THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2017 Rating List appeal; material change in circumstances; office and premises; redevelopment of hotel; comparable evidence; appeal allowed.*

Re: (Excl Bst Pt Fnt) Bst- 3rd Floors, 43 Upper Grosvenor Street London, W1K 2NJ
4th Floor, 43 Upper Grosvenor Street, London W1K 2NJ

APPEAL NUMBER: CHG100699227
CHG100709296

BETWEEN: Arab British Chamber of Commerce Appellant

and

Andrew Ricketts (Valuation Officer) Respondent

PANEL: Mr K Sutch (Presiding Senior Member)
Mr WJ Read (Senior Member)

CLERK: Ms N Shepherd IRRV Hons

REMOTE HEARING 1: Tuesday 25 July 2023

APPEARANCES: Mr C Poole, of Altus Group on behalf of the Appellant as advocate and expert witness
Mr A Byfield, on behalf of the Respondent

---

**Summary of decision**

1. Appeal allowed. An end allowance of 10% was awarded to the assessment of the subject hereditaments to reflect the severity of the building works within the locality.

**Introduction**

2. This appeal was made following a challenge against the was a 2017 rating list entry, on the basis that the assessment had been adversely affected by the redevelopment of the former American Embassy into a luxury hotel complex.

3. The subject hereditaments, (Excl Bst Pt Fnt) Bst- 3rd Floors, 43 Upper Grosvenor Street London, W1K 2NJ and 4th Floor, 43 Upper Grosvenor Street, London W1K 2NJ had been entered into the list with rateable values (RV) of £427,500 and £49,750 with effect from 23 July 2018. These assessments had an end allowance adjustment of 5% to account for the material change of circumstances (MCC) caused by the redevelopment of the former American Embassy.

4. A challenge had then been submitted by the appellant's representative, who did not consider the 5% allowance to be sufficient and instead proposed a 10% allowance be awarded to reflect the MCC. The Valuation Officer (VO) did not consider this proposal to be well founded and refused to alter the RV of the appeal hereditaments. Subsequently, an appeal was made by the appellant's representative to this Tribunal on 22 February 2023.

5. As Mr Poole appeared on behalf of the appellant as both advocate and expert witness and 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 aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was not instructed under a conditional fee arrangement or any other success related fee.

6. Mr Byfield, for the VO, also appeared in a dual role as advocate and expert witness.

7. This hearing was held remotely via Microsoft Teams.

8. This document is not and does not purport to be a full verbatim record of proceedings.

**Issue**

9. The issue in dispute was the RV of the subject hereditaments, and specifically, the extent, if any, to which the assessments were affected by the redevelopment of the former American Embassy. The appellant sought a reduction of 10%. The VO considered a 5% reduction to be fair and reasonable.

**Evidence and submissions**

10. The evidence comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

**Decision and reasons**

11. Matters which constitute a material change of circumstances are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988.

12. When valuing having regard to the material day, the valuation arrived to, has to conform with the rateable value definition provided in paragraph 2(1) to Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999:

"The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

13. Therefore, having regard to the above, in reaching its decision, the panel considered, would the material change in circumstances affect the hypothetical tenant's bid. In doing so, economic factors must be considered as at the antecedent valuation date of 1 April 2015, whereas the physical factors are as they existed on the material date.

14. In accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268), the material day is the date on which the ratepayer confirms the accuracy of the information included in the check. For this appeal, the material date was 20 May 2021.

15. It was Mr Poole's contention that the disturbance caused by the demolition of the former American Embassy and the subsequent redevelopment were such that a 10% allowance was warranted. The redevelopment had commenced in 2018 and was not anticipated to be completed until 2025, making it a seven-year project. The subject hereditaments were situated less than 8 metres away from the hoarding outside the south side of the development and were directly opposite two of the site entrances.

16. Mr Poole submitted that he had walked the perimeter of the development a number of times, as well as making several inspections of the subject hereditaments, which were within an early Georgian terrace property. He submitted that there was a basic specification throughout with single glazed, timber sash windows. He therefore contended that it was not equivalent to a

modern sealed office, and the noise from both the development and the vehicles entering and leaving the site could be heard clearly which caused disruptions and disturbances.

17. Mr Byfield submitted that whilst the subject hereditaments may have been situated 8m away from the hoarding surrounding the development, they were actually located 28m away from the actual building site. When awarding the 5% allowance in respect of the works, the proximity to the development and the fact that vehicles were entering and leaving the site opposite the subject hereditament had been taken into account. Furthermore, Mr Byfield submitted that as there were five entry points into the development, with the main entrance being on the eastern side, the usage at the entrance opposite the subject hereditament was minimal.

18. During questions from the panel Mr Byfield confirmed that he had not visited the site. However, he submitted that he had inspected properties that were of a similar character to the subject hereditament, with single glazing, that had works being undertaken within the same proximity as the development at the former American Embassy to the subject hereditaments. He submitted that at these properties there was limited noise impact or disturbances as the properties were located over 20m away from the works being undertaken. He was therefore of the opinion that due to the similarities the situation would be the same at the subject hereditaments. Ultimately, Mr Byfield submitted that he considered that the effectual enjoyment of the subject hereditament had not been affected adversely enough to warrant an allowance above 5%.

19. Both parties referred the panel to other works within the locality of the subject hereditament which had resulted in allowances being made to reflect the disruption caused by nearby works. The panel paid particular attention to 47-48 Grosvenor Street and 82-84 Brook Street which both had allowances of 10% in relation to demolition and redevelopment works taking place opposite.

20. Mr Byfield submitted that he considered these properties to support the current 5% allowance as the works there were located 15m away and therefore in far closer proximity than those at the subject hereditaments and warranted a higher allowance. The panel considered his point, however also noted that the redevelopment at the former American Embassy was of a far bigger scale with the duration of the works expected to surpass seven years. The scheme of works opposite 47- 48 Grosvenor Street had lasted for four years, and those opposite 82-84 Brook Street two and a half years, significantly less than those at the former American Embassy.

21. The panel considered all the factors and had regard to the duration of the development, the proximity of the subject hereditaments to the development and the fact that the subject hereditaments were not sealed units. The panel found that the disturbances would have impacted the hypothetical landlord and tenant negotiations at the AVD. Having regard to all the evidence, the panel was persuaded that an allowance higher than 5% was warranted and

determined that the proposed allowance of 10% was reasonable with regards to the MCC. The appeals were therefore allowed.

**Order**

22. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of (Excl Bst Pt Fnt) Bst- 3rd Floors, 43 Upper Grosvenor Street London, W1K 2NJ to £405,000 RV and 4th Floor, 43 Upper Grosvenor Street, London W1K 2NJ to £47,250 within two weeks with effect from 23 July 2018.

**Date:** 22 August 2023

**Appeal Numbers:** CHG100699227
CHG100709296

**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.