VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; The Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended; material change in circumstances. Appeal dismissed.

RE: 26-27 Aybrook Street, London W1U 4AN

APPEAL NUMBER: CHG100715206

BETWEEN: Working Title Films Ltd — Appellant

and

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Ms N Salh (Presiding Senior Member)
Mr D Winters (Senior Member)

CLERK: Ms J Routledge IRRV Tech

REMOTE HEARING ON: 29 February 2024

APPEARANCES: William Martin from CBRE Ltd representing the appellant

Mr C Cates, advocate for the respondent

Mr C Tawonezvi, expert witness for the respondent

Summary of decision

1. Appeal dismissed; the panel found the end allowance of 25% reflected the overall rental reduction applicable to the disturbance caused by the construction work

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2. Appeal dismissed; the panel found the end allowance of 25% reflected the overall rental reduction applicable to the disturbance caused by the construction works.

Introduction

3. This was a 2017 rating list appeal made in respect of 26-27 Aybrook Street, London W1U 4AN (the ‘appeal property’). The challenge proposal was submitted on 26 November 2021. It had been made on the grounds of a Material Change of Circumstances (MCC) and requested a 41% reduction in the RV to reflect construction work opposite the hereditament.

4. The Valuation Officer issued a challenge case decision notice on 26 April 2023 which disagreed with the proposed alteration of the list, but revised the MCC end allowance from 10% to 25%, which resulted in an RV of £715,000 with effect from 21 September 2020.

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 17 August 2023 and requested a revised RV of £555,000 based upon a 41% reduction based on the concession made by the landlord to reduce the rent.

6. Mr Martin 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.

7. 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).

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

9. The appeal hereditament was described as accommodation from basement to fourth floor situated in Aybrook Street London. It had originally been granted a lease for 15 years from September 2008 with reviews every five years.

10. The material date for consideration of an MCC is the date when the VO receives confirmation from the ratepayer that the information provided by the VO (during the check stage) is correct wich was 2 August 2021.

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

Preliminary matter

12. The Valuation Officer had submitted late evidence on 5 February 2024 which was not in accordance with the Standard Directions for the exchange of evidence. Mr Martin objected to the inclusion of this evidence on the grounds that the evidence was not provided within the statutory time frame. He argued that the list had been altered in September 2023 as a result of the settlements which were sought to be introduced, which was in good time for it to be included in the original exchange, as this appeal was not lodged until August 2023. Mr Martin confirmed he was not disadvantaged having had sufficient time to respond to this new evidence.

13. Mr Cates advised that the caseworker on the settlements was in a different team from Mr Tawonezvi who was the caseworker for this appeal and there was little exchange of information between teams. The system was updated but there was nothing in place to alert caseworkers of changes to nearby properties due to the sheer number of properties in the valuation list. The teams worked in separate areas, and it was not until preparing for the appeal that the settlements on the neighbouring property were identified.

14. When considering a non-compliance issue, the panel must have regard to the Upper Tribunal judgment in *Simpsons Malt Ltd & others v M C Jones & others (VOs)* [which allowed sanctions to be put in place providing the three steps of *Denton v TH White Ltd* [2014] 1 WLR 3926 had been taken into account. These steps were: had the breach been serious, was there a good reason for the breach, and would it be in the interest of justice to proceed.

15. The panel held that there had been a breach in the directions which was serious. However, having regard to the reasons for the breach and that Mr Martin had advised that he was not disadvantaged by the breach, the panel considered that it was in the interests of justice to admit the new evidence.

Issue

16. It was common ground that the construction work opposite the appeal property constituted a MCC. The issue in dispute was the value of the end allowance to be applied.

Evidence and submissions

17. 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.

Decision and reasons

18. 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.

19. 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").

20. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations") set out a number of grounds on which the list may be altered in regulation 4, including the following at 4(1)(b): "the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled." In respect of the subject appeal, the material day was 2 August 2021.

21. A "material change of circumstances" is defined by regulation 3(1) of the 2009 Regulations as "a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the [1988] Act". Those matters are, insofar as relevant here:

    (a) matters affecting the physical state or physical enjoyment of the hereditament,
    (b) the mode or category of occupation of the hereditament,
    (c) …

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there…

22. The issue for determination was the level of allowance to be applied as a result of the cited MCC. As outlined by the parties, the MCC in question was a significant construction site opposite the appeal property. The appellant had provided photographs to show the construction continued as of the material day and advised that there were further difficulties due to the road layout in the area.

23. Mr Martin for the appellant provided a history of the appeal property and the rental negotiations. The lease renewal was granted on 22 September 2018 for five years. This was negotiated without consideration of the anticipated disruption from the works that were to start in September 2020. This was an open market negotiation. Following the lease renewal, the parties then had regard to a reduction for the anticipated disturbance that would be caused. The landlord offered, and the tenant accepted, a reduction of 41.67% to reflect the disturbance for three years which was the anticipated time the works would take. A further discount of 10% was also given for an additional two years from September 2021 when the original discount expired. The total rent reduction was £1,450,100. Mr Martin sought the reduction of 41% up to the end of the lease in September 2023.

24. He contended that an adjustment of 41% was reasonable, given the fact that the landlord had reduced the rent by more than this amount. In accordance with *Lotus and Delta ltd v Culverwell (VO) and Leicester City Council (LVC/376/1975)* the best evidence is the rent on the appeal property which has to take precedent.

25. He also argued that what the landlord and tenant were doing, in agreeing a reduced rent for a period due to the impending works and disturbance anticipated opposite the subject accommodation was in accordance with *Dawkins (VO) v Ash Brothers and Heaton Limited*, in which Lord Wilberforce stated at page 386A:

> "But it would surely be unreasonable to suppose that the hypothetical tenant is so inescapably imprisoned in the present that no anticipation is permitted of what is to come. Whether the test is what would influence his judgment, or what intrinsic qualities the hereditament possesses, any occupier in real life has to ascertain and to consider whatever may make his tenancy more or less advantageous over the period for which he takes it. I appreciate that the statutory hypothesis as to the length of the tenancy may have a bearing on what the tenant may take into account, but, apart from this, it would seem clear that any occupier would take into account, not only any immediately actual defects or disadvantages...but disadvantages or advantages, which he can see coming."

26. Mr Cates for the respondent argued that the rent reduction was unusually explicit and that the terms of the agreement gave two options: either 25% over the term of the lease or for 41% for three years. It had been agreed in advance without knowledge of how the disturbance was going to affect the tenant. He considered that in accordance with the rating hypothesis, the 25% reduction over the term of the lease was what should be applied as an end allowance. It could only be applied from the date of the MCC which was 21 September 2020. The respondent was seeking a higher allowance over a longer period and if the reduction was annualised over the period of the lease, then 25% was correct.

27. He advised that the allowance could not extend before the start of the MCC or beyond the end of the list. Once the list closed on 31 March 2023 this would have to be considered afresh through a further check from the start of the new list.

28. With regard to the lease, this was a renewal and therefore carried less weight than a new rental agreement. In *Hostsoho Limited v Jackson (VO) (2019)* UKUT 0166 (LC) it was stated:

> "The nature of the rental transactions was also unhelpful as they were, principally, rent reviews, where the lease terms would substantially affect the rent agreed".

29. Mr Tawonezvi appeared as expert witness for the respondent. He advised that there had been settlements agreed on two hereditaments within the neighbouring property. Both were agreed at 25%. This supported the 25% allowance granted to the appeal property.

30. Mr Martin questioned whether Colliers, who were acting on behalf of the tenants in the negotiations on the neighbouring properties, had been made aware of the appeal in this case. He considered that the settlements could not be given weight if they were reached without knowledge of this case and the amount being sought as an end allowance. He also advised that these were described as college and premises and therefore different from the appeal property.

31. Mr Tawonezvi confirmed that Colliers were not aware of this challenge and subsequent appeal.

32. The panel had regard to *The Occupier v Stauder* (VO) (Valuation Tribunal decision, appeal number 232017696805/125N10) in which it was stated that “the granting of end allowances will always depend on the particular facts affecting any property. It is unreasonable to assume that, simply because one property has an assessment incorporating an end allowance, that another should automatically be entitled to the same allowance”. It was the end allowance that was being

considered on this property and the neighbouring agreements that had been reached would reflect the effect on those properties.

33. The burden of proof in appeals of this nature lies with the appellant to persuade the panel that the appeal should be allowed. After considering all the evidence presented, both documentary and oral, the panel found the appellant had provided little specific evidence of the physical effects of the MCC on the occupation or enjoyment of the property. It was clear that the construction work was close by and it would cause noise and disruption, but the extent was not evidenced, only the rental evidence was relied upon.

34. The panel had regard to the agreement that was reached between the landlord and tenant in this case. The panel found that the agreed rent reduction provided either a 25% reduction in the rent for the period of five years to compensate for the disturbance that was to be anticipated, or a 41% reduction over three years. The tenant electing to accept 41% over three years gave the same effect as 25% over the term of the lease renewal but the benefit was received over an earlier and shorter period. This reduction was reached two years before the work commenced and without knowledge of the specific disturbance that may be caused by the construction work on the appeal property and therefore was given less weight. The panel placed some weight on the settlements reached on the neighbouring properties as these would have been reached taking into account the effect of the construction works on those properties, which were close to the appeal property and therefore likely to be affected in a similar manner.

35. In view of the foregoing the panel found the 25% end allowance granted by the VO reasonably reflected the disturbance caused by the construction work. The appeal was therefore dismissed.

Date: 25 March 2024

Appeal number: CHG100715206

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.