VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556); of Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC); calculation of rent free period; appeal dismissed .

APPEAL NUMBER:	CHG100093985
RE:	PT 6TH FLR EAST PROSPECT HOUSE,80-110 NEW OXFORD STREET,LONDON,WC1A 1HB (the "subject property")

BETWEEN:	Andros Maritime Agencies Ltd	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	19 February 2025
BEFORE:	Mrs LR McDermott, Presiding Senior Member Mr I Lonsdale, Senior Member
CLERK:	Mrs J Routledge
APPEARANCES:	Mr M Morrison from Ryan on representing the appellant. Mr N Green representing the respondent

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel confirmed the Rateable Value (RV) of £357,500 from 1 April 2017.

Introduction

3. The appeal process began when the Appellant served a proposal on the Valuation Officer on 3 May 2019, challenging a Valuation Officer's entry in the Valuation List. At the date of the proposal, the existing assessment was £357,500 Rateable Value based on £600 per m^2. The Appellant's proposed valuation, was £293,000 Rateable Value, based on £491 per m^2. Having considered the merits of the proposal, the Valuation Officer disagreed with the Appellant's proposed alteration and made no alteration to the Rating List in their decision notice dated 5 November 2020. The Appellant subsequently appealed the Valuation Officer's decision to the tribunal, under Regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (the "NDR Regulations") on 3 March 2021. The appeal was made on the grounds that the valuation for the subject property was not reasonable.

4. Mr Morrison confirmed that he was appearing as advocate and expert witness, he was instructed under a contingency fee and he understood that his duty was first and foremost to the Tribunal. This was in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

5. 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.

6. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

7. The subject property comprises a mixed-use building arranged over eight floors constructed circa 1939 and refurbished in 2015, comprising retail accommodation on the ground floor with storage and office space on the remaining floors. The subject hereditament is situated on part of the 6th floor of the building.

8. The subject property was let under a lease for ten years which commenced on 1 March 2015. There was an eighteen month rent free period, and the headline rent was £408,177.

9. The issues in dispute were the uplift for fit out which had been subject to a test case appeal and was now settled at £25.00 per m^2 in London, as a consequence of this case Mr Morrison has revised his unadjusted rate from £490 to £525 per m^2. The amortisation of the rent free period was disputed, Mr Morrison argued this should only be amortised to the first break period at five years and the Valuation Officer considered it should be amortised to the second break at ten years and the overall rental analysis was also disputed.

Relevant Law

10. The term 'rateable value' is defined in paragraph 2(1) of Schedule 6 to the Local Government
Finance Act 1988 (the "1988 Act")(: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.

11. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance
with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841). Each appeal
hereditament had to be valued, having regard to factual matters at the relevant material day,
in accordance with paragraphs 2 (6) and (7) of Schedule 6 to the 1988 Act.

12. 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 was 1 April 2017.

Discussion

13. The documents considered by the panel comprised all of the documents exchanged between the parties as part of the challenge process: Appellant's challenge submission, initial response to the challenge, challenge further exchange, Valuation Officer's challenge case decision notice, and Appellant's supporting evidence statement.

14. The panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The six propositions in this judgment were:

> "(i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
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> (ii) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s19(6) of the General Rate Act 1967, the more weight should be attached to it.
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> (iii) Where rents of similar properties are available, they too are properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
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> (iv) Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can be properly referred to as giving some indication of that opinion.
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> (v) In the light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attributed to the different types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.
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> (vi) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would clearly be more difficult to reject the evidence of the actual rent."

The panel found that the subject property rent required significant adjustment to reflect the landlord's concession of an eighteen month rent free period. The length of the lease, the timing and type of any rent review and any incentives combined with the presence of break clauses all impact on the overall achievable rental income.

15. The panel found there was no dispute over a three month fit out period and that the uplift for category B fit out was now accepted, it was the fifteen months rent free incentive and the subsequent rental analysis that was the issue.

16. Mr Morrison had calculated the rents amortising to a five year break and disputed the Time Value Money method used by the Valuation Officer to adjust for the market. He argued that the Discounted Cash Flow method should be used as it had been agreed that offices in London should be valued by this method and a rate of 7% should be applied, he provided no evidence of this agreement. The Valuation Officer had analysed all the rents in the same manner using the same method. The panel determined that it would adopt the Valuation Officers method of valuing to provide consistency as it was based on the Form of Return information on rental information and lease details contained therein.

17. Mr Morrison had provided three leases on other properties in the building that had break clauses to support his argument that there was a break clause in the subject property lease. Although he argued that the rent free adjustment should be taken to the first break in accordance with *Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC)* which determined that adjustments should be made up to the first break clause when the tenant could leave. He did not produce the lease on the subject property and when asked to confirm the length of the lease as it had been stated to be alternatively both 10 years and 15 years in the evidence and the terms of the break clauses he could not. He advised the panel that he had been unable to obtain the lease or contact the client as they were no longer occupying the subject property.

18. The panel found that the three leases provided by Mr Morrison had different conditions in respect of the break clauses in each lease, the panel found that there was no consistency in the leases provided to be able to rely on these to infer a break clause existed for the subject property. As a consequence of this finding the panel concluded that the Valuation Officer's calculation was the correct approach.

19. In order to evaluate the reliability of the rental analysis the panel had regard to the comparable properties identified by the parties. The rent passing on the subject hereditament was just a month prior to the AVD which analyses at £567.10 per m^2 with effect from 01 March 2015. As a starting point some weight was attached to the rent passing on the subject hereditament by the panel.

20. The panel then considered the rents on comparable properties, these were within the same building. There was a new letting on the 5th and part 4th floor in November 2013 which was a much larger property with a lease over fifteen years, the rent analysed to £533 per m^2 which the panel considered would reflect an element of quantum and the longer lease period. The new lettings on the 1st, 2nd and 6th floors between 12 August 2015 and 11 September 2015 only a few months post AVD were all for ten years and analysed to between £672

and £690 per m^2. The panel found that the analysed rent of £567.10 on the subject property was low compared to the very similar property that was on the same floor that was subject to a new ten year lease on 11 September 2015 only six months after the letting of the subject property which analysed to well over per m^2. The panel allowing for an adjustment in the market considered the new lettings only months after the AVD could be given good weight as supporting £600 per m^2 for the subject property.

21. The panel found that, in cases of this nature, the onus was on the Appellant to prove his case. The panel concluded that without evidence of the terms of the lease including whether there was a break clause it had not been proven that the amortisation of the rent free period over ten years was incorrect. The panel also found that there had been insufficient evidence to show that the current RV of the subject property was unreasonable given the basket of evidence submitted for other similar properties within its locality.

Disposal

22. In view of the above findings and conclusions, the Tribunal Panel was satisfied that it had not been demonstrated that the RV of £357,500 was excessive for the subject property.

Date issued to parties: 7 March 2025

Right of further 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.
