THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; material change of circumstance; Offices and premises; whether there should be an end allowance following disturbance created by nearby works; appeals allowed in part.

RE: 3 Prince Albert Road, London NW1 7SN
Lwr Gd & Fl 4, Prince Albert Road, London NW1 7SN

APPEAL NUMBERS: CHG100574788 and CHG100577373

BETWEEN: Scodie Deyong LLP Appellant

and

The Valuation Officer Respondent

PANEL: Mr S Kandola (Chairman)
Mrs V Hollender

CLERK: Mr A Johnson Tech IRRV

HEARING: 10 October 2022

APPEARANCES: Mr S Carter of Altus Group (representing the Appellant)
Mr C Cates (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. These appeals were allowed in part. The Panel was satisfied that allowances of 5% should be made for the period 1 January 2020 to 31 July 2021. These allowances result in the following rateable values (RV):

3 Prince Albert Road, London NW1 7SN:	£90,500
Lwr Gd & Gd Fl, 4 Prince Albert Road, London NW1 7SN:	£44,000

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 such a manner. The parties can be assured that all of the evidence presented was fully considered by the panel before coming to its 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 allowances in the RV's attributed to 3 Prince Albert Road, London NW1 7SN and Lwr Gd & Fl 4, Prince Albert Road, London NW1 7SN (the 'subject properties'), both of which had been entered into the 2017 rating list as 'Offices and premises' with respective RV's of £95,000 and £46,250 effective from 1 April 2017.

4. The appellant had submitted proposals to the Valuation Officer on the grounds that each entry shown in the rating list should be temporarily reduced by 7.5% from 1 January 2020 to 31 July 2021 to reflect a material change of circumstance (MCC) due to the disruption caused by development works relating to the High Speed Two project (HS2) directly opposite the subject properties. If successful, these allowances would temporarily reduce the RV's to £88,000 and £42,750 respectively. The Valuation Officer had determined that the proposals were not well founded and so 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, appeals were made to this Tribunal on the grounds that the valuations for the subject properties were not reasonable from 1 January 2020 until August 2021.

6. The two appeals concerned parts of adjacent office buildings and, as they raised common arguments, they were listed for a hearing together. Prior to the hearing the Clerk to the Tribunal obtained confirmation (via email) from both parties that they were content for the appeals to be consolidated into one hearing and heard together. Therefore, the panel consolidated the hearing of the two appeals into one in accordance with its general power under regulation 6 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. The panel was also satisfied that all the evidence before it was admissible under Regulation 17A(1)(b) of those Regulations.

7. Mr Carter declared that he was representing the appellant in a dual role of advocate and expert witness. Mr Carter also declared that he was representing the appellant on a conditional fee basis and accepted that, when presenting evidence as an expert witness, his duty was to the Tribunal regardless of whether or not the evidence supported the appellant's case.

8. Mr Cates declared that he was representing the respondent as advocate but stated that his experience allowed him to provide evidence as an expert witness on general rating matters.

9. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 253 (LC), the panel 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).

10. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issues before it.

11. At the commencement of the hearing it became apparent that Mr Cates was experiencing connection issues which prevented him from using his camera. However, Mr Cates was willing and able to participate using his audio link and he confirmed that he was prepared for the hearing to proceed on this basis. No objections were raised by Mr Carter and the panel was content to proceed accordingly.

Preliminary matters

<u>Preliminary matter one: alleged failure on the part of the Valuation Officer to provide information within the Decision Notices</u>

12. Within the appeal documents the appellant had alleged that the Valuation Officer was in contravention of regulations 13(3)(b) and 13(3)(c) of the Non-Domestic Rating Regulations (Alteration of Lists and Appeals) (England) Regulations 2017. However, prior to the hearing Mr Carter had contacted the Clerk to the Tribunal by email to confirm that he wished to withdraw this matter.

<u>Preliminary matter two: application for the introduction of new evidence from Mr Carter</u>

13. On 15 September 2022 Mr Carter submitted a written application to the Tribunal for the inclusion of further evidence. This new evidence took the form of a table and supporting photographs which showed other allowances which had been conceded by the Valuation Officer between 24 December 2021 and 10 August 2022. Mr Carter explained that they were not known at the time the Valuation Officer issued his decision notices in respect of the subject properties on 29 November 2021.

14. Mr Cates had emailed the Clerk to the Tribunal to register his objection to Mr Carter's application and he also voiced his objection during the hearing. In summary, Mr Cates submitted that the Check Challenge and Appeal regulations allows for the inclusion of late (additional) evidence where both parties agree and that it was not open for the appellant to submit an appeal and to then assemble evidence to support his case. Mr Cates asked that the recent Valuation Tribunal appeal relating to *Hadcliffe Properties Limited and the Valuation Officer, 3rd Flr, 37 Upper Brook Street, London, W1K 7QL [CHG100113084]* issued on 17

August 2022 to be taken into consideration and followed. Mr Cates also questioned the relevance of the additional evidence given that allowances shown merely confirm that MCC appeals are conceded by the Valuation Officer. Mr Cates added that the examples provided by Mr Carter were not in the same part of London and did not support his case.

15. The panel duly retired to consider the application from Mr Carter.

16. In accordance with the Tribunal's Standard Directions relating to an application to include new evidence Mr Carter's application should have been made no later than four weeks prior to the date of the hearing (that being 12 September 2022). Therefore, it was three days late. As there had been a failure to comply with the requirements of the Standard Directions relating to further evidence the panel had regard to the Upper Tribunal case of *Simpsons Malt & Others v Craig Jones (VO) and Others [2017] UKUT 0460* which provided guidance as to how late evidence should be considered. This was a three stage test as outlined in Denton v TH White Limited [2014] WLR 3926, commonly referred to as the 'Denton Test'. Broadly, stage one requires the panel to decide if the breach is significant or serious, stage two requires the panel to consider how the failure had occurred and stage three requires the panel to consider the overarching requirement for litigation to be conducted efficiently and accurately. As far as stage one and stage two were concerned, the panel considered the breach to be significant and without any satisfactory explanation (although the apology from Mr Carter was noted). However, the panel considered it to be in the overriding interests of justice to accept the late evidence.

17. In reaching this decision, the panel respectfully rejected Mr Cates' allegation that the appellant had submitted the appeals and subsequently collated evidence in support of them. To paraphrase regulation 17A(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, new evidence may be admitted in a rating appeal where that evidence is (i) provided by a party to the appeal, (ii) relates to a ground on which the proposal was made, and (iii) was not known or could not reasonably have been acquired before the proposal was determined by the Valuation Officer. In this appeal, all three conditions were found to have been met; the additional evidence had been provided by Mr Carter (on behalf of the appellant), it related to a ground on which the appeal had been made (i.e. other allowances for MCC's) and the evidence could not have been known or reasonably acquired given that the allowances were made after the proposal had been determined.

18. The panel also considered the previous Valuation Tribunal case of *Hadcliffe Properties* which Mr Cates had asked the panel to follow. Whilst the panel was not bound by this decision it found that, in any case, the circumstances in *Hadcliffe* differed from those in this appeal. In brief summary of the pertinent points the panel, in *Hadcliffe*, concluded that it was not open to the appellant to submit additional rental evidence as part of the Challenge process which did not address any of the information provided within the Valuation Officer's decision notice and was, in any case, inadmissible because they were known to the proposer or were reasonably acquirable before the proposal was made. In this appeal the additional evidence did not relate to known or reasonably acquired

evidence (rental or otherwise) prior to the submission of the proposals. Rather, it actually related to MCC decisions which could not have been known to the proposer at the time the proposal was submitted because they had not been conceded at that time.

19. The panel, when deciding to include the additional evidence, was satisfied that Mr Cates had not been unduly prejudiced given that he had included a rebuttal of the additional evidence within his email of objection.

Preliminary matter three: Submission of photographs from Mr Cates & Mr Carter

20. On 6 October 2022 Mr Cates submitted external photographs of the subject properties and a plan of the locality. Mr Carter confirmed that he was content for these to be included in this appeal.

21. On 7 October 2020 Mr Carter submitted photographs relating to the allowances which were the subject of his late evidence application. Mr Cates confirmed that, subject to Mr Carters' application for his late evidence being successful, he was content for them to be included in this appeal.

22. In view of the parties agreement regarding the photographs and plan from Mr Cates and the panel's decision regarding Mr Carter's application for the inclusion of late evidence, they were included in this appeal.

Issues

23. The appellant had sought allowances of 7.5% in respect of the RV ascribed to the subject properties to reflect disturbance caused by development works in respect of HS2 directly opposite the subject properties. The effective period was 1 January 2020 to 31 July 2021. The panel had to determine, from the evidence and submissions of the parties, if such allowances were reasonable.

24. The material days were 2 November 2020 (for 3 Prince Albert Road) and 30 October 2020 (for Lwr Gd and Gd Fl, 4 Prince Albert Road). The parties were in agreement that the difference of three days was not materially relevant.

Summary of evidence and submissions

25. Mr Carter submitted that the subject properties were built circa 1775 and were occupied as office accommodation. As older buildings they had the disadvantage of unsealed single glazed windows and a lack of insulation. Mr Carter added that there was no air conditioning and so the occupants of the building had to open the windows in order to provide ventilation. Whilst the subject properties could be modernised (assuming the relevant permissions were granted given they are located within a conservation area) it was necessary to consider them vacant to let in their current state.

26. Mr Carter further submitted that a scheme of works had commenced opposite the subject properties in January 2020 in connection with the HS2 project. This had caused a significant amount of disturbance to the appellant in the form of noise,

dust, vibration and general inconvenience. The scheme of works had also caused road closures and diversions immediately in front of the subject dwellings, thereby exacerbating the negative impact. A notice received by the appellant was produced to show that the works were expected to conclude in April 2021 but, in fact, they overran and did not finish until August 2021. Photographic evidence was also produced to show the nature and extent of the works in October 2020 and January 2021.

27. In support of his submissions, Mr Carter had provided the panel with information relating to several other allowances which had been conceded by the Valuation Officer for various works in London. In particular, Mr Carter drew the panel's attention to 2nd Floor 163-170 Tottenham Court Road, 3rd Floor 163-170 Tottenham Court Road (were 5% allowances for public realm works had been conceded) and 7th Floor Swan House, 17-19 Stratford Place (where a 5% allowance for works relating to the London Crossrail project had been conceded).

28. In summary, it was Mr Carter's opinion that the severity of the works opposite the subject properties would have influenced the rental bid of the hypothetical tenant to such an extent that an allowance of 7.5% in respect of their RV's was justified. This, he said, was supported by the examples in Tottenham Court Road and Stratford Place where allowances of 5% had been made for what he considered to be less invasive works. In contrast, Mr Cates argued that the examples of conceded allowances put forward by Mr Carter were as a consequence of their own specific circumstances adding that, in his opinion, the works opposite the subject properties were not more invasive as Mr Carter had claimed and did not justify allowances of 7.5%.

29. Mr Cates argued that the appellant's 2014 lease (with a rent of £176,500 per annum) included a five year rent review clause and no allowance appeared to have been made in 2019 given the awareness of the forthcoming works.

30. Mr Cates referred the panel to photographs of Prince Albert Road which included the subject properties and the works. One photograph (taken in 2016) showed the circumstances before the works commenced, the second photograph (taken in March 2018) showed that the site had been fenced off ready for the commencement of the works and the third photograph (taken in August 2021) showed the end of the works. An additional photograph from Mr Cates showed the portacabins on the site.

Decisions and reasons

31. In accordance with the rating hypothesis, the panel must assume the existence of a hypothetical tenant fresh to the scene who is willing to conduct negotiations for a tenancy.

32. The panel found that it could not place any significant weight upon the argument that knowledge of the planned works would have impacted upon the appellant's rental bid at the rent review stage in 2019. Whilst the appellant was likely to have been aware of the works there could not have been a full understanding of the impact until they had actually started and had been endured for a period of time.

Furthermore, the rent review in 2019 post-dated the antecedent valuation date by approximately four years and would, at that point, have been between connected parties. In view of this, the panel placed no significant weight upon this argument.

33. The panel accepted the argument that details relating to other allowances in London for works which were not directly related to the circumstances of the subject properties or their locality were not particularly relevant. However, they did assist the panel in assessing what allowances should be made.

34. Overall, the panel was satisfied that the impact of the works opposite the subject properties were significant and would have had a detrimental impact upon the rental bid of the hypothetical tenant who was fresh to the scene. However, the panel did not find that they were significant enough to justify allowances of 7.5%. On balance, the panel concluded that allowances of 5% were reasonable. These allowances result in revised RV's of £90,500 for 3 Prince Albert Road, London NW1 7SN and £44,000 for Lwr Gd & Gd Fl, 4 Prince Albert Road, London NW1 7SN from 1 January 2020 to 31 July 2021.

Order

35. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the Valuation Tribunal for England orders the Valuation Officer to alter the rating list within two weeks of the date of this order to show the entries for the subject properties from 1 January 2020 to 31 July 2021 to be £90,500 in respect of 3 Prince Albert Road, London NW1 7SN and £44,000 in respect of Lwr Gd & Gd Fl, 4 Prince Albert Road, London NW1 7SN.

Refund of appeal fee

36. The appellant is entitled to a refund of the appeal fee in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 13 October 2022

Appeal numbers: CHG100574788 and CHG100577373

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.