THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeals; consolidated hearing of the appeals; offices and premises; appeals against the Valuation Officer's Notices which altered the appeal properties' assessments effective from 1 April 2017; correct level of end allowance warranted to reflect the adjacent building works; assessments of comparable properties; appeals allowed in part as the evidence showed that the existing valuations were unreasonable.

RE: 1st Floor 53-54 St Johns Square, London EC1V 4JL (Appeal 1)
2nd Floor 53-54 St Johns Square, London EC1V 4JL (Appeal 2)
3rd Floor 53-54 St Johns Square, London EC1V 4JL (Appeal 3)

APPEAL NUMBERS: CHG100530354 (Appeal 1), CHG100530359 (Appeal 2) and CHG100187956 (Appeal 3)

BETWEEN: Grimshaw Architects LLP (Appeals 1 and 2)
Frontera London Limited (Appeal 3) Appellants

and

Mr A Ricketts (Valuation Officer) Respondent

BEFORE: Mr W J Read (Senior Member) and Mrs A E Fielder

CLERK: Mrs R James

REMOTE HEARING 2: Friday 7 October 2022

APPEARANCES: Mr S Carter of Altus Group (on behalf of the Appellants)
Mr S Dodds (Respondent's representative)

Summary of decision

1. Appeals allowed in part; the appeal properties' assessments were reduced as follows:

   i) 1st Floor 53-54 St Johns Square, London EC1V 4JL - £45,250 Rateable Value, effective from 1 April 2017.
   ii) 2nd Floor 53-54 St Johns Square, London EC1V 4JL - £45,250 Rateable Value, effective from 1 April 2017.

iii) 3rd Floor 53-54 St Johns Square, London EC1V 4JL - £47,000 Rateable Value, effective from 1 April 2017.

Introduction

2. The panel agreed that the hearing of these three appeals should be consolidated.

3. These appeals have been brought in respect of the following:

    i) 1st Floor 53-54 St Johns Square, London EC1V 4JL; office and premises - £50,500 Rateable Value, effective from 1 April 2017.

    ii) 2nd Floor 53-54 St Johns Square, London EC1V 4JL; office and premises - £50,500 Rateable Value, effective from 1 April 2017.

    iii) 3rd Floor 53-54 St Johns Square, London EC1V 4JL; office and premises - £52,500 Rateable Value, effective from 1 April 2017.

4. In respect of (Appeals 1 and 2) the appellant's Challenge to the Valuation Officer (VO) was made on 17 December 2020. The appeals to this Tribunal were made on 2 March 2022, following the VO's Decision Notices of 5 and 12 November 2021 (respectively).

5. In respect of (Appeal 3) the appellant's Challenge to the VO was made on 15 April 2020. The appeal to this Tribunal was made on 20 January 2021, following the VO's Decision Notice of 20 September 2021.

6. The checks had been submitted seeking allowances to reflect the disturbance caused from the redevelopment of a disused site at 96-100 Clerkenwell Road, which was a former petrol filling station. The redevelopment works shared a party wall with 53-54 St Johns Square.

7. The checks were partially agreed when allowances were applied to reflect the temporary disturbance from the adjacent building works. The allowances granted were 4.75% in respect of (Appeals 1 and 2) and 5% in respect of (Appeal 3).

8. The appeal properties were offices and premises located on the 1st, 2nd and 3rd Floors of 53-54 St Johns Square off Clerkenwell Road, in proximity to Farringdon Station. 53-54 St Johns Square was a mixed-use building with accommodation arranged over seven floors. The property offered retail accommodation on the ground and basement levels with office space on the upper floors.

9. Mr Carter was appearing on behalf of the appellants as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

10. Mr Carter explained that he was representing the appellants in this appeal on a conditional fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

11. The panel have accepted this expert witness evidence on the above basis as the appeals are not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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.

12. 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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Preliminary Issue

13. On 12 September 2022, Altus Group forwarded the Tribunal office a written application for consideration of additional evidence. On 23 September 2022, that request was forwarded to the Valuation Office Agency (VOA). The clerk invited comments in relation to the application be made no later than 5 pm on Friday 30 September 2022. As the actual valuer dealing with the appeals at the VOA could not be established, the request was forwarded to the generic VOA email address. No response was received. On 4 October 2022, Mr Dodds emailed the clerk to confirm that he would be representing the VOA in respect of these three appeals. Following an email exchange between the parties, it was jointly requested that the application for consideration of additional evidence be considered by the panel as a preliminary issue.

14. At the hearing, Mr Dodds objected to the inclusion of the additional evidence as he was unsure on its relevance to the case.

15. Mr Carter highlighted that the additional evidence was in relation to 5th Floor 48 Dover Street, London W15 4NX. The settlement on this appeal had been made on 18 August 2022, which was after the appeal had been submitted. As such, he could not have possibly known about it at the time he had lodged the appeal.

16. After taking a short adjournment to consider the matter, the panel decided to allow the additional evidence. It was accepted that the evidence had not been available at the time the appeal was lodged. The panel would consider the additional evidence and its relevance to the case and place due weight on it.

17. Mr Carter provided the panel with a bundle containing photographs of the building works in question and of those in respect of the appeal at 5th Floor 48 Dover Street. As Mr Dodds raised no objection to the bundle of photographs, the panel allowed them to be included in evidence.

Issues

18. There were two issues in dispute:

    i) what was the correct material date for the appeals?
    ii) whether or not the existing allowances were sufficient to reflect the disturbance from the adjacent building works.

Evidence and submissions

19. The panel had been provided with a bundle of evidence, which comprised the challenge submission, VO Decision notice and the representative's appeal submission.

20. Mr Carter explained that the VO had reduced the appeal properties' original compiled list assessments following the check to incorporate allowances of 4.75% (Appeals 1 and 2) and 5% (Appeal 3) to reflect the temporary disturbance caused by the adjacent buildings works. He had appealed the VO's decision notices that reduced all three assessments back to 1 April 2017. As such, he considered that the correct material date in these appeals was 1 April 2017.

21. Having regard to the evidence he had presented, Mr Carter contended that the current allowances applied were insufficient and he sought an additional 15% for all three appeal properties, which resulted in his proposed assessments of:

    i) 1st Floor 53-54 St Johns Square - £42,500 Rateable Value, effective from 1 April 2017 (Appeal 1)
    ii) 2nd Floor 53-54 St Johns Square - £42,500 Rateable Value, effective from 1 April 2017 (Appeal 2)
    iii) 3rd Floor 53-54 St Johns Square - £44,250 Rateable Value, effective from 1 April 2017 (Appeal 3)

22. Mr Dodds contended that the appeals before the panel were in relation to a material change of circumstance. As such, the correct material date in these appeals was the date of the checks. In the case of (Appeals 1 and 2) this was 8 October 2020 and in the case of (Appeal 3) this was 15 January 2020. As at those dates, the works were all but complete. It was his contention that as at the material dates (8 October 2020 and 15 January 2020, respectively) the hypothetical landlord would not agree reduced rental bids to take account of the redevelopment works as the works had all but complete.

23. Mr Dodds contended even if one considered the material date of 1 April 2017 as suggested by Mr Carter, the current allowances applied were sufficient after having regard to other allowances applied in relation to the same building works. Accordingly, Mr Dodds sought dismissal of the appeals.

Decision and reasons

24. The appeal hereditaments must be valued for the purpose of non-domestic rating on the basis of the rents at which they might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015; the Antecedent Valuation Date (AVD).

25. The first issue for the panel to consider was the correct material date to apply when considering the three appeals before it. Mr Carter had contended that correct material date was 1 April 2017. In contrast, Mr Dodds had contended that as the matter in dispute was a material change of circumstances, the correct material dates were the date of the checks, namely 8 October 2020 (Appeals 1 and 2) and 15 January 2020 (Appeal 3).

26. The panel noted that the 1st and 2nd Floor had originally been entered in the 2017 Rating List at £53,000 Rateable Value, effective from 1 April 2017 and the 3rd Floor had an original entry

of £55,500 Rateable Value, effective from 1 April 2017. However, following the initial checks, VO Notices (VON) were issued in December 2020 (Appeals 1 and 2) and March 2020 (Appeal 3) to reduce the appeal properties' assessments to reflect a temporary disturbance allowance in relation to the adjacent building works. The 1st and 2nd Floor was granted a 4.75% allowance and the 3rd Floor a 5% allowance. As the building works had commenced prior to the commencement of the 2017 Rating List, the effective date of the alterations was from 1 April 2017.

27. The panel acknowledged that the appeals had been lodged against the alteration to the rating list made by the VO. Therefore, on this issue, the panel was in agreement with Mr Carter that the appeals had been against the VON's that had reduced the appeal properties' assessments with effect from 1 April 2017. Accordingly, the panel concluded that in the appeals before it, both the effective date and the material date was 1 April 2017.

28. The panel then went onto consider the substantive issue and determine whether the current allowances applied to the appeal properties' assessments to reflect the adjacent building works were sufficient. Mr Dodds contended that the current allowances were sufficient. In contrast, Mr Carter sought an additional 15% end allowance be applied to all three assessments; (this equated to total allowances of 19.75% and 20%, respectively).

29. The building works in question related to the development at 96-100 Clerkenwell Road. Those works were specified on the planning application as the demolition of all existing structures onsite (forecourt shop, canopy and pumps) and the erection of an eight storey building plus basement levels comprising of a 212 bedroom hotel, 5 self-contained residential units (facing onto and entrances onto St John's Square, the creation of 93 m^2 of office/workshop space, 410 m^2 of flexible commercial floorspace, plus a new pedestrian access from Clerkenwell Road to St John's Square, cycle storage provision, landscaping and associated alterations. In accordance with the planning application, works commenced on 6 February 2017 and were due to complete by 6 June 2019. Mr Carter pointed out that new building '100 Clerkenwell Road' was entered into the Rating List on 6 August 2020.

30. Mr Carter contended that the rental value of the appeal properties had been negatively affected by the redevelopment works. The works went up to the party-wall of 53-54 St Johns Square. Disturbance was experienced in the form of vibrations from ongoing construction works, associated noise, air and visual pollution. There had been heavy machinery on site such as large cranes.

31. In support of a greater allowance, Mr Carter referred the panel to a settlement reached on 102-108 Clerkenwell Road in relation to the same set of building works when an allowance of 7.5% had been agreed. He also provided schedules that detailed allowances applied to other offices and premises throughout London to reflect nearby/adjacent building works.

32. The panel placed close regard to the photographs provided of the building works in question. In doing so the panel acknowledged that the works had been severe and had carried on for over two years in duration. Having regard to those works, the panel concluded that the severity and duration of the works did warrant a reduction. The panel appreciated that the appeal properties would have suffered from noise, dust, vibration and visual disturbance.

33. At the Check stage, the VO had applied allowances to the appeal properties' assessments. In acknowledging that the development works had caused disruption to the appeal properties, the VO had started with a 10% allowance. However, that allowance had been reduced to 4.75% (Appeals 1 and 2) and 5% (Appeal 3) after having regard to the location of

the appeal properties within the building being shielded by the stairwell and toilets. Whilst Mr Dodds contended that the current assessments were fair and reasonable, Mr Carter sought an additional 15% be applied to all three assessments.

34. Having regard to all the evidence presented, the panel determined that that the current temporary allowances of 4.75% and 5%, respectively were unreasonable. However, the panel was also not persuaded that further allowances of 15% were warranted on top of the allowances already applied.

35. The panel noted that a larger allowance of 7.5% had been awarded to 102-108 Clerkenwell Road. Like 53-54 St Johns Square, 102-108 shared a party wall with 96-100 Clerkenwell Road, the property to which was undergoing the building works. The panel contended that the appeal properties would have suffered disturbances from the redevelopment works to the same or even a greater extent to that of 102-108 Clerkenwell Road.

36. The panel also placed weight on the temporary allowance of 14.2% applied to the office and premises at 4th Floor 1 America Square, London and the 15% allowance applied to 5th Floor 48 Dover Street.

37. Due to the long duration of the development works, the panel agreed with Mr Dodds that the severity of the works would not have remained at the most severe stage for the whole duration. With the level of disturbance fluctuating over the duration. However, the panel decided that a flat allowance should be for the whole duration.

38. Some of the comparable assessments presented had been granted a higher temporary allowance of 20%. However, the panel noted that the rent in respect of the 3rd Floor (Appeal 3) had a start date of 4 April 2017. At this date the development works would have been well in progress and the rent achieved of £56,140 per annum was in excess of the rateable value. No evidence had been presented to suggest that a rent reduction had been discussed.

39. The panel concluded that a total allowance of 15% from the original compiled list assessment was reasonable. The panel felt that 15% more fairly and accurately reflected the level of disruption and nuisance experienced due to the severity and duration of the works. The panel noted that 15% was also in line with the allowances applied in relation to similar works in the London area.

40. Accordingly, the appeals were allowed in part and the following assessments were determined:

1st Floor 53-54 St Johns Square, London EC1V 4JL (Appeal 1)

Floor	Description	Area m^2	£/m^2	Value (£)
First	Office	148.90	£358.31	£53,352
Sub-total				£53,352
Less 15% building works temporary allowance				£8,003
Total				£45,349
Say £45,250 Rateable Value, with effect from 1 April 2017				

2nd Floor 53-54 St Johns Square, London EC1V 4JL (Appeal 2)

Floor	Description	Area m²	£/m²	Value (£)
Second	Office	148.90	£358.31	£53,352
Sub-total				£53,352
Less 15% building works temporary allowance				£8,003
Total				£45,349
Say £45,250 Rateable Value, with effect from 1 April 2017				

3rd Floor 53-54 St Johns Square, London EC1V 4JL (Appeal 3)

Floor	Description	Area m²	£/m²	Value (£)
Third	Office	162.8	£341.25	£55,556
Sub-total				£55,556
Less 15% building works temporary allowance				£8,333
Total				£47,223
Say £47,000 Rateable Value, with effect from 1 April 2017				

Order

41. Under the provisions of regulation 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 amend the appeal properties' entries as follows:

   i) 1st Floor 53-54 St Johns Square, London EC1V 4JL - £45,250 Rateable Value, with effect from 1 April 2017
   ii) 2nd Floor 53-54 St Johns Square, London EC1V 4JL - £45,250 Rateable Value, with effect from 1 April 2017
   iii) 3rd Floor 53-54 St Johns Square, London EC1V 4JL - £47,000 Rateable Value, with effect from 1 April 2017

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

Refund of fees

43. A refund of the paid fees 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.

Rights 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.

Date: 24 October 2022
Appeal Numbers: CHG100530354, CHG100530359 and CHG100187956