THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; offices and premises; level of temporary allowance for building works in dispute; comparable assessments; appeal allowed in part.

RE: 4th Floor at 18 Wells Street, London, W1T 3PG

APPEAL NUMBER:	CHG100682585	
BETWEEN:	Todd Architects Limited	Appellant
	and	
	Mr A Ricketts, Valuation Officer	Respondent
PANEL:	Mrs S Patel (Presiding Senior Member) Mr F J Rogers	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Wednesday 28 June 2023	
APPEARANCES:	Mr C Anderson from Altus Group, representing the appellant Mr C Cates representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The panel determined a revised temporary allowance of 15% in respect of a material change in circumstances (MCC) caused by building works. This resulted in a revised rateable value (RV) of £39,500 with effect from 16 November 2020.

Introduction

2 This was a 2017 rating list appeal made in respect of 4th Floor at 18 Wells Street, London, W1T 3PG, (the 'appeal property'). The challenge proposal was submitted by Altus Group on behalf of the appellant, Todd Architects Limited, on 9 April 2021. It had been made on the grounds of an MCC and requested a 25% temporary allowance in respect of building works with effect

from 16 November 2020. A revised RV of £34,750 was proposed against the post-check RV of £41,750, which had reflected a 10% temporary allowance.

3 The Valuation Officer issued a challenge case decision notice on 8 December 2021 which disagreed with the proposed alteration of the list, but stated that the rating list entry was unreasonable based on the evidence and information available. The revised RV of £40,750 reflected a 12% temporary allowance.

4 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 7 April 2022 and requested a revised RV of £37,000 based upon a 20% temporary allowance.

5 Mr Anderson 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 confirmed that he was instructed under a contingency fee. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

6 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).

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

8 The appeal property was an office located on the 4^{th} floor of a mixed-use office/ retail building located in the City of Westminster. It had a total floor area of $75.3m^2$ and had been valued at a price of £617.50 per m^2.

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

Preliminary issues

10 Prior to the hearing it had been identified that the appellant had cited 16 November 2000 as the material day and the effective date for the alteration. There was no specific reference to the material day in the Valuation Officer's Challenge Decision Notice.

11 At the hearing it was confirmed that the parties agreed that the material day was 30 March 2021, the date that the Valuation Officer received confirmation

of the check, in accordance with Regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 NO. 2268).

Issues

12 The issue to be determined was the appropriate level of a temporary allowance to be awarded in respect of building works which had commenced on 16 November 2020.

Evidence and submissions

13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

14 It became apparent during Mr Anderson's presentation that he was referring to a pack which did not form part of the bundle. The pack contained photographs of the appeal property and the ongoing development, together with further comparable property evidence.

15 Mr Cates confirmed that he had no objection to the additional photographs of the appeal property, but he did object to the last part of the submission which contained new comparable property evidence.

16 Following a brief adjournment, the panel decided to admit the additional photographs of the appeal property. In consideration of the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926, the panel found no good reasons to accept new comparable property evidence at this stage in the proceedings.

Decision and reasons

17 The Local Government Finance Act 1988 makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act.

18 Briefly, the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

19 The material day (the date by which physical factors have to be taken into account) for an MCC was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 30 March 2021.

20 The issue for determination was the level of temporary allowance warranted as a result of the cited MCC. As outlined by Mr Anderson, the MCC in question was the development of 58-60 Berners Street, 14-17 Wells Street, 13-15 Eastcastle Street and 1 Wells Mews London. The development scheme described in the planning application comprised:

- Excavation to create a deeper basement level and excavation under Wells Mews;
- Demolition of 58-60 Berners Street;
- Demolition behind retained façade of 14-17 Wells Street (St George's House);
- Erection of a new mixed used development within two adjoining buildings;
- External alterations to 14 and 15 Eastcastle Street;
- Upgraded residential entrance to 1 Wells Mews.

21 Mr Anderson contended that an increased temporary allowance of 20% was reasonable, given the severity and duration of the development works. The subject hereditament was immediately adjacent to the development and shared a party wall with St George's House. The Valuation Officer had incorrectly stated that the subject building was sealed and protected by a stairwell. Mr Anderson referred to a photograph which illustrated that the stairwell was on the other side and therefore the appeal property was not shielded. The building was not sealed, as due to inferior air conditioning, windows opened at the front, and there were balconies at the rear.

22 In support of his proposed 25% allowance at the challenge stage, Mr Anderson provided details of temporary allowances awarded in respect of comparable assessments which ranged from 10% to 25%. At the hearing he highlighted the 25% temporary allowances agreed to reflect less substantial works opposite 1st – 4th Floors, 8 Berwick Street, W1F 0PH and 1st Floor, 12 Berwick Street, W1F 0PN. He acknowledged that no two sets of works were the same, and it was a matter of fact and degree. In his opinion, a 20% temporary allowance for the subject property was fair.

23 On behalf of the Valuation Officer, Mr Cates submitted that the present 12% temporary allowance was reasonable. He outlined that the RV had been reduced three times already, first for tone, then an initial allowance of 10% following the check, then a 12% allowance following the challenge. In his opinion, the works to the adjacent building, St George's House would not have been a "wrecking ball" demolition as the developer was required to retain the façade. Commenting on the rest of the works, he considered that the size of the development mitigated the impact on the subject property.

24 In consideration of the headline rent of £60,825, effective from 26 September 2019, Mr Cates submitted that a 12% temporary allowance was more than adequate to reflect the circumstances.

25 It was a point made by Mr Cates that there had been no Gantt chart provided in respect of the development works which had commenced on 16 November

2000. In the absence of such, and in response to a question from Mr Cates, Mr Anderson submitted that in the first four months the works would have comprised strip out works, closing off services and demolition. Mr Cates agreed with Mr Anderson's summary, and added that this supported his view that as at the material day, the hypothetical landlord would not agree to such a large reduction in rent, given that the initial intrusive works had been completed.

26 The panel noted that it had been outlined in the Valuation Officer's decision notice that it was now standard practice that building and development works in the centre of London resulted in temporary reductions to rating assessments, the scale of which was determined by the proximity and severity of the scheme. In the subject appeal, the Valuation Officer defended the present allowance of 12%, whereas the appellant sought an increase to 20%.

27 As he was not the original caseworker, Mr Cates was unable to provide further details on how the Valuation Officer had arrived at their opinion of a 12% temporary allowance; no specific comparable assessments had been provided. In consideration of the comparable assessments put forward by Mr Anderson, the panel decided that 12% did not fully reflect the proximity and duration of the subject development works.

28 However, the panel was also mindful of the rent that had been agreed at £60,825 in 2019, and was not persuaded that a 20% allowance was justified. The panel decided that it was reasonable to increase the temporary allowance to 15%, which resulted in a revised RV of £39,500 and therefore the appeal was allowed in part.

Order

29 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 alter the entry in the rating list to rateable value £39,500 with effect from 16 November 2000.

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

Date: 17 July 2023

Appeal number: CHG100682585

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.