VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988; material change of circumstances; end allowance sought for demolition and construction works within the locality; material day; appeal dismissed.

APPEAL NUMBER: CHG100890145

RE:	35th Flr, The Leadenhall Building, 122 Leadenhall Street, London EC3V 4PT (“the subject hereditament”)

BETWEEN:	Petredec (Europe) Limited	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	7 August 2024
BEFORE:	Mr K Higgins (Presiding Senior Member) Mrs N Yang (Senior Member)
CLERK:	Mr S Fletcher
APPEARANCES:	Mr A McKillop (Respondent’s representative)

DECISION and STATEMENT OF REASONS

Decision

1. The appeal was dismissed. The panel confirmed the ratable value (RV) of the subject hereditament at £670,000 with effect from 1 April 2017.

Introduction

2. The appeal process began with a proposal made by the appellant’s representative, on behalf of its client on 20 December 2022. The proposal was made under Regulation 4(1)(b) of the Non-Domestic Rating (Alterations of Lists and Appeals (England) Regulations 2009 on the basis that the rateable value (RV) shown in the list for a hereditament was

inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled. The material change "event" referred to in the proposal related to demolition and construction works in the locality of the hereditament. The appellant's representative proposed a reduced assessment with an end allowance for the material change of circumstances.

3. The respondent issued challenge case decision notices on 8 December 2023 which stated that the proposal was not well-founded and there should be no alteration of the list. The appellant appealed that decision to the tribunal on 18 March 2024 on the grounds that the valuation remained unreasonable.

4. The subject hereditament was an office and premises on the 35^{th} floor of the Leadenhall Building, located on Leadenhall Street in the City of London.

5. The appellant was represented by CBRE. Prior to the hearing, the appellant's representative requested for the appeal to be heard in its absence.

5. The grounds of the appeal were that the RV of the subject hereditament did not reflect either demolition and/or construction works at 6-8 Bishopsgate, 22 Bishopsgate and 150 Leadenhall Street. The material day was required to be determined by the panel. The appellant's representative's written submissions were silent regarding the specific date considered to be the material day, whereas the respondent considered the material day was 4 August 2022.

6. As part of their induction training, a new member of the tribunal was observing proceedings. It was explained to Mr McKillop that it was the panel's intention to invite their colleague to accompany it to the retiring room. Mr McKillop was assured that the new member would not participate in the decision-making exercise but would simply observe as part of their training. Mr McKillop did not raise any issues or objections to this.

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

Issue

8. There were two issues for the panel to determine. Firstly, the correct material day, and secondly, what, if any, allowance was applicable for the cited material change of circumstances.

Relevant law

9. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (the "1988 Act") (as amended):

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.

10. As the proposal was made on the grounds of a material change in their locality, regard had to be made to paragraphs 2(6) and 2(7) of Schedule 6 to the 1988 Act;

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are—

(a) matters affecting the physical state or physical enjoyment of the hereditament,

(b) the mode or category of occupation of the hereditament,

(c) the quantity of minerals or other substances in or extracted from the hereditament,

(cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,

(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, and

(e) the use or occupation of other premises situated in the locality of the hereditament.

Evidence and submissions

11. Arguments and factual evidence from both the appellant's representative and the respondent was provided. This comprised documentation and correspondence exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission, photographs of the subject hereditament and its locality, the challenge decision notice and reference to comparable assessments where allowances had been given pertaining to material changes of circumstances.

Discussion

Material day issue

12. In its written submissions, the appellant's representative did not refer to a specific date which it considered to be the material day. The respondent cited the material day as 4 August 2022, stating that was the day the proposal was served on the respondent. The panel was aware that for material change of circumstances appeals against the 2017 rating

list, Regulation 3 (7)(b)(i) of the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI:1992/556) stipulated that the material day was the date on which the Valuation Officer (VO) received a confirmation under regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as stated in an acknowledgement served by the VO under regulation 4D(1) of those Regulations). The panel was unable to query with the appellant's representative as to the date it confirmed the check as it was not present at the hearing. Mr McKillop was unable to answer the date on which the VO received the confirmation. The panel considered that the material day identified by the respondent was unlikely to be correct, as that was the day the check was submitted to the VO, and too short a time frame for the check process to be completed. In the absence of any other evidence to suggest otherwise, the panel therefore determined the material day was 6 December 2022, the date the check was completed.

Material change of circumstances

13. The RV of the subject hereditament was £670,000 with effect from 1 April 2017. The appellant's representative sought a revised assessment of £575,000 RV with effect from 13 November 2017, which accounted for a 10% end allowance for demolition and construction works within the subject hereditament's locality. The works and disturbances cited as the material change of circumstances were at 6-8 Bishopsgate, 22 Bishopsgate and 150 Leadenhall Street. The appellant's representative stated that demolition works began at 6-8 Bishopsgate and 150 Leadenhall Street, and their entries removed from the valuation list with effect from, 13 November 2017.

14. The appellant's representative referred to settlements in the 2017 rating list for disturbances in the subject hereditament's locality. 10 Crown Place was given a 7.5% allowance, 10 and 12 Arthur Street a 10% and 7.5% allowance respectively for the disturbance of Crossrail construction works, and 110 Bishopsgate was given a 6.25% allowance for works to its north. Two further comparable assessments were provided, at 9th-10th Floors at 52 Lime Street, where a 2% allowance was given, and Level 35-36 Citypoint, 1 Ropemaker Street, where a 2.5% allowance was given. It was argued that allowances had been given at 52 Lime Street and City Point for material changes of circumstances which were in excess of circa 28.5m away, whereas the subject hereditament was only 24.5 metres away from 8 Bishopsgate and was not separated by a road.

15. The respondent determined that no allowance should be given for the material change in circumstances cited by the appellant's representative. Mr McKillop described the works at 6-8 Bishopsgate and 150 Leadenhall Street, and 22 Bishopsgate as two separate development schemes. He stated that 6-8 Bishopsgate and 150 Leadenhall Street were demolished in 2018 and the reconstruction works of the scheme completed in 2023. The 7th and 9th floors had been entered into the rating list in July 2023. He argued that at the material day, demolition and initial construction were completed and any remaining works comprised of upper floor glazing and fitting out which would be of little disturbance to the subject hereditament, which was located in a modern, sealed building.

16. Mr McKillop described 22 Bishopsgate as a 62-storey office development which was widely reported as built and completed in 2020. He stated that properties at the development had been entered into the rating list with effect from March 2021 as the floors became occupied. He gave an example of an entry on Floor 45 which was with effect from August 2021. He argued that the subject hereditament was on the 35th floor and 160m from ground floor level, therefore it would suffer very little, if any, effects from any purported disturbances. He contended that any remaining works on the material day for the material change in

circumstances cited by the appellant were too minimal to warrant any allowance.

17. Mr McKillop also addressed the comparable assessments submitted by the appellant's representative where allowances had been given for material changes of circumstances in the subject hereditament's locality. He stated that the material days in those agreements were at much earlier points of the respective schemes where there was a higher degree of disruption which warranted an allowance. He stated that this was also the case at 10 and 12 Crown Place which was immediately opposite the works cited in the subject appeal.

18. The panel upheld the determination of the respondent. It was not satisfied that the appellant's representative had successfully demonstrated any detriment to the subject hereditament at the material day to warrant a reduction to its RV. It was not persuaded that a hypothetical tenant would reduce its rental bid considering the state of play in the locality at the material day.

19. It is a fundamental principle that rating valuations had to be undertaken, having regard to the facts as they stood at the material day. The events cited by the appellant started considerably earlier, for example the date cited by the appellant's representative that the works began was in excess of five years prior to the material day. Very limited information was provided by the appellant's representative regarding the progress of the works at the material day, save for a few photographs, and the appellant's representative was not present to answer any questions. The respondent's representative stated that the vast majority of construction work had been completed, and the panel found that was supported by the fact that hereditaments at the various premises had been entered into the rating list. The panel did not consider that any such remaining works described by the respondent's representative such as fitting out would warrant any reduction to the RV of the subject hereditament, as any resultant disruption would be minimal and short-lived. The panel attached very little weight to the comparable assessments submitted by the appellant's representative. It found the information provided pertaining to those to be vague, and again, the appellant's representative was not present to answer any questions. The material dates of those agreed allowances were also far earlier in their respective material change periods than the material day in the subject appeal.

20. In hindsight, the appellant's representative should have submitted an earlier check and challenge to reflect the severity of the works earlier in the scheme. By delaying the check and challenge, its client had lost the opportunity for a possible reduction as by the material day, the panel was satisfied that the scheme of works had either ended or the remaining works were minor and did not warrant a reduction in RV.

Disposal

21. In view of the foregoing, the appeal was dismissed.

Date: 6 September 2024

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.
