THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeals; Local Government Finance Act 1988; office and premises; end allowance to reflect nearby building works; appeals allowed in part.

APPEAL NUMBERS: CHG100688873, CHG100688884, CHG100688899, CHG100688842

BETWEEN: Colas Rail Limited Appellants
And
Lorentzen & Stemco UK Ltd

and

Andrew Ricketts Respondent
(Valuation Officer)

RE: 2nd Floor Dacre House, 19 Dacre Street, London SW1H 0DJ
3rd Floor Dacre House, 19 Dacre Street, London SW1H 0DJ
4th Floor Dacre House, 19 Dacre Street, London SW1H 0DJ
5th Floor Dacre House, 19 Dacre Street, London SW1H 0DJ
("the subject property")

PANEL: Mrs H Newman-Newing (Presiding Senior Member)
Mrs A Fielder (Senior Member)

CLERK: Mrs A Sloan

SITTING ON: 7 November 2023 (remote hearing)

APPEARANCES: Mr J Banbury of Allsop LLP (for the appellant)
Ms R Heuck (Valuation Officer's representative)

Summary of decision

1. Appeals allowed in part. The panel found that an allowance of 15% was reasonable and reduced the rateable value (RV) for each assessment as shown in the attached schedule.

Introduction

2. As Mr Banbury was representing both appellant companies and the issue in dispute was the same for each appeal, the Tribunal consolidated the hearing of these appeals together. There was no objection from the parties to this approach.

3. The appellants had made a challenge against the accuracy of the assessment in the 2017 Rating List, by way of a proposal for each hereditament, served on the Valuation Officer (VO) on 30 April 2021. After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals were not well founded and decision notices to that effect were served on the appellants on 30 August 2022. That decision was appealed to the Tribunal on 12 October 2022, on the grounds that the current valuations for the hereditaments were not reasonable.

4. The subject property is a steel frame building with retail accommodation on the ground and lower ground floors, and office accommodation above. The appellants occupied the 2nd to 5th floor offices which were each assessed as a separate hereditament. The property is located on Dacre Street at the junction with Dean Farrar Street.

5. Ms Heuck was appearing as advocate and expert witness for the VO. Mr Banbury also appeared before the panel in a dual capacity as both advocate and expert witness for the appellant. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he confirmed in an email to the Tribunal that his firm was instructed on a success related fee arrangement, but his first duty was to the Tribunal, regardless of whether the evidence supported his clients' 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. It was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal could admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight as it saw fit.

7. The hearing was conducted remotely, via Microsoft Teams. Permission was granted for Mr Banbury to share images from Google Streetview on screen during the hearing to supplement the photographs in his written submission. No objection to this was raised by Ms Heuck.

8. This document is not intended as a verbatim report of the proceedings, nor does it purport to reproduce in full all the parties' evidence.

Issue

9. The sole issue in dispute before the panel was the correct level of end allowance for the subject property to reflect the nearby demolition and building works. The works began in March 2017, before the list was compiled, and continued for around five years. When questioned, neither party was able to provide the Tribunal with the exact date that the works ended.

10. The existing valuations included a 5% end allowance to reflect the works opposite the subject property concerning the demolition of New Scotland Yard and subsequent building works. Mr Banbury considered the valuations unreasonable and sought an allowance of 18% for each hereditament. Ms Heuck defended the existing valuations with a 5% allowance.

Decision and reasons

11. There was no dispute between the parties that the material date on which to consider the property was 1 April 2017 for the 2nd to 4th floors and 11 June 2017 for the 5th floor, these

being the dates of the entries in the rating list. The value must be considered at the antecedent valuation date (AVD) of 1 April 2015.

12. Both parties provided the panel with examples of properties where an allowance had been given for building works opposite. Ms Heuck relied upon three properties in Victoria Street, where the hereditaments were also facing the same New Scotland Yard site. Two of the properties had a 5% allowance (before zoning) and the third, 20 Victoria Street, was awarded a 10% allowance. Ms Heuck submitted that 20 Victoria Street was a similar distance (12.46m) from the New Scotland Yard building, before it was demolished, to the subject property (12.12m). She stated that the 10% allowance had been agreed for the 2010 list on the basis that at the AVD for that list, 1 April 2008, the hypothetical tenant would not have been aware of the works beginning in March 2017. She therefore considered a higher allowance was justified for that list. However, she was of the opinion that the allowance was carried over to the 2017 list in error, as at the AVD for the next list, 1 April 2015, the tenant would likely be aware of the planned works, and this would be reflected in the rent agreed.

13. The panel found that the 10% allowance was still in place for 20 Victoria Street in the 2017 list and it must consider the list as it stood on the day of the hearing. It also noted that Ms Heuck had offered the appellants a 10% allowance, which was not accepted, before issuing the decision notices upholding the existing valuations.

14. After considering the photographs and maps provided by the parties, the panel noted that 20 Victoria Street had its widest length facing the main road of Victoria Street and the shorter end of the building was facing the building works. Both parties agreed that Victoria Street is a busy main road and Ms Heuck confirmed that the other two properties she had presented with a 5% allowance were on the opposite side of Victoria Street to the building works. She contended that the subject property was visible from Victoria Street and therefore would experience noise from the traffic passing on that road. She felt 20 Victoria Street was the best comparable property because it was located a similar distance from the building site as the subject property and was in the same location. Ms Heuck submitted that the subject property would have experienced similar levels of noise and a 5% allowance was reasonable.

15. The panel did not agree with Ms Heuck. It considered that the New Scotland Yard building would have masked some of the traffic noise from Victoria Street and the subject property was situated on a much narrower, quieter road, set back from the main street. Ms Heuck stated when questioned that the subject property was around 25m from Victoria Street, which the panel considered to be a significant distance compared to 20 Victoria Street on the main road. Mr Banbury submitted that, at its closest point, the subject property was around 5m from the New Scotland Yard building and the demolition and subsequent construction caused severe disruption. With reference to photographs, he showed a pile driver directly outside the subject property in April 2018, following demolition of the original building.

16. Mr Banbury presented details of four examples where an end allowance had been awarded to reflect building works opposite. Ms Heuck had resisted Mr Banbury's proposed 18% allowance stating this was at a level which would only usually be considered where the building works were on a party wall, rather than opposite the appeal property. However, Mr Banbury's examples had allowances ranging from 14% to 25% and none were party wall cases. The panel considered that each case must be assessed on its individual circumstances and, although in different localities of London and concerning different construction sites, these examples showed that higher allowances had been given for works that were not on a party wall.

17. Ms Heuck considered the appellants' evidence carried less weight than 20 Victoria Street, because the examples were in different localities and concerned different building sites. She contended that they were in quieter locations where the noise and disruption from building sites would be more noticeable than in areas where the background noise levels were already higher. It was also highlighted that some of the allowances related to the 2010 list, not the 2017 list.

18. The panel examined the evidence and found that the examples presented by Mr Banbury were concerning smaller building sites and, in some cases, the appeal property was not directly opposite the works, as was the case with Dacre House. The highest allowance, 25%, was for 8 Berwick Street W1F 0PH relating to works at Kemp House. Mr Banbury submitted that the works here did not involve a full demolition as the frame remained and there was no piling. 8 Berwick Street was a retail premises and Ms Heuck submitted that this was a quiet pedestrianised street with less traffic than Dacre Street, so the effects of the building works would be off-putting for pedestrians. The panel noted that Mr Banbury was not seeking 25% for the subject property but it found that 8 Berwick Street demonstrated that a high allowance had been given for less disruptive works in this case.

19. The panel found the example of 2 Dartmouth Street SW1H 9BP useful. This concerned the demolition and re-build of 1-3 Queen Ann's Gate across the street from the appeal property. Ms Heuck contended that this was a quieter area than Dacre Street and a different scheme of works. Mr Banbury submitted that the works in this case began in May 2017 and lasted approximately 1.5 years. He considered that the works were less disruptive than the New Scotland Yard works and yet a 15% allowance was given for 2 Dartmouth Street.

20. Considering the photographs provided, the panel noted that 2 Dartmouth Street was not directly opposite the building works for which the allowance had been given. Ms Heuck agreed in her written submissions that the works at Queen Ann's Gate were a smaller development than at New Scotland Yard. The panel acknowledged that Ms Heuck's example of 20 Victoria Street was the closest geographically to the subject property and concerned the same works. However, it considered that Dacre House was more severely affected than 20 Victoria Street. Dacre Street is a narrow road and is set back some 25m from the main thoroughfare of Victoria Street, being shielded by the original New Scotland Yard building and then the new buildings built in its place. In contrast, 20 Victoria Street faces the busy main road, with no shielding from traffic noise, and only the end of the building faced the construction site.

21. The panel accepted that a retail unit such as 8 Berwick Street would be more severely affected by nearby works than the offices occupied by the appellants to these appeals, on the 2nd to 5th floors. It did not therefore find that a 25% allowance was justified, and Mr Banbury did not seek an equivalent allowance to 8 Berwick Street. The panel found that Dacre House would have felt the impact of the New Scotland Yard building works more than 20 Victoria Street, which benefitted from a 10% allowance. Therefore, the panel considered that a minimum of 10% would be expected, which had in fact been offered by Ms Heuck.

22. After considering all the evidence, the panel found that a 15% end allowance was reasonable. The example of 2 Dartmouth Street demonstrated that such an allowance had been given in the 2017 list for a less disruptive and shorter duration programme of works in that case. The panel found that an allowance 5% more than 20 Victoria Street was fair and reasonable to reflect the same scheme of works and the quieter location of Dacre House. The appeals were therefore allowed in part.

Order

23. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entries in the 2017 Rating List as shown on the attached schedule, with effect from 1 April 2017 for the 2nd to 4th Floors of Dacre House and 11 June 2017 for the 5th floor. The Valuation Officer must comply with this Order within two weeks of its making.

Refund of appeal fees

24. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Date: 20 November 2023

Appeal numbers: CHG100688873, CHG100688884, CHG100688899, CHG100688842

Right of further 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.

<u>Revised valuations</u>

2nd Flr Dacre House, 19 Dacre Street, London SW1H 0DJ (CHG100688873)

Floor	Description	Area m^2/unit	Price per m^2/unit	Value
Second	Office	257.4	£393.75	£101,351.00
Adjustments				
	Temporary disadvantage		-15%	-£15,203.00
			Total	£86,148
			Rounded RV	**£86,000**

3rd Flr Dacre House, 19 Dacre Street, London SW1H 0DJ (CHG100688884)

Floor	Description	Area m^2/unit	Price per m^2/unit	Value
Second	Office	257.4	£393.75	£101,351.00
Adjustments				
	Temporary disadvantage		-15%	-£15,203.00
			Total	£86,148
			Rounded RV	**£86,000**

4th Flr Dacre House, 19 Dacre Street, London SW1H 0DJ (CHG100688899)

Floor	Description	Area m^2/unit	Price per m^2/unit	Value
Second	Office	242.4	£393.75	£95,445.00
Adjustments				
	Temporary disadvantage		-15%	-£14,317.00
			Total	£81,128
			Rounded RV	**£81,000**

5th Flr Dacre House, 19 Dacre Street, London SW1H 0DJ (CHG100688842)

Floor	Description	Area m^2/unit	Price per m^2/unit	Value
Second	Office	165.5	£393.75	£65,166.00
Adjustments				
	Temporary disadvantage		-15%	-£9,775.00
			Total	£55,391
			Rounded RV	**£55,000**