. I was not satisfied that an allowance should be made and the rateable value was unchanged at £362,500.

Introduction

2. This decision notice is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that I considered all of the evidence presented before coming to my decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. The appellant was seeking a reduction in the rateable value (RV) attributed to 10 Clifford Street, London W1S 2LJ (the "subject property") which had been entered into the 2017 rating list as 'Showroom and premises' with an RV of £362,500 effective from 1 April 2017.

4. The appellant had submitted a proposal to the Valuation Officer on the grounds that the entry shown in the rating list should be reduced by 20% from 1 August 2018 to 20 April 2020 to reflect the disruption caused by ongoing redevelopment/refurbishment works at 17-20 New Bond Street. If successful this would reduce the RV for this period to £291,000. The Valuation Officer determined that no allowance for the works was justified and the rating list was not amended.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was made to this Tribunal on grounds that the valuation for the subject property was not reasonable from 1 August 2018 to 20 April 2020.

6. Both parties' representatives stated that they were appearing in a dual role of advocate and expert witness. Ms Toor declared that she was representing the appellant on an incentivised fee basis and she acknowledged that when presenting evidence as an expert witness, she understood and accepted that her duty was to the Tribunal regardless of whether or not the evidence supported the appellant's case.

7. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 253 (LC), I accepted the expert witness evidence on this basis as the appeal was not complex and to do otherwise would have been contrary to regulation 3 (Discharge of VTE functions - general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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. It was therefore appropriate for me to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before me.

9. For the purpose of this appeal, the material day was 14 February 2019.

Senior Member authorised to sit alone

10. Paragraph 10 of the Tribunal's business arrangements allows a Senior Member to consider an appeal alone where a member gives notice that he/she becomes unavailable within one working day of the commencement of the hearing.

> ***Hearings Where a Member is Unable to Sit***
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> *"Where a panel member is allocated to a hearing and unable to sit for any reason or fails to appear, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where a member gives notice of unavailability within one working day of the commencement of the hearing, to avoid postponing the hearing. In all other cases the hearing must be postponed unless the President directs otherwise."*

11. My fellow panel member had provided notice within one working day of the hearing that he was unable to sit and consider this appeal. I was, in view of paragraph 10 above, satisfied that I was able to sit and consider this appeal alone.

Correction of the Appellant name

12. At the commencement of the hearing, the Clerk to the Tribunal invited me to correct the name of the appellant in this appeal. The Clerk explained that the appeal had, upon registration with the Tribunal, been incorrectly recorded as having been brought by Ms Sarah Wong in her personal capacity. However, Ms Wong was a director of the appellant company, Eskenazi Limited.

13. Neither party had any objection to this correction and I was satisfied that there was no prejudice to either party in doing so.

14. Pursuant to Regulation 11(1)(a) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, I formally directed that Eskenazi Limited be substituted as the appellant in this appeal.

Issue

15. The appellant had sought a reduction of 20% in respect of the RV ascribed to the subject property to reflect an allowance for the disturbance caused by redevelopment / refurbishment works that had taken place at 17-20 New Bond Street from 1 August 2018 to 20 April 2020. I had to determine, from the evidence and submissions of the parties, if such a reduction was reasonable.

Decision and reasons

16. The subject property was spread over five floors (from a basement to the fourth floor). It was recorded as being 666.49m^2 in size, split between 107.7m^2 for the basement, 116.73m^2 for the ground floor, 109.6m^2 for the first floor, 117.96m^2 for the second floor, 113.3m^2 for the third floor and 101.2m^2 for the fourth floor. These areas were not in dispute. The appellant was the freehold owner of the subject property which it occupied for the purposes of displaying and retailing what had been referred to as 'fine art and priceless collectables'.

17. Ms Toor submitted that the subject property shared a party wall with 17-20 New Bond Street which had undergone significant refurbishment and improvement works causing significant nuisance due to noise and vibration. The works included external alterations to the ground and first floor façade which fronted onto Clifton Street and new Bond Street, the installation of a rear roof extension at second floor level to enlarge the shop and the replacement of plant on the second, third and sixth floors. Furthermore, hoardings had enveloped the ground floor of 17-20 New Bond Street which had impaired visibility of the subject property.

18. Whilst it appeared that 17-20 New Bond Street had undergone a significant scheme of works (as evidenced by the fact it was removed from the rating list from August 2018 to October 2019), I was not presented with sufficient evidence to show the degree or intensity of those works at the material day to justify and support the 20% allowance which had been sought.

19. Ms Toor argued that the subject property shared a party wall with 17-20 New Bond Street which exacerbated the level of noise and vibration experienced during the ongoing works. However, Mr Gokensel rebutted this argument by stating that the exposed party wall extended to approximately four metres with the remainder shielded by 11-12 Clifford Street (located between 17-20 New Bond Street and the subject property) as well as stairwells and lift shafts that were contained within the subject property and 17-20 New Bond Street themselves. This was not rebutted by Ms Toor. I therefore placed little weight upon this argument.

20. I considered the photographs from the appellant which, although not date stamped, were accepted as being taken when stated. The photographs from August 2018 appeared to show the installation/repair of a lamp post on Clifford Street. It was accepted by the parties that this did not relate to the works at 17-20 New Bond Street and were, in fact, part of a different scheme of works. The photograph from January 2019 and one from September 2019 showed the extent of the non-illuminated hoarding around New Bond Street and Clifford Street. However, I was not satisfied that the portion of the hoarding in Clifford Street had significantly impaired the visibility of the subject dwelling. The remaining two photographs from September 2019 showed the presence of what appeared to be a crane on Clifford Street which I found to be too transient to be of any significance. For these reasons, the photographic

evidence submitted by the appellant did not persuade me that a reduction was warranted.

21. I also considered the photographic evidence which had been provided by Mr Gokensel (by email to the Tribunal and to Ms Toor on 22 September 2022). Whilst I was grateful to Ms Toor for accepting the photographs they did not provide me with any significant assistance.

22. The rear of the subject property was accessed via Coach and Horses Yard which, for security purposes, was used to facilitate the delivery and sale of what had been described as ‘fine art and priceless pieces of art’. Whilst I fully understood this, given the nature of the appellant’s business, I was not convinced that the hypothetical tenant coming fresh to the scene (who may not have the same use for the subject dwelling) would place a similar degree of importance to this rear access such that it would influence his rental bid by 20%.

23. As far as rear access was concerned, I considered the email from Mr Eskenazi to Westminster City Council on 31 October 2019 (and the three accompanying photographs) in which he complained about the blockages and his concern regarding the impediment caused to the fire escape of the subject property. Whilst I understood the apparent inconvenience which had been caused to the appellant’s business I was not presented with evidence to show that any other action had been taken by the appellant prior to the email of 31 October 2019 (given that the works had been ongoing since August 2018). It was also apparent that, as 17-20 New Bond Street returned to the 2017 rating list in October 2019, the email had been sent at a time when the works had ended (or were coming to an end) and the materials shown in the photographs were a result of the final clean up. I found that this evidence did not support the 20% reduction which had been sought by the appellant.

24. I also observed that the period for which the appellant had sought a 20% allowance (ending in April 2020) was not supported by the fact that 17-20 New Bond Street returned to the 2017 rating list in October 2019. If the works had been completed, thereby facilitating the return of 17-20 New Bond Street to the 2017 rating list, then any allowance (if allowed) could not go beyond October 2019.

25. In summary, the appellant had not discharged their legal or evidential burden of proof to show that an allowance of 20% should be made from 1 August 2018 to 20 April 2020 and I dismissed this appeal.

Date: 3 October 2022 **Appeal number:** CHG100315195

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.