THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; tv studio and premises; Proposal challenging VO notice of alteration; rental evidence; comparable properties; mode or category of occupation; Scottish & Newcastle Retail Ltd and Another v Williams (VO) [2001] EWCA Civ 185; end allowances; appeal dismissed.

Re: North End International Broadcast Centre, Olympic Park, Stratford, London E20 2ST

APPEAL NUMBER: 536024208266/538N10

BETWEEN:	BT Plc	(Appellant)
	and	
	Andrew Ricketts (Valuation Officer)	(Respondent)

PANEL: Gary Garland (President) and Alfred Clark (Vice President)

CLERK: David Slater (Deputy Registrar)

REMOTE HEARING HELD ON WEDNESDAY 30 JUNE 2021

PARTIES PRESENT; Mr Laurence Hatchwell from Colliers International (Appellant’s representative)
Mr Jonathan Cooper (Respondent's representative)

Summary of decision

1. The appeal was dismissed as the existing assessment of £675,000 Rateable Value with effect from 29 July 2013 was not excessive based on the actual rent paid and the comparable evidence.

Introduction

2. The appeal arose following a proposal served on the Valuation Officer on 10 July 2014 by the Appellant's then representatives Telereal Trillium. The proposal challenged the Valuation Officer's notice of alteration dated 18 March 2014, the effect of which was to insert a new entry, in relation to the appeal property, into the 2010 Rating List with an assessment of £675,000 Rateable Value with effect from 29 July 2013.

3. For the purposes of this appeal, both the material date and the effective date were 29 July 2013. The effective date for the appeal property's insertion in the rating list had been set following the billing authority's service of a completion notice.

4. Until the clerk raised the issue about the background to the effective date of the list entry, Mr Hatchwell was not aware that a completion notice had been served. Upon being made aware of its existence, Mr Hatchwell acknowledged that the hereditament had to be assumed to be complete and ready for occupation on the material date.

5. Mr Hatchwell appeared on behalf of the Appellant in a dual capacity 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 Hatchwell advised the Tribunal that he was instructed under a conditional fee arrangement.
6. Mr Hatchwell 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 (RICS) regardless of whether or not the evidence supported his 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 in England).

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

9. Ordinarily, the tribunal would have considered and determined this appeal, following a public face to face hearing. However, in view of the Covid 19 pandemic and to avoid justice being further delayed, a remote hearing was held.

10. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

11. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working.

12. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before it came to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Agreed facts

13. In order to assist the panel, the parties presented it with an agreed statement of facts. The facts that were agreed were as follows;

    I. The subject hereditament forms part of the former Olympic Park Broadcasting Centre that stood at over 61,000 square metres. It was constructed in 2012 and was used for the purpose of the 2012 London Olympics. It is situated 0.9 mile from Stratford International Station by the most direct walking route.

II. Following completion of the games, the site was taken over by iCITY with the idea of creating an environment for the digital and creative industries. The area is now known as "Here East". The Appellant (BT plc) is the occupier of the subject hereditament, having taken a full repairing and insuring lease for 10 years from 1 February 2013 at a rent of £1,321,920 per annum (pa), with an 18-month rent free period. The rent was to rise to £1,647,693 pa on 25 March 2019. An area of 8,244 ft² (765.9 m²) on the ground floor was excluded from that original lease but was included in a separate lease from the same landlord to BT for the same term with a rent free period until 1 August 2014, then £164,880 pa, rising to £186,314 pa on the 5th anniversary of the lease. The premises included in both leases were available for beneficial occupation from 27 July 2013.

III. The hereditament is used by BT Sport. BT Sport is a group of pay television sports channels provided by BT Consumer; a division of BT Group in the United Kingdom and Ireland that was launched on 1 August 2013.

IV. It is agreed that at the antecedent valuation date, 1 April 2008, BT plc would not have been in the market for the appeal hereditament.

V. The floorspace consists of a double height (in part) ground floor, above which a small first floor has been inserted, and a full size second floor.

VI. Access is via a common reception area which serves also other hereditaments. There is a shared loading bay. The hereditament does not include any car parking, although parking was and is available outside the hereditament.

VII. The space within the hereditament falls into the following categories:

a. Studios. There are three of these, although at the material day only two had been fitted out and were in use. The studios are "black boxes" fitted into the centre of the ground floor space.

b. Canteen and kitchen, a double height area along the frontage at ground floor level, but with no natural light.

c. Numerous small rooms surrounding the studios. None have natural light. Some of these are stores, or plant rooms. Others are production offices, green rooms, or dressing rooms (with self-contained shower/wc). There is also a hair salon. At first floor level and second floor level there are further production offices. None have natural light.

d. At second floor level at the front of the hereditament there is an area (approximately 800m²) of open plan offices, of normal office quality. However, at the material day and for many years after, these offices were deprived of natural light by the cladding which previously covered the west elevation, and subsequently by the temporary envelope which replaced it.

VIII. The parties adopt the same aggregate gross internal areas, and although they are grouped differently in the parties' valuations, there is no disagreement as to the attribution of GIA between the constituent parts of the hereditament.

IX. Both parties agree that the aggregate rateable value attributable to rateable Plant and Machinery and the structure housing the generator is £9,966.

Issues in dispute

14. For the panel's benefit, the parties had clarified the issues that were in dispute as follows;

I. Whether hereditaments in other modes/categories of occupation provide evidence of the rent which might reasonably be expected to be agreed for the appeal hereditament at the antecedent valuation date (AVD), and if so, to what extent.

II. Whether the appeal hereditament includes space which would exceed the requirements of a hypothetical tenant at the AVD, and if so, the appropriate allowance for surplusage.

III. Whether an allowance for lack of natural light in the ground floor canteen/kitchen area and in the open plan offices on the second floor is warranted, and if so, the size of that allowance.

IV. Whether an allowance for the unfinished state of the locality as it was at the material day is warranted, and if so, the size of that allowance.

Evidence and submissions

15. On behalf of his client, Mr Hatchwell sought a reduced entry of £166,000 Rateable Value. In support of his valuation, he relied on comparable evidence and his expert opinion. He also referred to both the Court of Appeal's and the Lands Tribunal's judgments in *Scottish & Newcastle Retail Ltd and Another v Williams (VO)*, commonly referred to as the City Duck case.

16. Mr Hatchwell also explained the background for BT's need for studio premises which resulted from their successful tendering for live Premier League football tv rights. Had it not been for the award of the contract to broadcast live Premier League matches, BT would not have been in the market for the appeal property. This point was not disputed by the Respondent.

17. In response, Mr Cooper defended the Valuation Officer's existing entry of £675,000 Rateable Value which he contended was the minimum value he would have placed on it, having regard to the actual rent and comparable evidence.

Appellant's valuation

Floor Level	Description	GIA	£ per sq m	£RV
Ground	Studio 1	940.3	38	35731
Ground	Studio 2	349.5	38	13281
Ground	Studio 3	179.96	38	6838
Ground	Canteen and kitchen	975.42	45	43894*

Ground	Production offices/dressing rooms/green rooms/stores		2086.43		
		Of which, required area	*1500*	45	67500
		Superfluous area	*586.43*	22.5	13195
Ground	stores		224.45	30	6734
Ground	Plant rooms		141.41	30	4242
Mezzanine	Plant deck		43.62	30	1309
First	Production offices	*Superfluous area*	269.55	22.50	6065
Second	Production offices	*Superfluous area*	1688.99	22.5	38002
Second	Open plan offices	*Superfluous area*	800	22.5	18000*
				Total	254791
		Less for	Solid cladding depriving canteen and second floor offices of natural light	15% of areas affected*	-9283
		Less for	Incomplete state of locality	35%	-89177
Add standby				Agreed	9966

generator and housing				
			Total	**£166,297**
			Say	**£166,000**

Respondent's valuation

Floor level	**Description**	**Area/m²**	**Rate/£m²**	**Total/£**
Ground	Plant area	131.52	70.00	9,206
Ground	Office quality	1798.01	84.00	151,033
Ground	Office quality	288.42	84.00	24,227
Ground	Store	111.63	68.26	7,620
Ground	Store/loading area	69.20	68.26	4,724
Ground	Canteen	848.36	75.08	63,695
Ground	Area under supported floor	43.62	47.78	2,084
Ground	Plant room	9.89	68.25	675
Ground	Kitchen/prep	127.06	81.90	10,406
Mezzanine	Plant deck	43.62	34.13	1,489
Ground	Studio 2	349.50	109.20	38,165
Ground	Studio 1	940.30	109.20	102,681
Ground	Studio 3	179.96	109.20	19,652
First	Office	269.55	84.00	22,642
Second	Office quality	2385.91	84.00	200,416
Second	Corridor	103.08	84.00	8,659
Building containing generator		104.53	20.00	2,091
Plant and machinery				7,875
			Total	**£677,340** **say £675,000**

The relevant law

18. The statutory hypothesis is contained in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988. The statutory definition of rateable value is as follows;

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 (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. Although the rateable value is determined having regard to the AVD, the valuation must reflect physical facts relating to the property and its locality as at the time the date the assessment is made or amended (called the material day). Paragraph 2 (6) and 2(7) of Schedule 6 to the Local Government Finance 1988 set out the matters which are relevant for this appeal:

 (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.

(6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.

(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) …………,

(cc)…**……….,**

(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.

Decision and reasons

Analysis of the rent

20. In the case under consideration, there was an actual rent and having regard to the Lands Tribunal's judgment in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 this was the starting point in the panel's deliberations.

21. Mr Hatchwell expressed his surprise at the Valuation Officer's reliance on the actual rent. He argued that no weight whatsoever should be attached to it. The appeal property was occupied on the basis of two leases which took effect on 1 February 2013 for a term of 10 years. The initial rent was set at £1,487,385 pa and with a fixed increase to £1,834,069 pa or market value on 1 February 2018. Mr Cooper had received information from the appellant to indicate that the rent

increased to £1,909,069 pa from which he assumed that the parties had agreed a market-based rent, in excess of the fixed rent.

22. The lease provided for an 18 months' rent-free period at the outset. Mr Cooper had disregarded the first three months, for fitting out, and had treated the remaining 15 months as a landlord's incentive. Following his adjustment of the rent, his analysis of the rent to conform to the rating hypothesis was £1,080,857 pa or £113 per m².

23. Mr Hatchwell accepted that the level of rent reflected factual matters as they stood on the material day but argued that the property would not have attracted anywhere near that level of rent at the AVD. He also pointed out that there was a break clause in the lease after five years which would allow BT to cease occupation if it lost the contractual rights to broadcast live Premier League football.

24. Mr Hatchwell considered his client would not have been in the market for the appeal premises at the AVD given the state of the broadcasting industry, market forces and technology at the time; he argued that the appeal property would never have been built. However, he did accept that the appeal property had to be valued as if it had existed at 1 April 2008 but that any value had to reflect the lack of demand in the locality at that time, the developing nature of the site and the unfinished nature of the building outside the hereditament itself. It was also accepted by both parties that BT would not have been a potential tenant interested in bidding for the property on 1 April 2008.

25. Having listened to the competing arguments, the panel accepted that the rent required considerable adjustment to conform to the rating hypothesis. However, it did not automatically follow that the rent attracted no weight and should be disregarded. This was a *sui generis* class of property where rental evidence was sparse. No other rental evidence was presented to enable the panel to test the reliability of the rent. That said, where a property is largely unique, if there is an actual rent, unless it can be shown that the rent is unreliable, that rent in the panel's opinion carries some weight. The rent resulted from a new letting with BT coming fresh to the scene. The effective date of the rent was almost five years after the AVD. The rent also required adjustment to reflect the rent-free period, which was well in excess of the norm for fitting out. The panel was also

mindful that the appeal property had been let on a shell basis, no costs for fitting out had been provided. Any costs for fit out which would form part of the hereditament would have been needed to be taken into account and the analysed rent adjusted upwards accordingly.

26. The panel's conclusion regarding the rent was that it did attract weight. When the proposal was served on the Valuation Officer the Appellant proposed a value of £1. The Appellant's declared position at the hearing had moved and Mr Hatchwell sought a revised valuation of £166,000 RV. Even allowing for the adjustment of the rent to statutory terms at the AVD the Appellant's case appeared to have no merit. The panel did not accept that rental values would have increased as exponentially as Mr Hatchwell's revised valuation would suggest. In contrast, the Valuation Officer's existing entry of £675,000 RV could not be said to be excessive having regard to the rent and the adjustments required.

27. Whilst it was accepted that BT would not have been in the market for the appeal property on 1 April 2008, had it existed then, the panel was satisfied that there were plenty of tenants who could have been. Moreover, the virtual rent that the Valuation Officer had deemed that the hereditament would attract was reasonable, purely having regard to the actual rent.

Mode or category of occupation/comparable evidence

28. Having looked at and considered the actual rent, the panel then turned its attention to the comparable evidence. Both parties were critical of each other's respective approach with regard to comparable evidence. Mr Hatchwell criticised the Valuation Officer's approach to the valuation of the appeal property on a distribution warehouse basis. He contended that, as a distribution warehouse was a different mode or category of occupation from a tv studio, the Valuation Officer's approach was flawed. He referred to the Court of Appeal's judgment in *Scottish & Newcastle Retail Ltd and Another v Williams (VO) [2001] EWCA Civ 185* which upheld the Lands Tribunal's judgment [2000] RA 119. He cited paragraphs 140 and 141 in the latter to support his argument.

140.We do not think it is right to exclude as a matter of principle as comparables all hereditaments that differ from the subject hereditament in terms of their mode or category of use, any more than it is right to exclude those that differ in terms of the other matters set out in para 2(7) of Schedule 6. Whether the rents of assessments of hereditaments in a different mode or category of use are relevant, and the weight to be attached to them, is a matter for judgment in the individual case. Often they will be of no assistance, but there are undoubtedly cases where they may constitute helpful evidence. Take, for example, a shopping street which contains, in addition to shops and A3 uses, a few offices in premises built as shops. The subject hereditament, in office use, is in a part of the street that contains only shops and restaurants apart from the subject hereditament itself. If the evidence from the other parts of the street is that the rents and assessments of offices are no different from those of shops and A3 uses, the valuer may well conclude that the best evidence of the value of the subject premises as offices is to be found in the rents and assessments of the adjacent shops and restaurants and he will make his valuation on the basis of the zone A prices that are established for this part of the street frontage. It is a matter of evidence and argument and valuation judgment in the particular case whether the rents and assessments of hereditaments in a different mode or category of use are of assistance.

141.In the example given, the valuer is not, of course, valuing the subject hereditament as a shop or restaurant. He is valuing it as an office but by reference to rents and assessments of shops and restaurants, because he finds that from those rents and assessments can be derived the rent that a tenant would pay to occupy the subject hereditament as an office. It is not necessary for him to pretend that the offices are in the same mode or category of use as shops or restaurants, any more than it is necessary for him to treat shops and restaurants as being in the same category of use for the purpose of comparing their rents and assessments where evidence and judgment show this to be appropriate.

29. Mr Hatchwell stated that the appeal property could not be occupied as a distribution warehouse and therefore the Valuation Officer’s approach failed to consider the property as it stood *rebus sic stantibus.*

30. In response, Mr Cooper contended that there was a paucity of rental evidence for properties let purely as tv studios. In his experience, television and film companies will often occupy properties akin to either offices or warehouses. He said from a landlord's perspective, if a tv or film company was interested in renting a property, he would not reduce the level of rent below what a competing tenant would offer for either office or warehouse use.

31. Both parties referred to comparable evidence. Mr Hatchwell's main comparable property was the Fountain Studios at Wembley Park. He also referred to 3 Mills Studios at Bow. Mr Cooper referred to a comparable assessment he had agreed with the ratepayer's representative for LH2 Concord Road, London W3 0SE. As there was no passing rent for this tv studio, its assessment for both the 2010 and 2017 Rating List was agreed on an industrial basis.

32. The panel understood the point that Mr Hatchwell was trying to make in his argument that warehouse values should not be used as a basis for valuing a tv studio. However, neither the Court of Appeal nor the Lands Tribunal in the City Duck case determined such an approach unlawful. Instead they urged caution as care clearly needed to be taken when having regard to comparable properties drawn from a completely different mode or category of use. In paragraph 152 of the Lands Tribunal's judgment, it said;

152. The conclusions that we have come to can be stated shortly. The rebus sic stantibus rule identifies for the purpose of valuation the hereditament, the physical changes which may be made to it, and the mode or category of occupation. The rule rests on the concept that what has to be determined in rating is the value to the occupier of his occupation of the hereditament, measured by the rent on an assumed yearly tenancy. In carrying out a valuation under the rating hypothesis the following assumptions are to be made of the hereditament:

(a) That the hereditament was in the same physical state on the material day. Alterations which the hypothetical tenant might make to the hereditament may be taken into account, if taken overall, they are minor. All other prospective alterations to the hereditament are to be ignored.

(b) That the hereditament can only be occupied for a purpose within the same mode or category of purpose as that for which it was occupied on the material day. Any prospective change of use outside that mode or category is

to be ignored. In determining to what mode or category a particular use belongs it is the principal characteristics of the use and the methods of valuation commonly applied by rating surveyors to which regard must be had; and shops, offices and factories serve as examples. Some uses may not fall within any such broad category, however, and are regarded as sui generis.

Any evidence relating to the rents and assessments of other hereditaments may be taken into account provided it is relevant to the valuation. There is no rule that evidence relating to another hereditament is irrelevant if that hereditament is in a different mode or category of occupation.

33. With the above in mind, the correct valuation approach was to have regard to the mode or category of occupation and then determine the value of that occupation to the occupier. In the subject appeal, the mode or category of occupation was a tv studio a *sui generis* type of property for which reliable rental and comparable evidence was either scarce or non-existent. In the absence of such evidence to guide the valuer, the actual rent, where there was one, assumed greater importance.

34. The panel found that the comparable evidence provided little assistance. The Appellant's main comparable property Fountain Studios was built in 1959 and was considerably older and much smaller than the appeal property. However, its studio space was significantly larger than any of the studios at the appeal property. Although it was in the same mode or category as the appeal property, it was hardly like for like. Similarly, 3 Mills Studio was not like for like being around two and a half times the size of the appeal property and was of a mixed age. Although Mr Cooper had referred to a number of tv and film studios in and around the London area to demonstrate there would have been potential tenants in the market on 1 April 2008, he was not relying on that evidence as a guide to how the appeal property should be valued.

35. In the absence of any direct comparable properties, within the same mode or category of occupation, the Valuation Officer's approach of having regard to warehouse values in the locality appeared to be reasonable. Moreover, when BT was in the market for a tv studio it looked at such premises because when it acquired the appeal property it was an empty shell. This, the panel thought,

would set a base line figure at which the Appellant would take the premises and at which a Landlord would let it. A Landlord would be unlikely to let it for a reduced rent on the basis of alternative use, when it was known that the market figure for such empty warehouse shells was higher.

Superfluidity argument

36. In his valuation of the appeal property, Mr Hatchwell had reduced his basis by 50% to the areas he considered would have been superfluous to another tenant. He accepted that BT would require all of the space within the building but argued that a different tenant, with no access to live Premier League football would not. The corollary of that would be that another tenant would have made a lower rental bid.

37. Mr Hatchwell's analysis of his comparable evidence had shown that there was a balance close to equality between studio and ancillary space. However, in the BT property, the non-studio space was 2.75 times the amount of studio space. Whilst another tenant could have made use of this additional space, it would probably only be used as storage as opposed to production offices, green/dressing rooms or canteen areas and therefore a lower basis was justified when valuing it as vacant and to let.

38. In response, Mr Cooper contended that superfluidity was not a factor. He argued that Mr Hatchwell had looked at poorer dated premises to justify his superfluidity argument. However, an analysis of modern tv studio properties did not support any allowance for superfluidity. Mr Cooper referred to the BskyB premises in Isleworth and Building 8, Chiswick Park occupied by QVC to substantiate his point.

39. Having considered the parties competing arguments, the panel determined that Mr Hatchwell had not proven his case for any superfluidity allowance. Mr Cooper's comparable evidence had shown that, in the more modern tv studio premises, offices or production space greatly exceeds the amount of studio space. Consequently, Mr Hatchwell's argument on this point was rejected.

End allowance for no natural light argument

40. At the material day, the exterior of the building was enveloped in cladding which meant that there was no natural light within the building. Mr Hatchwell accepted that natural light was not required for production areas, however, it was required in the canteen on the ground floor and for the open plan administrative offices on the second floor. Mr Hatchwell argued that staff morale was adversely affected by the lack of natural light. This claim was supported by a statement from Jamie Hindhaugh, the BT Sports Head of Studio and Project Manager.

41. Mr Hatchwell had therefore applied an end allowance of 15% to the affected areas. When questioned by Mr Cooper, Mr Hatchwell had no valuation evidence to support his adoptive end allowance as it was purely based on his expert opinion.

42. Whenever end allowances are sought, he who asserts must prove. There was therefore a factual burden of proof on the Appellant to prove his case. In the case under consideration there was the expert opinion of Mr Hatchwell, which was disputed by Mr Cooper. In such circumstances the panel would normally expect supporting rental or settlement evidence to be provided to demonstrate or substantiate the point. Such evidence would normally assist the panel to determine if an allowance was justified and if so, how much.

43. Mr Hatchwell's argument for an end allowance was also dependent upon whether his starting point (basis of assessment) was right in the first place. For the reasons already explained above, the Appellant's valuation appeared artificially low. His argument for an end allowance to reflect the absence of natural light in the affected areas was therefore rejected as even if it was correct, and supported with good evidence, any such reduction would be from a much higher starting point and produce a value in excess of that currently in the List. As it was the point was academic, but the panel was not persuaded by Mr Hatchwell's argument in any event.

End allowance for unfinished state of the locality allowance

44. It was accepted that at the material day, the appeal property's locality was in a state of flux. The appeal property was subject to significant disruption from ongoing building works, within the locality. It also suffered from the legacy of

utilitarian cladding outside the building itself which took a number of years to replace. Mr Hatchwell argued that his client's use of its property was severely impaired, as it had studio audiences for some of its shows and justified an end allowance of 35%. He referred to an earlier VTE panel decision in respect of Randy's Wing Bar at 4 East Bay Lane on the Olympic Park (appeal number; 536027912142/538N10) to support his argument.

45. In response, Mr Cooper argued that when BT agreed to take the property in 2012, the level of rent that was set would have reflected all of the advantages and disadvantages of the locality.

46. Mr Cooper also contended that no end allowance(s) for the unfinished state of the locality had been conceded by the Valuation Officer, in respect of non-retail units and referred to the Broadcast Centre on the Olympic Park as a prime example. No appeal had been received against this assessment. He also referred to the Broadcast Centre in Lesney Avenue where the entry with effect from 18 April 2016 was appealed and settled, with no end allowance for the unfinished state of the locality.

47. Having listened to the competing arguments on this issue, the panel determined that Mr Hatchwell had not proven his case. There was a marked difference between retail units and restaurants which would be dependent upon passing trade and whose businesses were likely to be affected by the unfinished state of the locality and destination venues like tv studios. The panel was not convinced that audience participants would be deterred by the outside environs. They would be travelling to the studio for one purpose and one purpose alone, to watch the show.

48. The panel also noted the quote from Mark Aldridge, the Executive Producer for Life's A Pitch, who had waxed lyrically about the quality team he had assembled at BT Sport. This was a clear indication that the physical state of the locality, at the material day, had had little impact on BT's day to day operations.

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

President

Vice President

Date 9 July 2021

Appeal number: 536024208266/538N10