Non-domestic rating; 2017 Rating List appeal; material change in circumstances; office and premises; correct level of end allowance warranted to reflect the adjacent building works; assessments of comparable properties; appeal allowed in part.

Re: 4th Floor Veritas House, 125 Finsbury Pavement, London, EC2A 1NQ

APPEAL NUMBER: CHG100327665

BETWEEN:	Luton EA Ltd	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mr C Taylor (Presiding Senior Member)
Mrs S Patel (Senior Member)

CLERK: Ms N Shepherd IRRV Hons

REMOTE HEARING 1: Tuesday 26 September 2023

APPEARANCES: Mr W Illingworth, of Savills on behalf of the Appellant as advocate and expert witness
Mr A Khan, on behalf of the Respondent

Summary of decision

1. Appeal allowed in part; the subject dwelling's assessment was reduced to £175,000 rateable value (RV) with effect from 1 May 2019.

Introduction

2. This appeal was made following a challenge against the 2017 rating list entry, on the basis that the assessment had been adversely affected by works

relating to 20 Ropemaker Street, 101-117 Finsbury Pavement and 10-12 Finsbury Street.

3. The subject dwelling, 4th Floor Veritas House, 125 Finsbury Pavement, London, EC2A 1NQ had been entered into the list with a RV of £204,000 from 1 May 2019. This assessment had an end allowance adjustment of 12.5% to account for the material change of circumstances (MCC) caused by the works relating to 20 Ropemaker Street, 101-117 Finsbury Pavement and 10-12 Finsbury Street.

4. A challenge had then been submitted by the appellant's representative, who did not consider the 12.5% allowance to be sufficient and instead proposed a 27.5% allowance be awarded to reflect the MCC. The Valuation Officer (VO) did not consider this proposal to be well founded and refused to alter the RV of the appeal hereditaments. Subsequently, an appeal was made by the appellant's representative to this Tribunal on 25 March 2022.

5. As Mr Illingworth appeared on behalf of the appellant as both advocate and expert witness and in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he confirmed that he was aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was instructed under a conditional fee arrangement or any other success related fee.

6. Mr Khan, for the VO, also appeared in a dual role as advocate and expert witness.

7. This hearing was held remotely via Microsoft Teams.

8. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

9. The issue in dispute was the RV of the subject hereditament, and specifically, the extent, if any, to which the assessment was affected by the adjacent building works. The appellant sought a reduction of 27.5%. The VO considered a 12.5% reduction to be fair and reasonable.

Evidence and submissions

10. The evidence comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

Decision and reasons

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

12. When valuing having regard to the material day, the valuation arrived to, has 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.

13. Therefore, having regard to the above, in reaching its decision, the panel considered, would the material change in circumstances affect the hypothetical tenant's 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.

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 the check. For this appeal, the material date was 23 October 2019.

15. Mr Illingworth submitted that although the VO had agreed to award an end allowance of 12.5% due to the disturbance resulting from the construction works next door, that this should be increased to 27.5% due to the scale of the project. The works concerned the demolition of the existing buildings and an erection of a 27-storey building with 3 basement levels. These works shared a party wall with the subject dwelling and had resulted in significant disruption to the premises including noise, dust vibration and a loss of amenity which would have negatively affected the rental value of the subject dwelling. During questions, Mr Illingworth submitted that the works commenced in May 2019 and were still ongoing, expected to be completed towards the beginning of 2024.

16. Mr Illingworth drew the panel's attention to the photographs taken of the site between October 2019 and May 2023 which demonstrated the level of work carried out. He made reference to a video clip from February 2023, that had been filmed on the road outside the building works and which showed the level of noise generated as a result at this date. Mr Illingworth also referred the panel to a list of end allowances throughout London given for the 2010 and 2017 lists which included allowances of between 15% and 25%.

17. The panel noted the photographs produced by the appellant showed that extensive construction work had been ongoing at the adjacent property. The panel considered that the video clip demonstrated that even in February 2023, following the completion of the majority of the construction works, that the disturbance caused by the noise was still substantial. The panel, when considering the comparable properties noted that an allowance of 15% or more had been allowed in relation to some of the properties where the constriction work was taking place further away and was on a smaller scale.

18. The panel paid particular attention to Basement and Ground Floors, 6 Great Sutton Street, which had a 15% allowance to reflect a party wall building works disturbance in relation to the redevelopment of ground floor level car park to a 7-storey building. The panel noted that the duration of the works here lasted two years, significantly less than those works adjacent to the subject dwelling. Furthermore, the building works were on a far smaller scale and there had been no demolition involved. The panel therefore found this to be good evidence in demonstrating that a higher allowance should be awarded in respect of the subject dwelling.

19. Mr Khan on behalf of the VO submitted that at the material date the majority of the demolition would have been completed at the subject dwelling and therefore what would have been the noisiest part of the works was over. He further submitted that the subject dwelling was a modern sealed building, with less than a third of it being a party wall to the building works. As such, the 12.5% was, in his opinion, sufficient to compensate for the disruption caused by the work.

20. The panel found that the photographs provided clearly demonstrated that all demolition had not occurred prior to the material date and that significant works then continued following this, with the development still not being currently completed.

21. Mr Khan also referred to comparable dwellings where allowances had been awarded, particularly the assessment of 5th Floor 36-38 Leadenhall Street London, where a 10% allowance from 1 April 2017 had been granted to reflect party wall works. He submitted that the works here were on a similar scale to the subject dwelling as they involved demolition and subsequent construction of a 42-storey mega tower. The panel had regard to this comparable and noted that as of the 1 April 2017 the demolition at this site and much of the construction had already taken place. Prior to this, in the 2010 list, an allowance of 22.5% had been awarded as the demolition and major structural works had not yet been completed. The panel also noted that whilst the works

here were of a large scale, the site of the works adjacent to the subject dwelling were on a larger site and lasted for a longer duration.

22. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that he had discharged that burden. The panel found that it had been provided with evidence to suggest that the 12.5% allowance was unreasonable.

23. The panel considered all the factors and had regard to the duration of the development, the scale of the development and the comparable assessments provided. The panel ultimately found that the disturbance created by the adjacent building works would have impacted the hypothetical landlord and tenant negotiations at the AVD. Having regard to all the evidence, whilst the panel was persuaded that an allowance higher than 12.5% was warranted, it considered the appellant's proposed reduction of 27.5% to be too high. The panel determined an allowance of 25% was reasonable with regards to the MCC. The appeal was therefore allowed in part, and the following assessment determined:

Floor	**Description**	**Area m^2**	**£/m^2**	**Value (£)**
Fourth	Office	583.87	400.00	£233,548
Sub-total				£233,548
Less 25% building works temporary allowance				£58,387
Total				£175,161
Say £175,000 Rateable Value with effect from 1 May 2019				

Order

24. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of 4th Floor Veritas House, 125 Finsbury Pavement, London, EC2A 1NQ to £175,000 within two weeks with from 1 May 2019.

Date: 24 October 2023

Appeal Number: CHG100327665

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.