THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; bank and premises; removal of end allowance in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: Santander, 14A Hanover Square, London W1S 1JL

APPEAL NUMBER: CHG100716393

BETWEEN:	Santander UK plc (represented by GL Hearn Ltd)	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Ms L Hussein-Venn (Presiding Senior Member)
Mr D C Gardner (Senior Member)

CLERK: Ms S Hodgson

REMOTE HEARING

ON 7 July 2023

APPEARANCES: Mr J Taylor for the appellant
Mr J Duff for the respondent

Summary of decision

1. Appeal dismissed. No allowance for Crossrail works was granted from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The subject property had been entered in the 2017 rating list as ‘bank and premises’ at a rateable value (RV) of £166,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by GL Hearn Ltd on behalf of Santander UK plc and was received by the Valuation Officer (VO) on 5 August 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £138,000 was proposed with effect from 1 April 2017 by way of a 7.5% allowance for layout and a 10.3% allowance for the Crossrail works in the locality.

4. The VO issued a challenge case decision notice on 20 September 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

5. 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 9 January 2023.

6. After the initial response was issued, Mr Taylor had conceded the issue of the 7.5% allowance for layout and was now proposing a revised RV of £149,000 based on a 10.3% allowance for the Crossrail works.

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

Preliminary issue

8. The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 as amended details at Regulation 17a the circumstances when new evidence may be included in Non-Domestic Rating appeals.

17A. Admission of new evidence on NDR appeal

(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—

(a) that evidence—
(i) is provided by a party to the appeal;
(ii) relates to the ground on which the proposal was made; and
(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence.

(2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—
(a) the new evidence; and
(b) the ground on which the proposal was made.
……
Applications must be made at least four weeks before the hearing.

9. Mr Taylor, for the appellant sought to introduce new evidence six days before the hearing. Mr Taylor stated that when he was discussing the upcoming hearing with his client, she advised she had correspondence relating to the works that were the subject of the appeal before the Tribunal. Once he received this email, he immediately forwarded it to Mr Duff. Mr Taylor stated to the panel that the evidence was supportive of the appellant's case, but not determinative.

10. Mr Duff objected to the new evidence as it had not been submitted 4 weeks in advance of the hearing. The evidence was an email that had been in the appellant's possession since 2016, a point that was not disputed by Mr Taylor. Mr Duff stated he had not had time to consider the details of the evidence or check the veracity of it.

11. In considering whether the evidence should be admitted, the panel needed to identify the areas of non-compliance against the Tribunals directions in accordance with the *Denton* test as reaffirmed by the Upper Tribunal (Lands Chamber) in SIMPSONS MALT LIMITED & Others v. MR CRAIG JONES & Others (VOs) [2017] UKUT 0460 (LC)UTLC Case Nos: RA/7-10/2017, RA/15/2017, RA/21/2017, RA/22/2017, RA/28/2017.

12. Stage 1 – I found that the breach was serious. Mr Taylor had missed the deadline to submit new evidence by over three weeks.
Stage 2 – Mr Taylor explained that his failure to comply was due to only gaining knowledge of the email recently. The panel found that this was not a good reason for the breach as the evidence had been in the appellant's possession for six years and it was the panel's opinion that it could have been reasonably acquired by Mr Taylor at any time during the challenge process.
Stage 3 – The panel then considered all the circumstances of the case. It found that there had been ample time since the challenge was submitted in August 2021 for this evidence to be submitted. The panel found that it was not in the interests of justice to allow the evidence at this time and cause further unnecessary delay in the resolution of this appeal.

Issue

13. The issue for the panel to determine was whether an allowance of 10.3% should be granted with effect from 1 April 2017.

Evidence and submissions

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

15. Mr Taylor, for the appellant, contended that the subject property had a 10.3% allowance in the 2010 rating list for the Crossrail works being undertaken on Hanover Square, and this should also be applied in the 2017 list as the works were still ongoing at the material day.

16. Mr Duff, for the respondent, contended that any allowance had already been reflected in the base rate of £475 per square metre (psm) in the 2017 rating list. He stated that the Crossrail

works were ongoing at the time rents were agreed for the subject property and a comparable property, and to award an allowance would be a double deduction.

17. Mr Taylor 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), Mr Taylor's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Taylor 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.

Decision and reasons

18. In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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.

19. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

20. The material day (the date by which physical factors have to be taken into account) 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 1 April 2017.

21. The Crossrail works started in 2012 and were completed in 2022. The works consisted of the development of a new ticket office and entrance to the Bond Street underground station as part of the Elizabeth Line.

22. The panel heard from Mr Taylor that the subject premises had a 10.3% end allowance in the 2010 rating list, which was for the same works. He also referred to comparable properties where it was his argument that allowances had been reinstated in the 2017 list for the Crossrail works. 2nd Floor 25 Hanover Square, London, and Barclays Bank at 21 Hanover Square both had allowances in the 2017 list of 10% and 12.5% respectively.

23. Mr Duff confirmed to the panel that the allowances on both of these properties were not for the Crossrail works but were for building works at 22-23 Hanover Square which was a hotel development and construction started in March 2017.

24. Mr Duff explained that the difference in approach by the VO in the 2017 list was due to the Crossrail works being ongoing at the material day and therefore incorporated into the tone for ‘ground floor units occupied by banks’ in the area. The hotel development was not ongoing at the material day for the 2017 list and therefore temporary end allowances were granted for affected properties as the works were not considered within the tone.

25. The panel reviewed the rental evidence submitted by Mr Duff. The appeal property was subject to a lease renewal at a rent of £325,000 per annum for 5 years and 2 months with effect from 25 March 2017. There was no rent-free period and Mr Duff had analysed the rent to £924.87psm with no adjustments.

26. There was a new letting at PT BST & GRD FLR, 21 Hanover Square, London that was a stepped rent with effect from 28 March 2014. Mr Duff had adjusted the rent to £206,564 per annum which analysed to £1,496.24psm.

27. Both of the above properties were in the 2017 rating list with a base rate of £475psm, which Mr Duff stated already included any allowance for the Crossrail works as both rents were agreed while the work was ongoing. He also stated that at the time the rents were agreed, there were still years left of the development works and the rental negotiations would have taken this into account. The lease on the subject property ended at the conclusion of the works, and the lease on 21 Hanover Square had 5 yearly rent reviews.

28. In addition to the properties above, Mr Duff had included rental evidence for BST & GRD FLRS, 5 Hanover Street, London, and BST-GRD FLRS, 27-28 Soho Square, London which were not affected by the Crossrail works at the rent reviews. Both were 15-year leases with 5-year rent reviews with effect from 25 December 2014 and 24 June 2015 respectively. These were analysed by Mr Duff at £983.49psm and £656.62psm and were in the 2017 rating list at £825psm and £600psm. Mr Duff had included these rents to show that ‘ground floor units occupied by banks’ in the area that were not affected by the Crossrail works were in the list at a higher value.

29. No rental evidence was produced by Mr Taylor as he stated he was seeking a continuation of the allowance that was granted in the 2010 list and in line with other properties in the area. As each rating list is considered afresh and based upon different valuation dates, the panel found that comparison with the previous list alone was not sufficient to warrant a reduction.

30. The panel considered all of the evidence before it and found Mr Duff's evidence more persuasive. The rents on the subject property and 21 Hanover Square support the view of the VO that the works have already been considered, and there was no evidence given to the contrary. The panel accepted that the allowances on Barclays and 25 Hanover Square were for the hotel works. The map provided and the start date of these works supported that view. While Mr Taylor stated that the agent for Barclays would be challenging the allowance start date, which was 30 April 2018, this had not been done to date and that appeal was not before the panel.

31. In conclusion, the panel found that the current RV of £166,000 had been supported by reference to rental and comparable assessment evidence, and therefore the appeal was dismissed.

Date: 4 August 2023

Appeal number: CHG100716393

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.