VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556]; the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]; Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269]; Gardiner & Theobald LLP v Jackson (VO) [2018] UKUT 0253 (LC); Grounds: the valuation for the hereditament is not reasonable; office and premises; age; appeal allowed.

APPEAL NUMBERS:	(1) CHG100057763; (2) CHG100044592; (3) CHG100051417; (4) CHG100043243
RE:	(1) Gnd Flr 4020 Lakeside, Birmingham Business Park, Birmingham, B37 7YN; (2) 6050 Knights Court, Birmingham Business Park, Birmingham, B37 7WY; (3) 6090 Knights Court, Birmingham Business Park, Birmingham, B37 7WY; (4) 1st Flr 6120 Knights Court, Birmingham Business Park, Birmingham, B37 7WY (together, the "subject hereditaments")

BETWEEN:

(1) Computacenter UK Ltd
(2) Vanderlande Industries UK Ltd
(3) McLaren Construction Ltd
(4) McLaren Construction Group Limited — Appellants

and

The Valuation Officer — Respondent

SITTING:	*remotely by Microsoft Teams conference call*
ON:	Thursday 22 October 2020 at 10:00 hours
BEFORE:	Mr K Everett (Senior Member) Ms JV Barnes
CLERK:	Mr W Hamilton IRRV(Dip) A.Inst.Pa
APPEARANCES:	Mr Sean Geary of Altus Group for the Appellants Mr Haroon Bhatti of the Valuation Office Agency for the Respondent

---

DECISION, STATEMENT OF REASONS and ORDER

Regulations 36, 37 and 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269]

Summary of Decision

1. The appeals are allowed.

2. The Panel is satisfied that, in each appeal, the valuation for the subject hereditaments is not reasonable.

Introduction

3. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings. The Panel gave proper judicial consideration to all the evidence and arguments put forward in the course of the proceedings whether or not it is fully set out in this statement of reasons.

Background

4. These four appeals are brought pursuant to Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] (the "Alterations and Appeals Regulations"). The appeals challenge the Respondent's decisions that the Appellants' proposals (also known as a "challenge" under the "check, challenge, appeal" framework) were not well-founded.

5. The Appellants' proposals sought alterations to the 2017 non-domestic rating list on the grounds that the rateable values for the subject hereditaments shown on the date it was compiled are not reasonable.

Appellants' hearing presentation pack

6. Prior to the commencement of the hearing, the Appellants' representative provided the Tribunal with documents entitled "Expert Witness Report" in respect of each appeal. The purported purpose of this report was to structure the representative's advocacy and present the evidence already shared between the parties under the disclosure framework. Additionally, these documents provided photographs of the subject hereditaments and other hereditaments on Birmingham Business Park.

7. The Clerk to the Tribunal provided to the Respondent's representative an opportunity to review these documents to confirm whether they introduced either new evidence, or whether there were any objections to their use in the hearing. The Respondent's representative confirmed to the Clerk that these documents did not introduce new evidence and he had no objection to their use in the hearing.

8. In view of the positions of the parties' representatives, the Panel was satisfied that the Appellants' hearing presentation packs could be used by the Appellants' representative during the hearing.

Remote hearing

9. On 29 July 2020, the President of the Tribunal issued the COVID-19 Variation of Practice Statement. In that statement, the President has determined, for the purposes of Regulation 6(3)(g) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations"), that the form of any hearings before the Tribunal would include "remote hearings". Specifically, the President states that this is to include the use of Microsoft Teams conferencing software. Further, the President directs that remote hearings would be the default until such time as it is safe for the Tribunal to return to normal practice.

10. In accordance with that Practice Statement, the Tribunal conducted the hearing of these appeals remotely via Microsoft Teams conference call by way of video/audio-link. For the

avoidance of any doubt, the Panel is satisfied that those present at the hearing were able to fully participate in the proceedings.

Consolidation

11. The four appeals, being geographically close and raising common themes in arguments, were listed for a hearing on the same day by the same Tribunal Panel. At the commencement of the hearing, the parties' representatives agreed to the matters being consolidated and heard before the Tribunal as one, noting key differences as appropriate. Therefore, the Panel consolidated the hearing of the four appeals pursuant to its general power at Regulation 6 of the Tribunal Procedure Regulations.

The Appellants' representative as expert witness

12. Mr Geary, a member of the Royal Institute of Chartered Surveyors, appeared on behalf of the Appellant as expert witness. Mr Geary's declaration of truth (contained in the hearing presentation pack) included a statement that he was instructed under a contingency based fee, a type of success-related fee arrangement. In his written declaration, which he also read out to the Panel orally, Mr Geary declared that he understood and accepted that his duty was to the Tribunal in giving his evidence, that he would comply with this duty, and the requirements of his professional body, regardless of whether or not the evidence supported the Appellants' case.

13. The Panel, mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), accepted Mr Geary's evidence as expert witness on the above basis because –

    (a) the appeal was not complex;

    (b) to do otherwise would be contrary to the requirements to deal with cases proportionately, avoiding unnecessary formality and ensuring parties are able to participate in proceedings (provided by Regulation 3 of the Tribunal Procedure Regulations); and

    (c) such evidence is nevertheless permissible whether or not it would be admissible in a civil trial (provided by Regulation 17(2)(a) of the Tribunal Procedure Regulations).

14. The Panel therefore considered Mr Geary's evidence and attached such weight to it as it saw fit.

Relevant Law

15. Part III of the Local Government Finance Act 1988 (the "Act") makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act (which is commonly referred to as the "rating hypothesis").

16. For these proceedings, it is not necessary to set out all the provisions but suffice it to say that the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

17. In determining rateable value, matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the material day. The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (the "Material Day Regulations") provides for determining the material day. In these appeals, the material day is the day on which the 2017 non-domestic rating list was compiled; 1 April 2017.

Discussion

The subject hereditaments

18. The subject hereditaments are located on Birmingham Business Park, Birmingham (the "Business Park"). The factual characteristics of the subject hereditaments are not disputed by the parties.

19. Gnd Flr 4020 Lakeside is located within a two-storey purpose-built office building constructed of steel frame with glass and brick, built in the early 2000s. It benefits from air conditioning and raised floors. It measures 659.37m^2 and benefits from 40 car parking spaces. It is held on a lease with a term of 10 years commencing on 12 December 2012 for an annual rent of £148,269.

20. 6050 Knights Court is a two-storey purpose-built office building constructed of steel frame with glass and brick, built in the 2000s. It benefits from air conditioning and raised floors. It measures 572.5m^2 and benefits from 23 car parking spaces. It is held on a lease with a term of 10 years commencing on 1 March 2012 for an annual rent of £86,352, with a 30-month rent free period at the commencement of the term.

21. 6090 Knights Court is a two-storey purpose-built office building constructed of steel frame with glass and brick, built in the 2000s. It benefits from air conditioning and raised floors. It measures 389.3m^2 and benefits from 6 car parking spaces. It is held on a freehold basis, therefore there is no passing rent for consideration.

22. 1st Flr 6120 Knights Court is located within a two-storey purpose-built office building constructed of steel frame with glass and brick, built in the 2000s. It benefits from air conditioning and raised floors. It measures 296.8m^2 and benefits from 11 car parking spaces. It is held on a lease with a term of 3 years commencing on 25 June 2014 for an annual rent of £43,438.

Appellants' case

23. The Appellants' case, as put forward by their representative, points at comparing the rate per square metre for hereditaments on the Business Park constructed pre-2000 with those constructed post-2000. The Appellant's representative highlights the differential between the rates following the settlement of challenges to the 2017 non-domestic rating list regarding hereditaments which were constructed pre-2000.

24. Firstly, the Appellants' representative referred the Panel to two tables, which show the agreed price per square metre under the 2010 non-domestic rating list and the rates adopted by the Respondent in compiling the 2017 non-domestic rating list.

Table 1: Price per square metre agreed in 2010 non-domestic rating list

	Agreed rate per square metre		
Hereditament size	Pre-2000 construction	Post-2000 construction	% Difference
125-1000m^2	£135.00	£150.00	10.00%

1050-2000m^2	£130.00	£142.50	9.60%
3000-4000m^2	£130.00	£135.00	3.80%

Table 2: Price per square metre adopted by Respondent in 2017 non-domestic rating list

	Agreed rate per square metre		
Hereditament size	Pre-2000 construction	Post-2000 construction	% Difference
100-500m^2	£120.00	£130.00	7.69%
500-1000m^2	£115.00	£125.00	8.00%
> 1000m^2	£110.00	£120.00	8.33%

25. It was accepted that a previous rating list does not bind the next. But the Appellants' representative contended these tables show a difference in value between the pre-2000 and post-2000 construction hereditaments on the Business Park of 8 to 10%. The Appellants' representative contends this concept was adopted by the Respondent carrying it forward into the 2017 non-domestic rating list on compilation.

26. There have now been 2017 non-domestic rating list settlements between ratepayers and the Respondent in relation to pre-2000 construction hereditaments on the Business Park. The Appellants' representative then referred the Panel to an adjusted table:

Table 3: Price per square metre following agreements in 2017 non-domestic rating list

	Agreed rate per square metre		
Hereditament size	Pre-2000 construction	Post-2000 construction	% Difference
100-500m^2	£105.00	£130.00	19.23%
500-1000m^2	£87.50	£125.00	30.00%
> 1000m^2	£110.00	£120.00	8.33%

27. The Appellant's representative contended that this increase in differential was unsubstantiated by the evidence. He sought for the Tribunal to determine that post-2000 construction hereditaments of 100-500m^2 should be valued at base price per square metre of £120. For post-2000 construction hereditaments of 500-1000m^2 the Appellants' representative sought a base price per square metre of £100. This would represent a differential between the pre-2000 construction hereditaments and post-2000 construction hereditaments of approximately 12.5%.

28. In support of this contention, the Appellants' representative referred the Panel to the combined schedules of sales evidence (compiled from both parties' evidence). This included the settlements of the pre-2000 construction hereditaments, which the Appellants' representative considered was relevant in determining the value of the post-2000 construction hereditaments.

29. He also drew attention to three lettings of post-2000 construction hereditaments on the Business Park.

30. 6130 Knights Court measures 305.35m^2 in terms of main space. It was let on renewal on 3 February 2015 for a term of five years. The Respondent's analysed rate per square metre for this hereditament is £113.79/m^2.

31. Grd Flr 6120 Knights Court measures 307.18m^2 in terms of main space. It was let on renewal on from 29 July 2013 for a term of five years. The Respondent's analysed rate per

square metre for this hereditament is £156.12/m^2. However, the Appellants' representative contended less weight should be attributed to this as a comparable. This was on the basis that it was a nil-increase/decrease lease renewal. It therefore reflected the state of the market when the lease originally commenced, not in in 2013 when the renewal took place.

32. The Appellants' representative also referred the Panel to the letting on 1st Flr 6120 Knights Court. It measures 309.01m^2 in terms of main space. It was let as a new letting on 25 June 2014 for a term of three years. The Respondent's analysed rate per square metre for this hereditament was £128.11/m^2.

Respondent's case

33. The Respondent's representative sought the dismissal of the appeals on the basis that a tone of £130/m^2 and £125/m^2 was established for the post-2000 construction hereditaments measured at 104-500m^2 and 520-1000m^2 respectively.

34. He relied upon the same three key rents on the Business Park to demonstrate his argument as those put forward by the Appellants' representative. But he provided a different interpretation. The Respondent's representative contended that the rent on 1st Flr 6120 Knights Court was the best evidence, being a new letting. He also contended that the rent for Gnd Flr 6120 Knights Court was not irrelevant and should be considered as good evidence in the basket of evidence before the Panel.

35. The Respondent's representative also cautioned the Panel on utilising the settlements in relation to pre-2000 construction hereditaments to inform value on the subject hereditaments. He contended that valuation must be like for like and sought for the Panel to disregard that evidence.

Decision

36. The Panel agrees with the Appellants' representative that the differentials between pre- and post-2000 construction hereditaments, whilst not in itself determinative, did look out of kilter when undertaking the 'stand back and look'.

37. In the round, the Panel does not find that there is much difference between the pre- and post-2000 construction hereditaments in terms of style, character and of course, locality, having had regard to the photographic evidence provided. Accordingly, the Panel concluded that there was some relevance of the settlements for pre-2000 construction hereditaments.

38. The Panel is also in agreement with the Appellants' representative that less weight should be attributed to the letting evidence of Gnd Flr 6120 Knights Court. In the Panel's view, it was questionably not an open-market letting, given that it was a no-change renewal of an existing agreement. The two remaining key lettings highlighted by the Panel have analysed rents of £113.79/m^2 and £128.11/m^2. In particular, the Panel noted that the letting at £113.79/m2 was the closest letting to the antecedent valuation date.

39. Based on the overall basket of evidence, the Panel considers the valuations proposed by the Appellants' representative to be an entirely reasonable valuation and, on balance, the most likely to be the closer to the statutory rating hypothesis. It also resolves the issue with the differentials highlighted by the Appellants' representative.

40. In conclusion, the Panel is satisfied that, in each appeal, the valuation for the subject hereditaments is not reasonable. Accordingly, the appeals are allowed.

Order and refund of appeal fee

41. In view of the above decision, the Tribunal orders –

(a) the Respondent shall alter the 2017 non-domestic rating list to show –

(1) Gnd Flr 4020 Lakeside, Birmingham Business Park, Birmingham, B37 7YN with a rateable value of £84,500,

(2) 6050 Knights Court, Birmingham Business Park, Birmingham, B37 7WY with a rateable value of £69,500,

(3) 6090 Knights Court, Birmingham Business Park, Birmingham, B37 7WY with a rateable value of £52,000,

(4) 1st Flr 6120 Knights Court, Birmingham Business Park, Birmingham, B37 7WY with a rateable value of £40,750,

with effect from 1 April 2017; and

(b) the Respondent shall comply with this order within two weeks.

42. Further, in view of the above decision and order, the fee paid by the Appellants for bringing these proceedings shall be refunded.

Appeal Numbers:	(1) CHG100057763; (2) CHG100044592; (3) CHG100051417; (4) CHG100043243	**Issued:**	17 November 2020