THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; Local Government Finance Act 1988; advertising right and premises; material change in circumstances; locality; end allowance; appeal dismissed as the panel found that the existing assessment was not unreasonable.

RE: Outdoor Plus digital advertising right, Entrance to Hyde Park underpass, Knightsbridge, London SW7 1SE

BETWEEN: Primesight Ltd — Appellant

And

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Mr C Derrick (Presiding Senior Member)
Mrs N C Yang (Senior Member)

CLERK: Mrs R James IRRV (Hons)

SITTING ON: Friday 8 December 2023 (remote hearing no.2)

APPEARANCES: Mr R Wackett of Montagu Evans (on behalf of the appellant as advocate and expert witness)
Mr N Green (respondent’s representative as advocate and expert witness)

Summary of decision

1. Appeal dismissed. The panel made no alteration to the 2017 Rating List entry.

Introduction

2. This appeal had been brought in respect of the following: Outdoor Plus digital advertising right, Entrance to Hyde Park underpass, Knightsbridge, London SW7 1SE, which was entered in the 2017 Rating List as advertisement right and premises at £1,750,000 Rateable Value (RV), effective from 1 April 2017.

3. The appellant had made a challenge against the accuracy of the assessment in the 2017 Rating List, by way of a proposal served on the Valuation Officer (VO) on 8 September 2022.

After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and a decision to that effect was issued on 15 May 2023. That decision was appealed to this Tribunal on 29 June 2023, on the grounds that the valuation for the hereditament was not reasonable due to a material change in circumstance.

4. The subject property is an advertising right comprising two large format digital advertising displays. Each display is 96 sheets in size, and they are situated on both the Eastbound and Westbound entrances to the underpass, above the carriageway. The compiled list entry had been agreed at £1,750,000 RV, with effect from 1 April 2017 following the merger of the two previously separately rated displays. This appeal arose following a challenge to that entry on the grounds of a material change in circumstances.

5. As Mr Wackett was appearing on behalf of the appellant, as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

6. It was established that Mr Wackett was not instructed under a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. He also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

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

Preliminary Issue

8. Mr Wackett explained that the appeal property was one hereditament; reiterating that the compiled list assessment had been agreed at £1,750,000 RV following the merger of the former two assessments. The current appeal had been lodged on the grounds of a material change in the locality due to the proliferation of new digital advertising hoardings within the same locality and nationally since 1 April 2017 and before the start of the Covid-19 pandemic arising on 11 March 2020. As a result, he requested that its assessment be reduced on the basis of Schedule 6, paragraph 2 (7)(d) because there were matters 'physically manifest' within the locality of the hereditament affecting rental value for rating purposes. He was seeking an allowance of 20%, which equated to a reduced assessment of £1,400,000 RV. He contended that the material date was 19 May 2022 and the effective date for any reduction would be 19 February 2020.

9. Mr Green agreed that the material date was 19 May 2022; but did not necessarily agree with the effective date proposed by Mr Wackett.

10. In response, Mr Wackett explained that the 'tipping point' on the oversupply issue was the addition of the assessment in relation to an Advertising Right and Premises at S/O 380 Streatham High Road, London SW16 6HP, which entered the Rating List at £24,250 RV, with effect from 19 February 2020.

11. It was not disputed that there was a new advertisement right entered into the Rating List on 19 February 2020; however, Mr Green disputed that there was an oversupply issue of digital

advertising hoardings. The panel noted both parties' stances. It proceeded to hear the appeal and would address the matter of the effective date should the panel determine that an allowance was warranted.

Issue

12. The dispute related to whether the material change of circumstances quoted, which in this case was the proliferation of the new supply of digital advertising hoardings to the market, had adversely affected the appeal property's rental value at 1 April 2015 based on physical factors as at the material date. If so, was the effect so severe as to justify an end allowance of 20% as requested by Mr Wackett?

Evidence

13. The panel considered the evidence exchanged between the parties during the challenge stage along with oral submissions at the hearing.

14. Mr Wackett contended that the value of the subject assessment had been reduced by the increase in premium advertising hoardings in the locality since 1 April 2017 and before the start of the Covid 19 pandemic on 11 March 2020. He considered that matters physically manifest in the locality had affected the rental value of the subject advertising right for rating purposes. Mr Wackett sought an end allowance of 20% with effect from 19 February 2020, resulting in a revised RV of £1,400,000. Mr Green did not consider a reduction in RV was warranted and he defended the existing entry in the list at £1,750,000 RV.

Decision and reasons

15. The value of the subject hereditament must be considered as at the antecedent valuation date (AVD) of 1 April 2015. The material date on which to consider the property was the date on which the check of the assessment was confirmed, in this case that was 19 May 2022. Therefore, the panel must consider the subject hereditament on the material date and decide whether the increase in digital sites would impact negatively on the value based on rents from 1 April 2015.

16. There was no dispute that a new advertisement right had entered the Rating List on 19 February 2020.

17. Mr Wackett presented the panel with statistics on the increased number of advertising rights valued at £10,000 RV and above between 1 April 2017 to 19 February 2020. The number of assessments in this category had increased from 200 to 269 in that period and the overall RV had increased from £14,032,000 to £27,168,000; culminating in the 69th new assessment on 19 February 2020. With reference to a map of London, he demonstrated the increased number of sites. Mr Wackett also cited his researched figures showing that the number of digital sites had increased from 7% of the total of advertising rights in 2008 to 32% in 2015 and argued that digital advertising was now the preferred option over traditional 'paper and paste' sites.

18. Mr Green highlighted that the figures cited by Mr Wackett were skewed by the RV concerning the sites at Piccadilly Circus. Those assessments were deleted in January 2017 and replaced with the new Piccadilly Lights screen from October 2017. Therefore, the RV of £14 million quoted from 1 April 2017 did not include the original Piccadilly assessments and the

increased RV of £27 million in February 2020 included the new Piccadilly Light screen, valued at £10 million.

19. The panel treated this evidence with caution and concluded that whilst the evidence demonstrated an increase in RV for advertising rights during the quoted period, it was tainted by the earlier deletion and subsequent insertion of the new assessment of a particular high value premium site at Piccadilly Circus. It did not therefore conclude that this supported Mr Wackett's case of an oversupply of digital sites.

20. The panel accepted the submission that there has been an increase in digital advertising rights in comparison to traditional hoardings, and that digital sites command higher values. However, it was concerned in this appeal with the impact on the locality surrounding the subject hereditament. It was apparent from Mr Wackett's submissions that his evidence drew on a wide area, covering much of Greater London. The panel was of the opinion that the locality in this case must be a much smaller area, in the same surroundings as the subject hereditament. In forming this opinion, the panel was mindful of the judgment in *K Shoe Shops Ltd v Hardy (VO) and Westminster CC* [1983] RA 245 (HL). The panel was of the opinion that rents would vary widely across London and the values achieved on the AVD of 1 April 2015 would likely be very different in the Greater London boroughs, when compared to a prime location in central London, such as Hyde Park.

21. The subject hereditament was located in the affluent area of Knightsbridge on a major thoroughfare and therefore the panel expected its position to command a higher rent than similar sized advertising rights in outer London in less prominent locations. Nearby retailers included Harrods, Harvey Nicholls and Rolex. The site also served traffic traveling to and from Heathrow Airport. Mr Green explained that the appeal property occupied a prime site and was known in the digital advertising world as 'Knightsbridge One'. The panel found that the size and location of the subject assessment made it unique and there were no comparable sites presented in evidence; none of the assessments put forward as comparable were situated in the area of Hyde Park underpass.

22. The subject hereditament was occupied on a leasehold basis, with the lease commencing in December 2015, just eight months post the AVD. The rent was cited as £2,760,000 per annum when the lease was agreed. However, it was subsequently reduced to £700,000 per annum, subject to a profit share, from September 2020; no profit had been made since that agreement had been reached. Mr Wackett contended that, had the level of advertising rights existed on 1 April 2015 as they stood on the material date, the rent agreed in December 2015 would have been lower.

23. The panel noted that the original rent, had been agreed close to the AVD and therefore must be the starting point for consideration. However, it understood that the rental figure agreed included the payment of Non-Domestic Rates and therefore would need significant adjustment to reflect the statutory definition. Mr Wackett contended that the reduced rent reflected the increase in advertising rights competing in the locality. However, the panel noted that the rent agreed in September 2020 was on different terms to the original 2015 lease and therefore difficult to compare. There was also no evidence that the reduction was due to the increase in advertising rights. Furthermore, any proportion of the reduced rent to reflect the effect of the Covid 19 pandemic, and the reduction in cars on the road at that time, must be ignored for rating purposes in accordance with the relevant legislation. The panel could therefore not conclude that the reduction in rent was evidence of oversupply in the locality.

24. Mr Wackett had provided the panel with a rental schedule detailing ten rents. The panel noted that the only true digital advertisement right listed was that in relation to Ad Rights (digital) Grounds of 99 Upper Ground, London, SE1 9PP. A rent was set on this advertisement right in 2014, which had increased at renewal in both 2016 and 2018. There was a decline in rent in 2021; however, the panel noted that this was after the Covid -19 pandemic. The panel noted that the rental reductions granted were in relation to static and lightbox sites. As such, it agreed with Mr Green that this evidence supported the suggestion that there was a different market for digital and traditional advertising rights.

25. Mr Wackett had provided the panel with the decision of an arbitrator in the case of ARS on York House, York Parade, Great West Road, Brentford, Middlesex TW8 9DN. This case was concerning a rent review due in September 2019. However, the panel attached less weight to this evidence as the respondent landlord was not represented by an expert witness.

26. In appeals of this nature, the burden of proof lies with the appellant or their representative. After considering all the evidence presented, the panel was not persuaded that there had been a physical change in the locality that would have impacted the value of the subject hereditament sufficiently to affect the rental negotiations on the AVD. The subject hereditament's rent was negotiated and agreed in 2015 at a value higher than the compiled list RV. Although that rent was subsequently re-negotiated from 2020, insufficient evidence had been presented demonstrating that the rental reduction was as a result of a physical change in the locality. There was insufficient evidence presented of specific new sites in the direct surrounding area that may have an impact on the prominent and well-located subject site and the panel did not find analysis of trends across the entire London area persuasive. The appeal was therefore dismissed.

Date: 15 January 2024 **Appeal number:** CHG100851407

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.