THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; merger of assessments; properties in common occupation; Car Showroom and Premises; Rental evidence; Tone of value; comparable evidence; end allowances; W H Smith v Clee (VO) [1978] RA 93; Futures London Limited v. Stratford (VO) [2005] RA 47; *appeal allowed.*

Re: (&18-20 Burton Street) Basement, Ground & Mezzanine Floors 18-19 Berkeley Square, London W1J 6EG (referred to as 18 Berkeley Square) and Ground Floor North, Berkeley Square House, Berkeley Square, London W1J 6BS (referred to as 16-17 Berkeley Square)

APPEAL NUMBER: 599033437644/285N10

BETWEEN:	H R Owen Plc	(Appellants)
	and	
	Andrew Ricketts (Valuation Officer)	(Respondent)

BEFORE; Alf Clark (Vice President) sitting alone

CLERK: David Slater (Deputy Registrar)

REMOTE HEARING held on Wednesday 13 October 2021

APPEARANCE(S); Kit Rabbette (Appellants' representative)
Christopher Cates (Valuation Officer's representative)

Summary of decision

1. The appeal was allowed and the entry reduced to £467,500 Rateable Value.

Introduction

2. The two appeal properties stand at the junction of Berkley Square and Bruton Street and are operated together as high-quality car showrooms. They appeared as separate entries throughout the life of the 2010 Rating List (although in the 2017 Rating List they now appear as a merged single entry).

3. On 24 April 2019 Paul Rabbette Limited submitted a proposal to the Valuation Officer seeking a merger of the two assessments. The proposal was not treated as being well founded and so on 11 July 2019 it was transmitted by way of appeal to the Tribunal.

4. The Valuation Officer agreed with the Appellants that there should be a single merged entry in the Rating List. However, the rateable value for that entry was not agreed.

5. What was agreed was the basis of a valuation (based upon £1,550 per m²/zone A) that gave a figure of just over £585,000 prior to the application of any end allowances. Survey areas and relativities were also agreed.

6. The Valuation Officer conceded that there should be a single end allowance of 5% (to reflect the fact that the merged assessment was a split or divided unit). That resulted in a proposed rateable value of £555,000.

7. The Appellants through Kit Rabbette sought 3 separate end allowances. 13¼% to reflect width to depth ratio, 12½% to reflect a poor layout and 7½% to reflect quantum. Together they came to just over £174,000 and produced a proposed rateable value of £410,000.

8. My task therefore was to adjudicate on the single issue between the parties, that of any appropriate end allowances.

9. Mr Rabbette appeared on behalf of the Appellants as an expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT

0253 (LC), Mr Rabbette advised the Tribunal that he was instructed under a conditional fee arrangement.

10. Mr Rabbette 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.

11. I 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). I, therefore, considered the "expert" evidence and attached such weight to it as I saw fit.

12. 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.

13. 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.

14. 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.

15. 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 before I came to my decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Evidence and submissions

16. The Appellants' bundle included Mr Rabbette's skeleton arguments, expert witness statement, case law references, comparable evidence with summary valuations, photographs and his proposed valuation.

17. The Respondent's bundle included Mr Cates's statement of case, his expert witness declaration, proposed valuation, photographs of the appeal property, the appeal history and a copy of the Appellant's proposal.

Decision and reasons

18. Normally the starting point in any rating valuation, in line with the principles outlined in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 was the rent passing, assuming there was one, on the appeal property. The appeal property comprised two car showrooms which were subject to separate lease agreements.

19. 18-19 Berkeley Square was occupied under a 25-year lease from 25 December 1992 and the term was due to expire on 24 December 2017. As at the rent review from 25 December 2002, the rent was increased to £500,000 per annum; the rent was further increased by way of a rent review as at 25 December 2007 to £595,000 per annum.

20. 16-17 Berkeley Square was occupied under 17 year and just over three months' lease from 12 December 1997 until 25 March 2015. As at the rent review from 25 March 2005 the rent was £229,000 per annum; the rent was further increased by way of a rent review as at 25 March 2010 to £260,000 per annum.

21. Mr Rabbette contended that the actual rent was out of line with rents passing in the locality and said it should be discounted. In response, Mr Cates disagreed with that assertion. The way he saw it was that where you had a passing rent of around £800,000 at the antecedent valuation date, the Appellants' proposed valuation of £410,000 RV which was around half the actual rent could not possibly be justified.

22. Having listened intently to the arguments about the relevance and the weight to be applied to the actual rent, I quickly came to the conclusion that it should be disregarded. Neither party had based their respective valuations on the rent. In any event, the level of rent was academic because both parties had agreed that the subject property should be zoned and had also agreed the tone of value, in terms of Zone A, that should be applied.

23. The 2010 rating list was now just over 11 years old and, in the absence of any evidence to prove the contrary, the agreed tone of value had become established over the lifetime of the list following the careful analysis of all of the available rental evidence and the settlement of previous appeals by other ratepayers. Where a tone of value has become established, it was generally accepted that comparable assessment evidence was more relevant in comparison to individual rents. Mr Rabbette referred me to a number of authorities to show that this principle was well established.

24. In paragraph 40 of its judgment in *O'Brien v. Harwood (VO)* [2002] the Lands Tribunal stated;

> The concept of tone of the list has been explained by this Tribunal on many occasions (see *K Shoe Shops Ltd v Hardy (VO) [1983] RA 145 at 154; Burroughs Machines Limited v Mooney (VO) [1977] RA 45 at 55; Marks v Eastaugh (VO) [1993] RA 11 at 20-23; Jaffron Properties Limited v Prisk (VO) [1997] RA 137 at 166-7).* It is concerned with the weight to be given to assessments in the rating list. It is settled law that assessments of comparable hereditaments are admissible as evidence of value (*Pointer v Norfolk Assessment Committee [1922] 2 KB 471).* Tone of the list may be explained as follows. Rateable value is based on market rents. These usually vary, sometimes considerably, and it is often difficult to find a general pattern. When preparing a rating list the valuation officer is required to value each property individually and to have regard to the underlying principle of uniformity and equality. Although rents may vary greatly, assessments must show a uniform pattern. This has led to assessment by the use of common unit figures for classes of hereditament and location with individual adjustments to reflect the characteristics of each property.

25. In paragraphs 23 and 25 of its judgment in *Futures London Limited v. Stratford (VO)* [2005] RA 47, The Lands Tribunal stated the following:

The third proposition in Lotus and Delta is that rents of similar properties (where available) should be looked at "to confirm or otherwise the level of value indicated by the actual rent of the subject hereditament". It is in this proposition that much of the weight which would otherwise be given to rent is diminished. There are no other rents in evidence suitable for comparison purposes. I was referred to the rent of the fifth floor of Windsor House, but both valuers agree that it is of no assistance, being greatly in excess of the market value. It is not possible therefore to test the rent of the appeal hereditament against other rents. In short a single rent, even of the appeal hereditament, can, at best, be only of limited assistance as evidence of market value.

There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, assessments will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by a VT or this Tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The rating list is then said to have settled: rents will largely be subsumed into assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments.

26. Similarly, in paragraphs 237 and 238 of its judgment in *H J Banks and Company Limited v. Speight (VO) and Snowball (VO)* [2005] the Lands Tribunal stated;

There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, the assessments will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by an LVT or this Tribunal or accepted by lack of challenge. Finally, a stage is reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled (K Shoe Shops at 353, LT; Jaffron Properties at 166-7; O'Brien at 257). Where a list has settled rents will be largely subsumed into assessments. At that stage rating surveyors will have little regard to rents and pay considerable attention to assessments (K Shoe Shops at 353; Burroughs

Machines Limited v Mooney (VO) [1977] RA 45 at 55). The position at any time regarding the tone of the list is a question of fact. When an assessment is challenged before a Tribunal the correct time for deciding whether the tone of list is established is immediately before the hearing (Jaffron at 167-8 and O'Brien at 257).

Generally, the concept of tone of the list is applied by reference to assessments of comparable properties in the same locality and in the same rating list. Where, however, the hereditaments under consideration are in a special class, and particularly where rental evidence is absent or lacking, the agreed assessments over a wide geographical area may be considered (Shrewsbury Schools v Shrewsbury Borough Council and Plumpton (VO) [1960] 7 RRC 313 at 322 (public schools) and Imperial College of Science and Technology v Ebdon (VO) and Westminster City Council [1984] RA 213 at 234 (universities). No objection has been raised in these appeals to consideration of open case coal sites covering a very wide area.

27. As the tone of value was well established for properties of the appeal properties' mode or category of occupation, within its locality, and given the fact that the parties had agreed the tone of value/zone A that should apply, there was no need for me to consider the reliability of the actual rent. The parties having agreed the appeal properties' combined valuation of £585,222 before the application of end allowances indicated that it was accepted that the actual rents were unreliable.

28. The appeal properties comprised two separated showrooms which although contiguous had no intercommunication between them. Whilst this may not have adversely affected the Appellants' business as one showroom was used to market Rolls Royce cars, the other for Bentleys, at the material date, the combined property had to be valued as vacant and to let. In recognition of that, the Valuation Officer was prepared to concede an end allowance of 5% for the split unit. He was not, however, prepared to concede any further end allowances.

29. Mr Rabbette contended that none of the other properties within Berkeley Square suffered from the same disabilities as the combined property. He had therefore had regard to other retail properties within the appeal property's immediate locality which shared similar disabilities. He produced photographs and comparable assessment evidence to show the

level of end allowances which the Valuation Officer had been prepared to concede elsewhere.

30. Mr Cates openly expressed his disquiet about the way this appeal had progressed. He felt it had turned into an audit of the Valuation Office Agency. Normally, when a merger under the Properties in Common Occupation (PICO) legislation was sought by a ratepayer, it was very much a desk top valuation and the merged entry was quickly agreed. However, in this case, he felt he was being invited to prove a negative.

31. Whilst he accepted that the property had to be valued vacant and to let, Mr Cates said it was also correct to consider that the current occupier would be in the market for the same building. The combined property had a lot of positive characteristics, it occupied a prominent position, had excellent car sales display space and facilitated the storage of cars in the basement via a lift. The combined property and its location was ideal for a prestige car dealer as evidenced by the length of time the current occupier had occupied the site. Mr Cates contended that it was wrong to look at other properties, where end allowances had been conceded, which were not comparable to the combined property.

32. Mr Rabbette was effectively seeking a reduction in the virtual rent of about a third, having regard to his proposed end allowances, Mr Cates believed that the hypothetical landlord would not agree to such a reduced rent.

33. In his rebuttal, Mr Rabbette contended that Mr Cates had overlooked a key point. Following the agreement to merge the two previously separate entries, I was required to value a new hereditament. So he posed the question, which was better, a valuation based on no evidence or a valuation based on comparable assessment evidence?

34. Mr Rabbette argued that his comparable properties were directly comparable and yet the Valuation Officer was not prepared to concede any allowance for width/depth ratio or for quantum. The Respondent has therefore disregarded the Lands Tribunal's judgment in *W H Smith v Clee (VO)* [1978] RA 93. Whilst the Valuation Officer was prepared to concede an end allowance for layout, he had only been prepared to concede the bare minimum 5%. With regard to quantum, Mr Rabbette said his comparable evidence indicated that it exists in the market. With no comparable evidence of his own, Mr Cates was reliant on his opinion which Mr Rabbette argued did not cut the mustard.

35. There was some discussion during proceedings on where the burden of proof lay. The Deputy Registrar, in giving advice in open Tribunal, referred to the Lands Tribunal's judgment in *Irving Brown and Daughter v Smith (VO)* [1996] RA 53 which had addressed the question of on whom does the burden of proof lie. There were two aspects to the burden of proof a factual burden which was on both sides and the persuasive or legal burden of proof which rests solely with the Appellants. In terms of the factual burden, a party asserting something must prove it, he asserts must prove. The Deputy Registrar advised that in order to meet the factual burden of proof each party should be able to explain how they have arrived at their valuation and be in a position to justify their proposed assessment. It would not be sufficient for the Valuation Officer merely to put forward a valuation and invite the Appellants to prove it was wrong. It was important for the Appellants and the Tribunal, on appeal, to see how the valuation had been calculated. If that was not the case, the Valuation Officer could cite any figure he liked. In terms of the persuasive or legal burden, especially when end allowances were in dispute, the onus was on the Appellants to prove their case.

36. The Deputy Registrar also advised that the merged assessment would be a new hereditament which I was required to value afresh.

37. Both parties were given the opportunity to challenge the Deputy Registrar's advice but neither chose to do so.

38. I therefore turned to consider the respective end allowances in turn.

<u>Width to Depth ratio</u>

39. For the purposes of the 2005 Rating List, the Valuation Officer had conceded a 5% end allowance for the Ground Floor North assessment (16-17 Berkeley Square) but no allowance for 18-19 Berkeley Square. For the merged entry, Mr Rabbette sought an allowance of 13¼% whilst Mr Cates argued that an allowance for the width/depth was no longer appropriate.

40. Mr Rabbette argued that a width-to-depth allowance was a well-established principle in rating valuations. It had been applied to the assessments of countless retail properties. Without width-to-depth allowances being applied, due to the limitations of the zoning method, affected properties would be overvalued.

41. The width of 16-17 Berkeley Square was approximately 15.1 metres, and the width of 18-19 Berkeley Square is approximately 15.2 metres. This produced a total width (excluding the party wall) of 30.3 metres. The depth of the retail accommodation of the two was approximately 17.8 metres. The width-to-depth ratio was therefore 1:0.58.

42. A width-to-depth ratio of 1:0.58 means that, approximately, the width of the shop is twice the length of the depth. In comparison, a ratio of 1:1 means that the shop is square, and a ratio of 1:2 meant that the shop was twice as deep as it was wide. As discussed in the case of *WH Smith v. Clee* [1978], the standard width-to-depth ratio tended to be in the order of 1:2 or 1:3.

43. Mr Rabbette referred to the following comparable evidence in support of his argument on this issue;

a) Ground Floor North, 113 Park Lane (10% allowance agreed)
b) Ground Floor South 113 Park Lane (10% allowance agreed)
c) Ground Floor 192 Piccadilly (20% allowance conceded)
d) 65 South Molton Street (12½% allowance agreed)
e) 73-77 Regent Street (14% allowance conceded)
f) 32-34 Shepherd Market (20% allowance conceded).
g) Various retail units in Lansdowne Row (10% allowance conceded)

44. Having had regard to the comparable evidence, appeal history and the parties' competing submissions, in my judgment a 5% end allowance should be applied for the width-to-depth ratio. This was the allowance that was agreed for the 2005 and 2010 lists for the Ground Floor North property. The assessment of 18-19 Berkeley Square had a similar width-to-depth ratio but no end allowance was conceded even though effectively both suffered from the same disability.

45. I was not convinced by Mr Rabbette's comparable evidence that a greater allowance than 5% should apply, as in my opinion, none of those comparable properties were directly comparable to the subject. Neither am I persuaded by the Respondent that no allowance was applicable.

<u>Layout</u>

46. On this issue, both parties were in agreement that an end allowance was applicable. Whilst the Valuation Officer was prepared to concede 5%, Mr Rabbette argued that that was insufficient and he sought an increased end allowance of 12½%.

47. Mr Rabbette argued that the layout of the combined property was extremely poor. 16-17 Berkeley Square and 18-19 Berkeley Square were separated by an uninterrupted party wall which spanned the entire depth of the property. As a result of this, the only way to travel between the two halves of the hereditament was by exiting one, traversing over the public pavement and entering the other. The two halves of the hereditament were effectively segregated by the party wall, with no possible movement between the two halves internally.

48. In addition to this, the area behind the original rear wall of 18-19 Berkeley Square was significantly fragmented from the remainder of the property. There was a difference in floor levels, which was accounted for by two steps, as well as a large number of structural walls and columns dividing this area from the remainder of the property.

49. In support of his argument on this issue, Mr Rabbette referred to the following comparable properties;

a) Basement and Ground Floor 105-107 Oxford Street (13½% allowance agreed)
b) Basement and Ground Floor 532-540 Oxford Street (10% allowance conceded).
c) Basement and Ground Floor, 44 Mortimer Street (12½% allowance conceded).
d) 28 Margaret Street (including 14 Little Portland Street) (10% allowance agreed).
e) 379 and 1st Floor 381 Oxford Street (10% allowance agreed).
f) 73-77 Regent Street (10% allowance agreed).
g) 32-34 Shepherd Market (12½% allowance conceded for shape)
h) 2 Davies Street (20% allowance agreed).

50. Having had regard to the comparable evidence, Mr Rabbette's argument for an increased allowance was made out. In my judgment, the most compelling piece of comparable evidence related to 73-77 Regent Street where the ratepayer traded as Barbour. Mr Rabbette argued that the layout issues in this property were less severe, in comparison to the appeal property, hence his proposed end allowance of 12½%. However, whilst retail

shops by their very nature require a lot of circulation space, I do not think that the same can be said of car showroom space. In my opinion, they would need less and therefore I considered that an end allowance of 7½% was sufficient for any disabilities caused by layout.

Quantum

51. Mr Rabbette sought a 7½% end allowance for quantum whilst Mr Cates did not think it was a factor and was not prepared to concede an allowance for size.

52. The combined property with a survey area of 1,228.78 m² was the largest property in its Valuation Scheme. The next largest property according to Mr Rabbette was 10 Berkeley Square, with a total area of 905.42 m². He had therefore calculated that the appeal property was 35.7% larger than the next largest comparable in the Valuation Scheme. The average size of hereditaments in the Scheme, excluding the subject, was 312.80 m². The combined property was almost four times the size of this. In support of his case on this issue, he referred to the following comparable properties;

a) 28 Margaret Street including 14 Little Portland Street (10% allowance agreed).
b) Basement and Ground Floor, 50-54 Wigmore Street (13½% allowance conceded).
c) 187-188 Piccadilly (16½% allowance agreed).
d) Basement and Ground Floor, 19 Newman Street (10% allowance agreed).
e) Ground Floor, 27 Wigmore Street (7½% allowance conceded).
f) 111-117 New Bond Street (6% allowance agreed).

53. Mr Rabbette also referred to the Lands Tribunal's judgments in *F W Woolworth & Co v Peck (VO)* [1967] RA 365 and *Trevail (VO) v C&A Modes and Marks & Spencer* [1967] RA 124. He described the latter as the cornerstone case in terms of quantum. He referred to the following extract from *Trevail*;

> We do not accept therefore the submission that there is a presumption in favour of a quantity allowance for large shops when valued on the zoning method: but we do accept that, as the method was originally based on factual rental evidence, it

requires comparatively slender evidence to establish that in any particular shopping centre quantity is still allowed for in the market. Once that is done, it must be answered by positive evidence to displace it. It is not enough in our view simply to say 'I do not find the evidence sufficient or sufficiently convincing'. And it is on that basis that we approach the evidence in these appeals.

It is basically this approach which the Tribunal has consistently adopted; sometimes the evidence has satisfied the Tribunal one way, sometimes the other, but always the impact of the evidence in the particular case has been the deciding factor. We do not think it can be otherwise unless and until it becomes established by evidence that quantity is or is not allowed for in market transactions generally and irrespective of the conditions in any particular place.

54. Mr Rabbette justified his proposed end allowance for quantum by suggesting I look at 28 Margaret Street, where an end allowance of 10% was agreed and 111-117 New Bond Street where a lower allowance of 6% was agreed. He felt that the appeal property should qualify for an end allowance somewhere between the two and therefore he proposed 7½%.

55. In my judgment, his argument for a quantum allowance was clearly justified and was allowed for under the valuation scheme by reference to which the combined property was valued. Mr Rabbette's proposed end allowance of 7½% did not appear to be unreasonable. Whilst 111-117 New Bond Street was considerably larger than the appeal property, it was valued in accordance with a different valuation scheme.

56. Mr Rabbette explained that the "normal" size for shops in this Valuation Scheme for New Bond Street was larger than is many locations. This was because New Bond Street was a prime retail destination which included flagship stores for many fashion brands. These flagship stores were often significantly larger than standard shops in the locality. This was a feature that was fairly unique to New Bond Street, with a significant number of properties in the street measuring to over 1,000 m^2, with six properties in the Scheme measuring to over 2,000 m^2.

57. The Zone A Rate, therefore, implicitly reflected a degree of the property's size as it was valued in line with other properties which would typically be classed as being "large".

Normally a property with a total area of over 1,000 m^2 would be classed as being "large", but on New Bond Street that was not the case. "Large" properties in this locality were those over 3,500 m^2.

58. In the case of the Valuation Scheme that the subject hereditament was assessed in, typical sized hereditaments were less than 500 m^2. The subject hereditament, measuring to over 1,200 m^2 was clearly significantly over-sized in comparison with the properties that it was valued in line with. It was this size differential from the norm which, in my opinion, justified an allowance greater than 6%. I also found the assessment of 27 Wigmore Street, where an allowance of 7½% was conceded, provided compelling evidence that the same level of allowance was justified for the appeal property. Consequently, Mr Rabbette's argument on this issue was upheld.

59. In view of the foregoing, the appeal was allowed and the entry reduced to £467,500 Rateable Value in line with the following valuation;

Agreed valuation prior to adjustments		**£585,222**
Width/depth	Less 5%	
Layout	Less 7½%	
Quantum	Less 7½%	
Total adjustment		(£117.044)
		£468,178

Rateable Value say £467,500

Order

60. In accordance with regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the entry for the appeal property to show a merged entry of £467,500 Rateable Value with effect from 1 April 2010.

61. The Valuation Officer must comply with this Order within two weeks of its making.

Vice President

Date: 25 October 2021

Appeal number: 599033437644/285N10