THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; office and premises; allowances for disruption caused by building works; appeals dismissed.

RE: 32 Cleveland Street, London W1T 4JY

APPEAL NUMBERS: CHG100605467 (1)
CHG100612217 (2)

BETWEEN:	Make Limited	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Ms L Hussein-Venn (Senior Member)
Prof P Catterall (Member)

CLERK: Ms R Muller

HEARING: Remote Hearing No. 1: 28 April 2023

APPEARANCES: Mr S Berkley from Knight Frank, the representative for the Appellant
Mr C Cates, the representative for the Respondent

Summary of decision

1. Appeals dismissed. The entry remained the same within the Rating List.

Introduction

2. The appeals arose in respect of two proposals to alter the 2017 non-domestic rating list for a material change in circumstance (MCC).

(i). (1) The check was submitted on 11 October 2019
The check was completed on 15 January 2020
(ii). (2) The check was submitted on 14 October 2019
The check was completed on 8 January 2020

3. The challenge was submitted for both appeals on 12 February 2021 and completed on 8 June 2021. Appeals to this Tribunal were received on 7 October 2022.

4. The subject property - 32 Cleveland Street, London W1T 4JY had entered into the 2017 Rating List as ‘office and premises’ at rateable value £427,500 effective from 1 April 2017. It was situated at basement level within a building which had a total of five floors and had a total area of 1,165,71m^2. It had been converted from a car park and brought into the Rating List in 2015. Access to the office was via the entrance on Cleveland Street. The property was on the edge of a redevelopment where the properties at each side were to be demolished and then replaced by the construction of new retail and leisure units.

5. Appeal (1) was an MCC with regards to the level of allowance to be applied for the adjacent party wall building works at Middlesex Annex, Cleveland Street, effective from 2 July 2018. This was the date the demolition started on site with the overall development targeted to be completed circa September 2023. In reference to this MCC, the appellant’s representative Mr Berkley sought a 5% end allowance to reflect the intensity of the building works disturbance.

6. Appeal (2) was an MCC with regards to the level of allowance to be applied for the adjacent party wall building works at 40-50 Tottenham Street (Arthur Stanley House development), effective from 7 November 2018. This was the date the demolition started on site with the overall development targeted to be completed circa May 2021. In reference to this MCC, Mr Berkley sought a 7% end allowance to reflect the intensity of the building works disturbance.

7. Mr Cates, the respondent’s representative made the decision following the review of the ongoing works to allow a 2.5% reduction to the assessment with effect from 2 July 2018 and had altered the assessment within the 2017 Rating List to show an entry of £417,500. Mr Berkley did not consider this allowance to be sufficient given the intensity of the works and the impact on the subject hereditament. Consequently, both challenged decisions were appealed to this Tribunal.

8. Mr Berkley appeared on behalf of the appellant 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), he stated that he was instructed under a conditional based fee and 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.

9. 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).

10. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

11. Mr Cates appeared as advocate only on behalf of the Respondent.

12. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

13. The issue for the panel to consider was whether the RV of the subject hereditament had been affected by the works within the locality. The appellant sought a total allowance of 12.5% with regards to the assessment with different effective dates. However, Mr Cates had stated a 2.5% allowance was reasonable with effect from 2 July 2018.

Evidence and submissions

14. Mr Berkley explained that both parties were in agreement that an allowance should be awarded to the subject property due to the disruptions caused by the building works on each side of the subject property. The issue was whether the basement (the subject property) should receive a lower allowance than the upper floors. The subject property has an office which is predominately open plan. The redevelopment works for Middlesex Annex is to provide a mix of residential and commercial accommodation. Associated works include opening up of Bedford Passage, the creation of a public open space, landscaping works and partial demolition of the front boundary wall connected to the subject property.

15. Mr Berkley stated that the view from the subject property was obstructed due to the works, access was restricted due to the pavement closures, and there was excess noise and dust which affected the subject property.

16. With regards to the Arthur Stanley House development, Mr Berkley informed the panel that works were due to be completed in the Spring of 2023. Therefore, a total of four years since the start of these works. He stated that as the redevelopment works were at basement level of an adjoining wall, the same level of allowance should apply to the basement as given to the upper floors.

17. Mr Berkley referred to the High Court case of *Hotosoho Ltd v Jackson (VO)* [2019] UKUT 0166 (LT) RA/57/2018. This case concerned offices in Soho which had been affected by adjacent building work. In this decision, the parties had been reminded that it was important in rating to 'stand back and look' and considered that this was something the valuation officer had not done.

18. Mr Berkley requested that an allowance of 7.5% be allowed with regards to Arthur Stanley House development works with effect from 7 November 2018 and 5% allowance with regards to the works for Middlesex Annexe with effect from 2 July 2018, a total combined allowance of 12.5%.

19. Mr Cates stated that the noise and dust caused by the works would not impact a basement as much as the upper floors. He stated that the demolition and all that happens at the start of any development had already been completed as of the material day. An allowance had already been applied of 2.5% for each of the works carried out which he argued was sufficient.

Decision and reasons

20. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would have agreed, as at the antecedent valuation date (AVD),1 April 2015.

21. There was an important date for rating appeals known as the 'material day.' This was the date on which the physical factors had to be taken into account. The task for the panel was to determine the level of disturbance caused to the subject property on the material day and the level (if any) of allowance which should be awarded.

22. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the "material day". The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (the "MD Regulations") provides for determining the material day. So far as is relevant for these proceedings, Regulation 3 of the MD Regulations provides –

    "3 Material day for list alterations

    (1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.

    …

    (7) In any other case—

    …

    (b) where the determination is with a view to making an alteration to a list compiled on or after 1st April 2005, the material day is—

    (i) where the alteration is made in pursuance of a proposal, the date on which the VO received a confirmation under regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as stated in an acknowledgement served by the VO under regulation 4D(1) of those Regulations);"

23. During the course of the proceedings, it was necessary to clarify the material day for each of the appeals. Both parties had stated that the material day was the day when the check had been submitted, namely 11 October 2019 and 14 October 2019. After the hearing, the panel requested that the clerk contact the parties to verify the date on which the Respondent had received confirmation under Regulation 4C of the NDR Regulations for each of the appeals. The Valuation Officer stated that the date the Respondent finalised the check is not one that can be used within the NDR Regulations as it is a variable, depending on the workload of the Valuation Office Agency at any given point; Therefore, the clerk advised the panel that for appeal (1), the material day must be some date between 11 October 2019 and 15 January 2020 and for appeal (2), the material day must be some date between 14 October 2019 and 8 January 2020.

24. The panel on balance considered that there was unlikely to be a significant difference in the level of the disturbance between the check commencement date and the check completion date for each of the appeals.

25. However, the panel considered that the correct approach was to consider the disturbance caused by works which remained to be undertaken as at the material day. This was what would be reflected in the rental bid by a hypothetical tenant coming fresh to the scene.

26. It was agreed by both parties that demolition works commenced at Middlesex Annex on 8 July 2018 and Arthur Stanley House development on 11 November 2018. The panel noted that the proposed end date for demolition works with regards to Middlesex Annex was documented as 25 January 2019. Therefore, as of the material day, the panel was satisfied that there was likely to be less disruption, and certainly not a disruption that would warrant a higher end allowance.

27. The panel found there was little evidence for the works which were actually undertaken after 11 and 14 October 2019. The panel supported the view of Mr Cates that it was more likely that most, if not all, of the structural works which would have caused the significant disruption to the subject property would have been concluded.

28. When considering the photographs provided, the panel accepted that demolition works had still taken place in July 2019. Scaffolding had been in place since December 2019 and had remained in place until February 2022 and that it was likely that some form of fitting out would have occurred until the neighbouring properties were capable of beneficial occupation and entered into the rating list.

29. In view of the lack of evidence of any significant level of ongoing disturbance after 11 and 14 October 2019, the panel was satisfied that Mr Cates' allowance granted to the subject property was reasonable.

30. Accordingly, the appeals failed and must be dismissed.

Date: 22 May 2023

Appeal numbers: CHG100605467 and CHG100612217

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.