THE VALUATION TRIBUNAL FOR ENGLAND

NDR 2010 rating list valuation appeal; Local Government Finance Act 1988; unadjusted base rate; retail park; appeal allowed in part.

RE: Unit 11 Kirkstall Bridge Shopping Park, Bridge Road, Leeds LS5 3BL

APPEAL NUMBER: 472026847332/539N10

BETWEEN:	Marks and Spencer P.L.C. (represented by GL Hearn)	Appellant
	And	
	Jo Moore (Valuation Officer)	Respondent

PANEL: Mrs M Cole (Senior Member)

CLERK: Ms S Hodgson

ON: 26 March 2021

APPEARANCES: Mr L Newton of GL Hearn for the appellant
Mr M Mattock of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal allowed in part.

Introduction

2. The appeal arose in respect of a proposal dated 9 March 2016 against a Valuation Officer Notice to alter the 2010 non-domestic rating list (the “2010 list”), Rateable Value (RV) £196,000 with effect from 30 October 2015, made by GL Hearn on behalf of the appellant, Marks and Spencer P.L.C. The appellant’s representative sought a reduction in base rate to £175psm, a reduction in the base rate of the mezzanine floor to £15psm, a pioneering end allowance of 10%, and the removal of the air conditioning system from the assessment, resulting in an RV of £154,000.

3. The subject property is located on the Kirkstall Bridge Shopping Park in Leeds, three miles north west of Leeds City Centre. The property comprised a retail warehouse and premises that measured 942m^2. The material date and the effective date for this appeal are the 30 October 2015 when the subject property was brought into the 2010 rating list.

4. 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.

5. 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. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

6. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two Members of the Tribunal, including at least one Senior Member. However, the Arrangements also provide that a Senior Member may sit alone to avoid a postponement of the hearing where a second Member of the Tribunal is unable to sit.

7. In respect of this hearing, another Member of the Tribunal was unable to sit. I am therefore satisfied that, in order to avoid a postponement of the hearing, I am authorised by the Tribunal Business Arrangements to hear and determine this appeal sitting alone.

8. 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 coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

9. The issue I had to consider was the correct RV to be ascribed to the assessment and whether a pioneering allowance should be granted.

Evidence and submissions

10. Before me today were five appeals for properties located on the same retail park, all represented by Mr Newton of GL Hearn. The properties under appeal were Unit 10, Unit 11, Unit 12, Unit 18 & Unit 19 at the Kirkstall Bridge Shopping Centre.

11. The main evidence for all appeals was the same and therefore, Mr Newton presented one appeal in full (Unit 11), and then provided short additions for the remainder of the Units to confirm the RV that was requested for each. There were slight differences on two units which were the inclusion of air conditioning in the original valuation for Unit 11 and the request by Mr Newton for a lower base rate on Unit 10 to allow for quantum. These differences are accounted for in the respective decisions.

12. Mr Newton appeared on behalf of the appellant as both Advocate and expert witness and Mr Mattock appeared on behalf of the respondent as advocate only.

13. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Newton's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Newton 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.

14. Mr Newton provided comparable evidence from a retail park located outside of Leeds City Centre, Guiseley Retail Park. He argued that this was more comparable to the subject property due to the range of shops on site and lack of petrol station. Mr Newton disputed the respondents suggestion that retail parks close to each other should be valued with the same base rate and provided evidence from Guiseley Retail Park and West Side Retail Park to show that, in his opinion, this strategy was not always followed. He explained that the Kirkstall Bridge Shopping park, where the subject property was located, opened in October 2015 but was not fully occupied until December 2016. For this reason, he believed a pioneering allowance of 10% was warranted until the park was at 75% occupancy in April 2016. Mr Newton had also provided location plans and photographs of the subject property and asked me to reduce the RV to £154,000 which incorporated a main space base rate of £175psm, £15psm for the mezzanine floor, and a pioneering allowance of 10%.

15. Mr Mattock read through the case pack that had been prepared by a colleague for this appeal and contended the base rate of £195psm was not excessive and was based on settled 'tone' evidence from units at the retail park located opposite, Savins Mill Way. He considered Savins Mill Way to be a comparable retail park due to its proximity to the subject property. Mr Mattock asked me to confirm the RV at £191,000 which incorporated an agreement of £15psm for the mezzanine floor and the removal of the air conditioning system from the assessment.

Decision and reasons

16. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

2(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.

17. In respect of an appeal against an entry in the 2010 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2008.

18. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 30 October 2015.

19. I was advised that the parties had agreed a reduction in the base rate for the mezzanine floor to £15psm. Therefore, this part of the appeal was allowed.

20. The original valuation for Unit 11 included a line in the assessment for an air conditioning system. Mr Mattock submitted an amended valuation to the Tribunal which removed this from the assessment. Therefore, this part of the appeal was allowed.

21. Kirkstall Bridge Shopping Centre was described by the parties as being located three miles outside of Leeds City Centre. The retailers on the site included a Marks and Spencer Simply Food, JD Sports, Smyths Toys and a Pure Gym. The site started trading in October 2015 but was not fully occupied until December 2016. The shopping park was easily accessible by car and public transport and was located in an area with a strong student population.

22. Unit 11 was occupied by Marks and Spencer P.L.C. and was subject to a 15-year lease with effect from 24 August 2015 with a passing rent of £252,500. The lease included a one-year rent-free period and a £700,000 reverse premium.

23. I heard from Mr Mattock that the base rate for the units at Kirkstall Bridge Shopping Centre were adopted from the agreed tone on the retail park located opposite, Savins Mill Way. No rental evidence was provided for Savins Mill Way and Mr Mattock relied on the settled tone evidence to support the rate of £195 at Kirkstall Bridge Shopping Park.

24. Mr Mattock argued that Savins Mill Way was the best comparable evidence available due to its proximity to the Kirkstall Bridge Shopping Park.

25. Mr Newton disputed that Savins Mill Way was the best evidence and he advised me that there was no rental evidence provided by the respondent and that Savins Mill Way was anchored by a Morrison's supermarket and had a petrol station on the site.

26. Mr Newton provided me with evidence of the Guiseley Retail Park located almost 7 miles from the subject property. I noted it was an older park and was advised by the parties it was in a more affluent area than Kirkstall Bridge Shopping Park. Guiseley Retail Park did not have a petrol station and like Kirkstall had a Marks and Spencer Simply Food and a Pets at Home.

27. I heard from Mr Newton that two of the occupiers from Kirkstall Shopping Park also had units on the Guiseley Retail Park. These were Unit 11 (Marks and Spencer) and Unit 19 (Pets at Home).

28. I reviewed the rental evidence for both parks and noted that Mr Newton had adjusted the rents at the Kirkstall Bridge Shopping Park to allow for the rent-free periods and incentives. The adjusted rent for Unit 11 devalued to £166.91 and the adjusted rent for Unit 19 devalued to £189.94. This was in comparison to the rents at Guiseley Retail Park for the same retailers, that devalued to £205.05 and £241.60.

29. The dates of the rents used for this comparison were as follows:

Unit 11 Kirkstall (Marks and Spencer)	24 August 2015 (new lease)
Unit 19 Kirkstall (Pets at Home)	21 September 2015 (new lease)
Unit 5 Guiseley (Marks and Spencer)	24 June 2014 (rent review)
Unit 4 Guiseley (Pets at Home)	24 June 2014 (rent review)

30. I acknowledge that the rents are very far from the AVD and place no weight on the rents to independently determine the RV of the subject property. However, I do find that the comparison of these rents is helpful when determining the best comparator for the subject property. It is hard to ignore that the rents agreed at the Guiseley Retail Park were higher, and yet it had been valued with a lower base rate than the subject property.

31. It was raised at the hearing that the Guiseley Retail Park was located opposite the West Side Retail Park and the unadjusted base rates adopted were £180psm and £230psm respectively. It was explained to me that this was because the West Side Retail Park was superior to the Guiseley Retail Park.

32. I have reviewed all of the evidence that was raised as part of these appeals and it is my opinion that while Savins Mill Way is comparable to Kirkstall Bridge Shopping Park in terms of location, I do not find it to be directly comparable in terms of amenities. I found the Guiseley Retail Park to be more comparable based on the shops available and the lack of petrol station. In my view Savins Mill Way would attract more footfall than Kirkstall Bridge due to the larger supermarket and petrol station on site.

33. I have considered Mr Mattocks contention that there is a settled tone at Savins Mill Way and that due to Kirkstall Bridge being located directly opposite, the same base rate should be applied. I disagree with this argument and found the evidence provided by Mr Newton that showed different base rates adopted for Guiseley Retail Park and West Side Retail Park supported this. A higher base rate was applied to West Side due to it being considered a superior retail park to Guiseley. Therefore, I have found that Kirkstall Bridge does not need to follow the tone of Savins Mill Way just because of its proximity.

34. I heard that the Kirkstall Bridge Shopping Centre started trading in October 2015, yet all units were not occupied until December 2016. The site had a 75% occupancy rate in April 2016.

35. I considered the argument put forward by Mr Newton that Unit 11 suffered due to the lack of occupied units and the poor performance of the site and ultimately the lease was surrendered in December 2019. I have not been persuaded that this evidence supported a pioneering allowance of 10% for all the appeal properties until 18 April 2016.

36. I am convinced by Mr Mattock's submission that the earlier occupied units received incentives as part of the lease to account for the low occupation. The subject property received a one-year rent-free period and a £700,000 reverse premium to move onto the site.

37. Based on my reasons outlined above it is my view that none of the appeal properties warranted a pioneering allowance being granted. I am also of the opinion that there is sufficient evidence to justify a reduction in the unadjusted base rate of the units under appeal.

38. Therefore, taking into account all of the evidence before me the base rate of Unit 11 is reduced to £185psm. As agreed between the parties the mezzanine floor is reduced to £15psm and the air conditioning system is removed from the assessment. This resulted in the following revised valuation:

Floor	**Area (m^2)**	**Rate psm**	**Value**
Ground Floor	942.11	£185	£174,290
Mezzanine Floor	488.54	£15	£7,328
Total			£181,618
		RV say	£181,000
		Effective from	30 October 2015

39. Therefore, the appeal is allowed in part.

Order

40. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2010 list in respect of Unit 11 Kirkstall Bridge Shopping Centre within two weeks, to £181,000 after rounding with effect from 30 October 2015.

Date: 22 April 2021

Appeal number: 472026847332/539N10