VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; university and premises; 2010 Memorandum of agreement – contractor's basis valuations; age of building in dispute; building costs; allowance for age and obsolescence; allowance for flat roof; end allowance for "cramped site" rejected by the panel; appeal allowed in part.

RE: University of East London, Duncan House College, High Street, London E15 4QZ

APPEAL NUMBER: 35526483

BETWEEN:	St Patricks International College Ltd	Appellant
	and	
	David Jackson (Valuation Officer)	Respondent

PANEL:	Mrs A E Fielder (Senior Member) Mrs N C Yang
CLERK:	James N Massey
REMOTE HEARING:	28 September 2022
APPEARANCES:	Mr P Emerick of Altus Group (Appellant's representative) Ms F Dahl-Nielsen (for the Valuation Officer)

Summary of Decision

1. Appeal allowed in part. The panel determined that the revised valuation of £123,000 proposed by the respondent effective from 1 April 2010 was fair and reasonable.

Introduction

2. This appeal has been brought in respect of the following: University of East London, Duncan House College, High Street, London, E15 4QZ (the 'subject property'), which was entered in the 2010 rating list as 'university and premises' at rateable value £138,000 effective from 1 April 2010.

3. The appeal arose following a proposal received by the Valuation Officer (VO) on 31 March 2015, which was made by CVS (now Altus Group) and disputed the VO's alteration to the rating list on 22 October 2013 following the memorandum of agreement (MOA) and sought a reduction to rateable value £1 on the grounds that the assessment at £135,000 was excessive, incorrect, illegal and unfair. The rent quoted on the proposal was £390,000.

4. As the Valuation Officer disagreed with the list alteration proposed by the appellant, he referred the matter to the Tribunal under regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No.2268) on 18 June 2015. This appeal was listed to a hearing on 17 January 2018 but was dismissed due to the appellant's non-attendance. An application was made on the 16 August 2021 to review the dismissal of the appeal and the appeal was reinstated on the 24 August 2021. The reinstated appeal was listed to this hearing on the 15 July 2022.

5. The subject property was a two-storey building with basement parking and a gross internal area (GIA) of 4360.1m^2 located on the High Street in Stratford, approximately 300m south of Stratford Underground and rail stations and 50m south west of Stratford High Street DLR station. According to the respondent's records, it was built in 1978, and was occupied by the University of East London before being let to the current occupiers in 2014.

6. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issues

7. Although no statement of agreed facts had been provided, the parties had agreed the area of the subject property and that it should be valued according to the contractor's method within the framework provided by the Revaluation 2010 Memorandum of Agreement (MOA) for Higher Education Institutions in England and Wales. Most of the variables used in determining the valuation had also been agreed, however there were three issues which remained in dispute.

8. The parties disagreed as to the age of the subject property. Mr Emrick contended that it was completed in 1966 and the building costs and age and obsolescence (A & O) allowance should be 41% to account for this. Ms Dahl-Nielsen considered that the current building costs and A & O allowance were correct as she considered that the subject property had been built in 1978.

9. Secondly, the appellant's representative considered that the fact that the majority of the building was covered by a flat roof warranted a reduction of £271 per m^2 in building costs across the whole footprint of the building. The respondent considered that such an allowance was not applicable to buildings constructed in the 1960s and 1970s.

10. The third issue in dispute between the parties concerns the appellant's representative's proposed 5% end allowance to reflect what he described as the cramped site occupied by the subject property. The Valuation Officer believes that no such allowance is warranted.

11. Taking into account his proposed amendments, Mr Emrick had calculated the value of the subject property using the Contractor's method to be RV £88,700. Ms Dahl-Nielsen defended the current entry in the rating list of RV £135,000 and also provided an alternative valuation at £123,000.

Evidence and Submissions

12. As Mr Emrick appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

13. It was established that Mr Emrick's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision.

14. However, Mr Emrick declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

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

16. A combined evidence bundle had been provided by the appellant in accordance with the standard direction for 2010 rating list appeals. It contained a copy of both parties' statements of case including their respective valuations, various planning reports, a planning history, and a copy of the Revaluation 2010 Memorandum of Agreement (MOA) for Higher Education Institutions in England and Wales.

17. Both parties were represented by experienced advocates who also appeared in the role of expert witness although neither had inspected the subject property as it had been demolished in 2015.

18. Mr Emrick provided a brief history of the subject building. He stated that according to a 2015 Local Authority planning report (Townscape Assessment and Justification Statement for Duncan House), the subject property was constructed between 1964 and 1966 for newspaper publishers Wilson and Whitworth. He also referred to a Greater London Planning Authority report from 3 November 2010, which referred to the subject building as a two-storey 1960s building.

19. He stated that a planning application for change of use from offices to an educational establishment was granted on 3 April 1978, however whilst he accepted that the existing premises had been refurbished, he considered that this was mostly cosmetic, and the building still reflected what was built between 1964 and 1966.

20. Mr Emrick referred to the photographs provided in evidence, which he considered show a 1960s concrete structure. From the MOA, he had adopted building costs of £1054 per m^2 (including 10% fees) based on a subject property being built in 1965 and reduced this by an A & O allowance of 41%. He considered that the A & O allowance should be at the bottom end of the range (41%-45%) contained in the MOA for buildings constructed 1960-1964 as

he considered that it should reflect the fact that it was designed pre-1965, using materials and construction methods of that time. He also referred to the use of 1960s materials in the subject building's construction, such as high alumina cement and asbestos, the disadvantages of which he considered would outweigh any cosmetic improvements resulting from its renovation in 1978.

21. Mr Emrick stated that almost 100% of the roof consisted of a concrete slab, notorious for water ingress and resulting structural instability. He described this as being more of a disadvantage than traditional timber and felt roofing due to this and the difficulty in repairing and maintaining a concrete slab. Whilst the MOA refers to a flat roof allowance of £281 per m^2 for buildings constructed before 1960 or after 1980 he contended that the subject property was built shortly after 1960 and believed that it would be appropriate to apply the allowance to its whole footprint due to the extent of the flat roof and the dated design of the building.

22. Mr Emrick also considered that the subject building was located on a cramped site which he considered warranted a 5% end allowance. He described the building as taking up the majority of the plot with no room to the rear or the north-east and limited space to the other two sides, which he considered, meant there was no scope for expansion. He suggested that this was supported by the subsequent demolition of the subject property and its redevelopment as a multi-storey student hall of residence.

23. On behalf of the respondent, Ms Dahl-Nielsen referred to the passing rent on the subject property, of £380,000 per annum, which although agreed six years after the AVD, she considered supported the current RV of £135,000.

24. She referred to an inspection carried out by the respondent on 16 October 1980, in which the subject property was described as a new building erected on the site of former printing works. Also included with the inspection report were plans of the ground and first floor dated 24 August 1978. She also referred to a report by MOLA (Museum of London Archaeology) prepared for a 2015 planning application which she had included in her submission and described the building as being built in 1980.

25. Whilst she did not consider that the evidence which she had provided showed conclusively that the subject property was built in the late 1970s, she considered it indicates that the subject property was likely extended and altered in the late 1970s. Based on this she considered that the build cost of £978 per m^2 (including fees) with an A & O allowance of 27% reflected the age of the subject building.

26. With regard to the flat roof, Ms Dahl Nielsen considered that these were common in the 1960s and 1970s and any disadvantages were accounted for in the build costs agreed in the MOA for those periods. She highlighted the applicable paragraph in the MOA which stated that:

> *'A reduction of £281 per m^2 of roof footprint should be made to the value of pre 1960 and post 1980 buildings with traditional flat, timber & truss decked, felt covered roofs (£140 per m^2 footprint for flat roofs with other coverings)'*

She therefore considered that whether the subject property was built in 1966 or 1978, it was outside the periods agreed within the MOA that a flat roof allowance should be made.

27. With regard to the appellant's seeking an end allowance of 5% for a cramped site, Mrs Dahl-Nielsen stated that the subject property was well laid out and benefitted from ground floor exterior parking as well as basement parking and had landscaped areas to the front and one side. She did not consider the site to be cramped in comparison with other buildings located within London, and no comparable evidence had been provided by the appellant to show why a 5% allowance should be applied to a two-storey building with a site coverage of less than 75%.

28. Although she was of the opinion that there was no definitive evidence that some or all of the appeal building was completed in 1966 or that little adjustment should be made due to its refurbishment in 1978, Ms Dahl Nielsen had provided an alternative valuation of £123,000 for the subject property. In this valuation she had adopted a construction date of 1966 with building costs of £1054 per m^2 and an obsolescence adjustment of 39% which is towards the top end of the range for buildings constructed between 1965 and 1979 (26-40%). She stated that in the current valuation, the rooftop building was costed at a reduced rate of £500 per m^2 as determined by the MOA for a temporary or portable building. She considered that this was not correct as the photographs show it was not a later addition but was part of the original construction and should therefore be costed at the full rate.

Decision and Reasons

29. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
>
> (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> (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"

30. The antecedent valuation date (AVD) for the 2010 rating list is 1 April 2008 and the material day for the appeal is agreed as 1 April 2010. The rent passing on the subject property was £380,000 per annum with effect from 26 September 2014 which Ms Dahl-Nielsen contended indicated strongly that its current assessment at RV £135,000 was not excessive.

31. The panel noted that no copy of the lease or details of the terms of the lease had been provided by either party from which an accurate analysis of the rent could be carried out. It

also noted that the rent was agreed a considerable time after the AVD, and there was no rental evidence for comparable properties against which to test this rent.

32. Both parties agreed that the subject property should be valued for rating on the contractor's basis. A useful definition of this basis was expressed by the Lands Tribunal in *Dawkins (VO) v Royal Leamington Spa BC and Warwickshire CC* [1961] 8 RRC 241:

> "The use of the contractor's basis, last resort or not, is amply supported by the authorities. In his opening the Solicitor-General pointed to its logic in words we cannot hope to improve upon: 'As I understand it, the argument is that the hypothetical tenant has an alternative to leasing the hereditament and paying rent for it; he can build a precisely similar building himself. He could borrow the money, on which he would have to pay interest; or use his own capital on which he would have to forego interest to put up a similar building for his owner-occupation rather than rent it, and he will do that rather than pay what he would regard as an excessive rent – that is, a rent which is greater than the interest he foregoes by using his own capital to build the building himself. The argument is that he will therefore be unwilling to pay as annual rent for a hereditament more than it would cost him in the way of annual interest on the capital sum necessary to build a similar hereditament. On the other hand, if the annual rent demanded is fixed marginally below what it would cost him in the way of annual interest on the capital sum necessary to build a similar hereditament, it will be in his interest to rent the hereditament rather than build it."

33. Five stages have developed under the contractor's basis of valuation:

- Stage 1: Estimate the replacement cost of construction of equivalent premises (excluding the land value).
- Stage 2: Make adjustments to reflect deficiencies in the hereditament.
- Stage 3: Add the value of the land.
- Stage 4: Decapitalise using the appropriate statutory rate.
- Stage 5: Stand back and look and make any further adjustments considered appropriate.

34. The MOA adopted by both parties in their valuations provided agreed values to be adopted in these stages for university buildings of varying locations and ages. The panel noted that the build costs for 1965, when the appellant considered the subject property had been built were slightly higher than those for 1978, which had been adopted by the respondent. It understood that these differing costs reflect the materials and construction methods of buildings of those eras.

35. The panel understood that is unusual for there to be such a difference in opinion regarding the age of a building, and also that this issue had not been raised in appeals against earlier list entries. In this appeal there was little hard or contemporaneous evidence regarding what parts of the subject property were built when, but the panel considered that more of the evidence showed that it had been completed in 1966. From the planning history and reports before it, as well as the photographs of the subject property, the panel was satisfied most of the subject property had been constructed in the 1960s. There was no evidence that this building had been demolished and replaced with something more modern in 1978, although

the panel does accept that a certain amount of modernisation of the subject property took place around 1978. In line with the MOA, the panel determined that the construction date was 1965, one year before completion.

36. With regard to the A & O allowance to adopt, the panel considered that the allowance of 39% adopted by the respondent was reasonable. The range of A & O allowance specified in appendix 3 of the MOA for buildings constructed between 1965 & 1979 was 26%-40%. The panel considered that an allowance of 39% reflected the subject property's age, the inherent disadvantages of its construction as well as the fact that some modernisation had taken place in the late 1970s.

37. The panel noted that Mr Emerick had argued that although the subject property had been completed in 1966, it had been designed some years earlier, and as such would not have been much different to a pre-1960 building, and therefore it would be reasonable to apply a flat roof allowance. The panel considered that the design phase of most buildings can take place over a number of years, and therefore this would have been taken into account in the age ranges specified in the MOA. The MOA made it clear that such an allowance was only applicable to pre-1960 or post-1980 buildings. The panel was therefore satisfied that the building costs agreed for periods in those two decades would have accounted for flat roof construction.

38. Mr Emerick had submitted that a 5% end allowance was reasonable to compensate for the subject property being located on a cramped plot. Having examined the plans and photographs of the subject property, the panel noted that there were landscaped areas to the front and one side of the building and car parking to the other side and could not conclude that it was located on a particularly cramped site. It did not consider the fact that the subject property had been demolished and replaced with something different was any indication that an end allowance should be applied to reflect a cramped site. Mr Emerick had not provided any comparable evidence of properties to which this end allowance had been applied to demonstrate to the panel that such an allowance should be applied in respect of the subject property.

39. The panel therefore determined that the appeal is allowed but only to the extent of the age of the subject property. It considered that the alternative valuation of RV £123,000 provided by Ms Dahl-Nielsen (attached to the end of this decision) is fair and reasonable and the appeal is therefore allowed in part.

Order

40. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2010 Rating List entry for University of East London, Duncan House College, High Street, London E15 4QZ to £123,000 with effect from 1 April 2010, within two weeks of the date of this order.

Date: 26 October 2022

Appeal number: 35526483

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.

Description	**Age**	**Area(m^2)**	**Price (per m^2)**	**Estimate replacement cost**	**A&O (%)**	**A&O allowance**	**Flat roof**	**Adj Replacement costs**
Basement car park	1965	465.8	£958.00	£446,236.40	39	£174,032.20	£0	£272,204.20
Ground Floor	1965	1996.7	£958.00	£1,912,838.60	39	£746,007.05	£0	£1,166,831.55
First Floor	1965	1766.4	£958.00	£1,692,211.20	39	£659,962.37	£0	£1,032,248.83
Roof top Plant room	1965	131.2	£958.00	£125,689.60	39	£49,018.94	£0	£76,670.66
		4360.1		**£4,176,975.80**				**£2,547,955.24**
Location	+12%							£2,853,709.87
External Works restricted site	+4%							£2,967,858.26
Contract size	-1.97%							£2,909,391.45
Fees	+10%							£3,200,330.60
Developed Land	+16%							£3,712,383.49
Undeveloped land	0%							£3,712,383.49
Decapitalise	**3.33%**							£123,622.37
Allowance (Cramped site	**0%**							**£123,622.37**