THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; material change in circumstances; building works in locality; comparable properties; appeals dismissed.

RE: 5 Th Flr West,1 Knightsbridge, London SW1X 7LX
5 Th Flr East, 1 Knightsbridge, London SW1X 7LX
Right 1st Fl West, 1 Knightsbridge, London SW1X 7LX

APPEAL NUMBERS: CHG100344921, CHG100344877 & CHG100180358

BETWEEN: Man Capital LLP, Aralon Advisory Services Limited & RJI Capital (UK) Limited — Appellants

and

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Mrs A Fielder (presiding senior member)
Dr J Johnson (senior member)

CLERK: Mrs C McAvoy

REMOTE HEARING No.2 on 5 October 2022

APPEARANCES:
Mr S Carter of Altus Group on behalf of the appellant as both advocate and expert witness
Mr A Khan on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decisions

1. The appeals were dismissed; the panel made no change to the rateable values (RV) as it was not persuaded that, as at the material dates, the building works would have impacted the appeal properties to the extent to warrant an allowance.

Introduction

2. This hearing related to three 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 building works in the locality. The material change in circumstances in question is for a large development directly opposite the appeal properties (The Peninsula London, 1-5 Grosvenor Place SW1X 7HJ).

3. Challenges had been submitted by the appellants representative. An end adjustment of 10% was originally proposed to account for the material change of circumstances. This was revised and the appellants representative now proposes a 5% allowance on each assessment.

4. The appeal properties are all situated within a property which comprises office space arranged over eight floors. The properties are currently shown in the list at:

    - 5 Th Flr West,1 Knightsbridge, London SW1X 7LX - £340,000 RV
    - 5 Th Flr East, 1 Knightsbridge, London SW1X 7LX - £540,000 RV
    - Right 1st Fl West, 1 Knightsbridge, London SW1X 7LX - £580,000 RV

5. Mr Carter appeared on behalf of the appellants 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.

6. Within his written statement, Mr Carter 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.

7. 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).

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

9. Mr Khan also declared that he accepted and understood that when giving evidence as expert witness his overriding duty was to the Tribunal.

10. 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.

Issues

11. The issue concerned the RV of the appeal properties and, specifically, the extent, if any, to which their assessments were affected by nearby building works. The appellant sought an allowance of 5% for each assessment. The Valuation Officer considers the current rating list entries to be reasonable.

Evidence and submissions

12. 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 for the three appeals to be consolidated and for the evidence held for each appeal to be admissible.

13. A bundle of evidence was provided for each of these appeals, which, in summary, comprised of the reasons for the challenge to the appeal properties rating assessments, subsequent appeals and the challenge decisions. It also included the information exchanged between the parties during the challenge; comparable properties; location plans; photographs; expert witness report; and reference to caselaw and the definition of rateable value.

14. Late evidence was provided by Mr Carter in the form of settlements that were not available at the time of challenge. No objections were raised following the late submission and it was clarified in advance of the hearing that Mr Khan was content with this evidence being admitted. A photograph pack was also provided to the clerk in advance of the hearing. In accordance with the consolidate practice statement, photographs can be provided leading up to hearing to assist the panel, but it is expected that the parties agree that they are a true representation of the situation as at the material date. The photographs were added to evidence, but Mr Khan stated that he did have concerns that they did not demonstrate the situation as the material date but was content with raising this as part of his submission. Both parties agreed that any disagreements regarding the photographs could be discussed during the hearing.

15. At the hearing, the appellant’s representative sought a reduction of 5% as he considered that the appeal properties had been negatively affected by the building works. He provided an overview of this and referred to other assessments which had been awarded allowance for similar works. Based on the evidence brought, he proposed the following revised rateable values with effect from 4 April 2017:

- 5 Th Flr West,1 Knightsbridge, London SW1X 7LX - £322,500 RV
- 5 Th Flr East, 1 Knightsbridge, London SW1X 7LX - £515,000 RV
- Right 1st Fl West, 1 Knightsbridge, London SW1X 7LX - £550,000 RV

16. The VO submitted that by the material dates the significant part of construction was complete. The demolition at 1-5 Grosvenor place happened in September 2017. He submitted that based on the evidence put to the Valuation Officer, an allowance was not warranted. He sought dismissal of the appeals.

Decision and reasons

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

18. 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.

19. 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.

20. 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 these appeals the material dates are 4 December 2019 for Right 1st Fl West, 1 Knightsbridge, London SW1X 7LX

and 18 February 2020 for 5 Th Flr West and 5 Th Flr East, 1 Knightsbridge, London SW1X 7LX.

21. The panel considered the intensity of the building works. Mr Carter had provided a description of the development by way of an extract from the Westminster Planning Application. This stated the following:

> '15/06448/FULL | Demolition of all existing buildings and comprehensive redevelopment to provide a mixed-use development accommodated in a single building arranged around a central courtyard of lower ground, ground, eight upper floors, rooftop plant and basements. Use of new building for hotel comprising up to 190 guest rooms, restaurants/bars, ballroom, function rooms, hotel leisure/spa facilities, ancillary and back of house spaces (Class C1), 24-28 residential dwellings including ancillary residential leisure and amenity facilities (Class C3) and retail (Class A1), car and cycle parking with access from Grosvenor Crescent and Halkin Street, refuse, delivery and circulation spaces within basements and other associated works. (Site includes Yorkshire House, Grosvenor Crescent, 3, 4, 5 and 8 Pembroke Close and 12 Halkin Street London SW1)'

22. The effective date being sought was the 4 April 2017 and it was submitted that the works would continue through the duration of the 2017 rating list.

23. Mr Carter provided comparable properties in support of his case. The panel had less regard to those which related to the 2010 list. At the hearing, Mr Carter specifically referred to the assessments of 10 Crown Place, EC2A 4FT; 62/76 Park Street, London SE1 9DZ and 2nd Flr 25 Victoria Street, London SW1E 0EX which had a 7.5% allowance agreed and 4th Flr 25 Victoria Street, London SW1E 0EX which had a 5% allowance agreed.

24. He considered the Victoria Street assessments to be most comparable as it was submitted that this was a similar scheme of works, the building was opposite the construction and the distance was 15.7m. The allowance was agreed when the demolition works had been completed. It was a more modern and a sealed building in comparison to the appeal property.

25. Mr Carter submitted that there was still well over a year of works left to complete and therefore there is still a significant amount of disturbance which would impact the hypothetical tenants bid. The comparable assessments referred to helps to quantify a reduction and, in his opinion, the 5% allowance which is adjusted to reflect that the works were further along to those assessments presented in support, is justified and reasonable.

26. Mr Khan argued that the demolition of 1-5 Grosvenor Place had taken place in September 2017, and at the material dates, significant part of the construction had been complete. In his opinion, the hypothetical tenant and landlord negotiation would have considered that the works were coming to an end. He referred to the photographs provided which he considered supported that the in May 2019 the structural build was going up. He did not consider the

assessments presented by Mr Carter to be comparable as they were in a different locality and the material dates for those assessments were closer to the demolition works so there were greater disturbances.

27. Most of the photographs which had been presented to the panel were showing the situation on dates much earlier than the material dates, at a time when the works would likely have caused greater disturbances. Whilst Mr Carter had provided that the works were still causing a significant amount of disturbance as at the material dates, there was no compelling evidence provided to support this or details of the remaining works for the ongoing year. The photographs showing the ongoing works dated 13 January 2020 and 22 March 2021 demonstrated that there appeared to be minimal external works. Glass windows were being fitted to the new structure, so without evidence to the contrary, the panel was mindful that any ongoing works would be of a lesser intensity to avoid damage to the glass. The building was located approximately 17m from the construction and whilst the panel accepted that the appeal properties building was unsealed, it was not persuaded that as at the material date when the demolition and significant structure work had completed, that this would impact the appeal properties significantly.

28. It also considered that the photographs demonstrated that traffic was flowing freely and therefore found that there was no strong evidence to support that the appeal properties were affected by access or traffic issues.

29. The comparable properties provided were in a different locality and not for the same material change of circumstances, although the panel recognised that the allowances agreed were for similar works. However, the panel considered Mr Khan’s comments that the material dates for these settlements were much closer to the demolition phase so there was still significant construction work. As such, the panel found it could not attach great weight to the evidence to support a reduction for this locality where the material dates were over two years post the demolition.

30. Ultimately, the panel found that there was a lack of evidence to provide it with a good overview of the situation and impact to the appeal properties as at the material dates. There were no photographs provided on or close to the material dates and no compelling evidence to support how the appeal properties were adversely affected to the extent that it would result in a reduced rental bid.

31. For the reasons stated, based on the evidence before it, the panel found that a 5% reduction was not warranted. Having regard to the property’s location and given that the major construction works were near completion as at the material date, it was not persuaded that the hypothetical landlord and tenants, fresh to the scene, would negotiate a reduction.

32. In view of the foregoing, the panel dismissed the appeals.

Date: 20 October 2022

Appeal numbers: CHG100344921, CHG100344877 & CHG100180358

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.