IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG101084898

Sitting remotely using Microsoft Teams

Date: 13 June 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating appeal; 2017 rating list; warehouse and premises; allowances for disruption caused by redevelopment works; appeal dismissed.

Before:

MISS U HAQUE
MR A HUSSAIN

Between:

JOSEPH STAIANO **Appellant**

- and -

ANDREW MOULAND (VALUATION OFFICER) **Respondent**

Regarding:
UNITS 3 - 4, THE WAVERLEY IND PARK, HARROW, HA1 4TR
(the "subject property")

Mr M Rowell from Colliers International for the Appellant
Mr Y Napal for the Respondent

Hearing date: 23 May 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed.

2. The Tribunal panel found that no changes should be made to the entry within the 2017 rating list for Units 3--4, The Waverley Ind Park, Harrow, HA1 4TR, (hereafter, known as the subject property) and should remain at £162,000 rateable value (RV) with effect from 7 April 2022.

Introduction

3. The appeal arose in respect of a proposal to alter the 2017 non domestic rating list for a material change in circumstance (MCC). The check was submitted on 29 March 2023 and completed on 22 June 2023. The Challenge was submitted on 10 July 2023 and completed on 6 September 2023. An appeal to this Tribunal was received on 8 January 2024.

4. Mr Rowell appeared on behalf of the appellant and Mr Napal appeared on behalf of the respondent. Both appeared on a dual role 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 Rowell stated that he was instructed under a conditional based fee and also 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.

5. The panel accepted the 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).

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

7. During the course of the proceedings, it was necessary to clarify the material day for the appeal. Both parties had stated that the material day was the day when the check had been submitted, namely 29 March 2023. However, with MCC appeals, the material date was the date when the check was confirmed by the valuation officer. Therefore, the material day with regards to this appeal would be between 29 March 2023 22 June 2023. The panel on balance considered that there was unlikely to be a significant difference in the level of the disturbance between the check commencement date and the check completion date for the appeal. Therefore, the material day with considered to be 29 March 2023.

8. This was the date on which the physical factors had to be taken into account. The task for the panel was to determine the level of disturbance caused to the subject property on the material day and the level (if any) of allowance which should be awarded.

9. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Background

10. The subject property had been entered into the 2017 rating list with an RV of £162,000 with effect from 7 April 2022 and described as a 'warehouse and premises'. The subject property

comprised a block of two single storey industrial warehouse units of steel frame construction. It is located within Waverley Industrial Estate on Hailsham Drive in Harrow.

11. There had been construction works that had been arisen from the Eastman Village residential development. The construction works involved demolition of the Kodak factory and redevelopment of the land to provide more than 2000 new homes. In the Challenge submission, Mr Rowell had stated that the demolition works had commenced in October 2018. However, an article had been published from 'MyLondon', which stated that works had commenced in the summer of 2018. The development works carried out involved demolition; hazardous waste removal; remediation and enabling works; groundworks and civil engineering.

12. Mr Rowell was of the opinion that due to the subject property being affected by a material change of circumstance in the form of disturbance, an end allowance of 15 % with effect from 1 October 2018 should be warranted to reflect the negative impact the works had on the subject property.

13. Mr Napal was of the opinion that no allowance was warranted, as no evidence had been provided to show any disturbance as of the material day. Therefore, he requested that the panel dismiss the appeal.

Preliminary issue

14. On 30 January 2024, Mr Rowell had provided new evidence, which Mr Napal had objected to. This new evidence had been considered by the Senior Member and denied. This was due to the fact that the new evidence had been shown to be available at the time the Challenge had been submitted.

15. The day before this hearing, Mr Rowell submitted further evidence, which Mr Napal objected to. The new evidence contained photographs from March 2024 and links to works ongoing at that time.

16. As there had been an objection by Mr Napal, the panel considered the matter in light of the *Upper Tribunal decision in Simpsons Malt Ltd etc. v Jones* (VO) UKUT [2017] 460 and had regard to the test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926.

Stage 1 – If panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents may be good reasons but overlooking a deadline is not (para. 54).

Stage 3 - The panel must consider all the circumstances of the case including:

(1) The need for litigation to be conducted efficiently and at a proportionate cost;
(2) A failure to grant a sanction may leave an inaccuracy being uncorrected;
(3) The need to enforce compliance with rules, directions and orders (para. 55). However such matters are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice (para. 56).

17. The panel had to consider whether there had been a minor or significant breach. The panel found that it was a significant breach. Mr Rowell could have submitted an application under Reg 17a for the new evidence to be submitted and considered, as this new evidence had been available since March 2024, but he had failed to do this. Additionally, the new evidence related to March 2024 - a year after the material day under consideration for the appeal. Therefore, in fairness to Mr Napal, the panel did not allow this new evidence to be included as part of this appeal.

Relevant Law

18. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the "material day". The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (the "MD Regulations") provides for determining the material day. So far as is relevant for these proceedings, Regulation 3 of the MD Regulations provides –

> ***"3 Material day for list alterations***
>
> *(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.*
>
> *…*
>
> *(7) In any other case—*
>
> *…*
>
> *(b) where the determination is with a view to making an alteration to a list compiled on or after 1st April 2005, the material day is—*
>
> *(i) where the alteration is made in pursuance of a proposal, the date on which the 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);"*

19. 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.

20. Case law detailed within the submissions were:

Laing (J) & Son v Kingswood AC [1949] 1 KB 344
Lotus and Delta v Culverwell (VO) [1976] RA 141
Robinson Bros (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee (1938) 28 R&IT 197 & (1937) 26 R&IT 228
*Telereal Trillium v K Hewitt (*VO) [2018] EWCA Civ 26
K Shoe Shops Ltd v Hardy (VO) & Westminster City Council (Lands Tribunal) (1980) RA 333 at 353 (Court Of Appeal) (1983) RA 26; 3 All ER 609
Oldschool & Oldschool v Coll (VO) (1995) RA/312/1994
BPP Holdings Ltd v Revenue and Customs Commissioners [2016] 227-245
Fir Mill Ltd v Royton UDC and Jones (VO) 1960 LT 7 RRC 171

Discussion

21. 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 of 29 March 2023.

22. The panel noted that Mr Rowell proposed a 15% end allowance due to the disturbances caused by the neighbouring works. In support of his case, he had provided comparable properties which had been granted an end allowance of 15% due to redevelopment works. The panel noted that two of the comparable properties were offices and premises where demolition works and redevelopment works had taken place. The other property had been an industrial unit. Two of these comparable properties had been agreements made with regards to the 15% end allowance and one of the offices had the end allowance determined at Valuation Tribunal.

23. The panel found that the comparable properties MCC's were due to residential development schemes like the one that existed with regards to the subject property. However, the comparable properties must have had evidence which showed that the level of disturbance was adequate to warrant an end allowance as of the material day that had been submitted with regards to those appeals, unlike the subject property.

24. The panel was provided with an email which had been provided by the appellant from February 2021, where it was mentioned by the appellant that the works involved considerable noise from heavy machinery and had a negative effect on the appellant company's ability to operate from the premises. The appellant company design and produce radio communication headset systems. Therefore, given the nature of the works, the ongoing works would affect the appellant company from performing business tasks, such as product testing. The appellant had informed Mr Rowell that the noise from the ongoing works can sometimes affect multiple days of testing procedures. where he had mentioned that the noise was not consistent, however, was quite frequent when the heavy machinery starts up. It can

ruin days' worth of work if a product under test picks up the noise. The appellant also stated that the contractors for the works were parking their vehicles in private car parks, as there was little room elsewhere.

25. The panel considered that the correct approach was to consider the disturbance caused by works which remained to be undertaken as at the material day. This was what would be reflected in the rental bid by a hypothetical tenant coming fresh to the scene.

26. The subject property was occupied under two separate lease agreements. Unit 3 was occupied on a 10 year lease commencing on 29 September 2014 with a headline rent of £111,800 per annum. Unit 4 was occupied on a 10 year lease commencing on 29 September 2014 with a headline rent of £110,700 per annum. The panel noted that no evidence had been provided to show that the Landlord had reduced the rent of the subject property to reflect the issues relating to the disturbance within the neighbourhood.

27. The panel found that the demolition works commenced in October 2018. The panel noted that the proposed end date for demolition works with regards to this site had been circa 18 months, which would have been around April 2020. Therefore, as of the material day of 29 March 2023, even though the development of the residential buildings were still deemed to be ongoing, the majority of the major disturbance would have been completed by the material day. Therefore, even though the panel accepted that the noise from the development would have disrupted the appellant company's business at the start of the demolition process in October 2018, the material day the panel had to consider was much later in 2023.

28. Mr Napal informed the panel that he was of the opinion that there was insufficient evidence provided to show that as of the material day, the ongoing works would have impacted the subject property to warrant an end allowance. He had undertaken an inspection of the subject property in May 2024 where he noted that works were still ongoing at that time, as works were conducted in phases. However, even though the works were still ongoing in May 2024, Mr Napal stated that there was no evidence to show what works were still ongoing as of the material day and to what effect, if any, the level of disturbance would be at that time.

29. Mr Napal also informed the panel that there were no MCC settlements on the estate where the subject property was, and therefore, he was of the opinion no end allowance should be granted with regards to the subject property. In support of his statement. Mr Napal provided details of comparable properties situated on Waverley Industrial Estate. The panel noted that 11 Waverley Industrial Estate had submitted a Challenge in October 2022 with no change in the RV and no appeal.

30. Units 1 and 2, The Waverley Industrial Estate and agreed tone reductions in 2020, but no MCC allowances had been considered for either unit.

31. The panel found there was little evidence for the works which were actually undertaken around 29 March 2023 around the subject property. Mr Rowell had provided a photograph which was taken 2022 where scaffolding was shown to be erected around one of the new residential buildings. Therefore, the panel supported the view of Mr Napal that it was more likely that most, if not all, of the structural works which would have caused the significant disruption to the subject property by March 2023 would have been concluded.

32. When considering the evidence provided, the panel accepted that demolition works had taken place in 2018. Scaffolding had been in place from February 2022 and were still in place

with regards to some of the residential buildings in 2024, but no evidence had been submitted from around the material day to show what outstanding works were still ongoing or to what effect these works had on the subject property at that time.

Determination

33. In view of the above findings and conclusions, the Tribunal panel found that in view of the lack of evidence of any significant level of ongoing disturbance as of the material day of 29 March 2023, an end allowance of 15% was not warranted.

34. Accordingly, the appeal was dismissed.

Right of further appeal

35. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

36. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Miss U Haque, Senior Member (Presiding)

Mr Amran Hussain, Senior Member

13 June 2025

Ms R Muller
Clerk to the Tribunal
Date issued to the parties: 13 June 2025