VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Offices and premises; Unadjusted base rate; Comparable assessment evidence; Dawn Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC); Category A or Category B fit out; Appeal allowed in part.

APPEAL NUMBERS:	Please see attached schedule	
RE:	Please see attached schedule (the "subject properties")	
BETWEEN:	University of Chicago Booth School of Business CVS Rating Surveyors Global Reach Group Knight Frank LLP Sidley Austin LLP	Appellants
	and	
	Andrew Ricketts (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	20 February 2025	
BEFORE:	Mr APS Crawford, Presiding Senior Member Mrs RS Choudhury, Senior Member	
CLERK:	Mrs S Hodgson IRRV(Dip)	
APPEARANCES:	Mr N Bell from Knight Frank LLP Mr B Bowles from Knight Frank LLP Mr P Barney from Ryan Property Tax Services UK Limited Mr J Ivers for the respondent	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are allowed-in-part.

2. The Tribunal Panel found that the current rateable values (RV) were unreasonable and determined revised RVs based on an unadjusted base rate of £425 per square metre (psm). Please refer to the attached Schedule of Valuations for the revised RV's. The effective date for all appeals is 1 April 2017.

Introduction

3. These were 2017 Rating List appeals. The subject properties were located at Woolgate Exchange, 25 Basinghall Street, London, EC2V 5HA. Six of the appeals had been entered in the 2017 Rating List as "Office and Premises" and one as "Stores and Premises". The hereditaments had an effective date of 1 April 2017, and the material dates were also 1 April 2017. The RV's ranged between £22,000 and £3,270,000 dependent on each hereditaments size. All of the properties were in the 2017 Rating List with an unadjusted base rate of £485 psm. This base rate was the only contended issue between the parties and therefore the appeals were all heard in one hearing with the agreement of the parties.

4. The challenge proposals were submitted by Knight Frank LLP and Ryan Property Tax Services UK Limited. They had been made on the grounds that the RV shown in the 2017 rating list was wrong and proposed a revised RV's for all the hereditaments.

5. The VO issued a challenge case decision notices. The VO's decision was to treat the appellant's challenges as not well-founded and proposed no change to the rating list.

6. Following the exchange of evidence and discussions throughout the challenge period, the VO revised his decision and reduced the RV's of the subject properties based on a reduction of the unadjusted base rate from £485 psm to £460 psm. This reduced the RV's which now ranged between £20,750 and £3,100,000.

7. Whilst the proposals from the agents varied in the unadjusted base rate being sought, following ongoing communications between the agents and the respondent, the agents were all seeking the same reduction at the hearing, to an unadjusted base rate of £400 psm based on the evidence that had been submitted.

8. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), all agents for the appellants declared that they were instructed under a conditional fee arrangement.

9. The agents understood and accepted that their duty was to the Tribunal in giving their evidence and they would comply with this regardless of whether or not the evidence supported their client's cases.

10. The panel accepted the 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).

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

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

<u>Background</u>

13. The subject properties were located within a ten-floor office building which was built in 2000. The building was arranged over basement and ground floor accommodation and eight upper floors. The building benefitted from a reception area, passenger lifts, air conditioning and bike storage. It was located in central London within close proximity to a number of underground stations.

14. The adjustments to the unadjusted base rate for quantum and location in the building were not in dispute between the parties.

<u>Preliminary issue</u>

15. Prior to the hearing, Mr Ivers had requested to submit new evidence which consisted of comparable assessment evidence which had been settled after the decision notices on these appeals were issued. He contended that the property it related to had already been raised in the original proposals.

16. Mr Bell, on behalf of the agents, objected to the settlement evidence on the basis that it was being introduced six days before the hearing. Whilst he agreed that the property had come up in previous discussions with the respondent, it was never included as assessment evidence, he was advised by the respondent that it was not relevant, and discussions did not develop any further. As it had only been raised, he had not had the opportunity to check the veracity of the settlement evidence.

17. The panel heard from both parties that they were aware of the evidence from approximately two months earlier.

18. The panel must decide whether this new evidence could be admitted into evidence. Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations") places restriction upon the admission of new evidence. So far as is relevant, it provides—

> *17A Admission of new evidence on NDR Appeal*
>
> *(1) On an NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal (“new evidence”) if—*
>
> *(a) that evidence—*
>
> *(i) is provided by a party to the appeal;*
>
> *(ii) relates to a ground on which the proposal was made; and*
>
> *(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations*

19. The panel found that the settlement evidence was not available at the time the proposals were completed and therefore satisfied the test set out above. The panel was also of the opinion that whilst the evidence had only been raised to be included in proceedings in the week prior to the hearing, all parties had knowledge and sight of the evidence in question for at least two months prior to the hearing. Therefore, the panel allowed the inclusion of the new settlement evidence.

20. The panel offered the appellant's representatives the opportunity to seek an adjournment to consider if they wanted to submit any new evidence in response. The appellant's representatives were also offered the opportunity to have the hearing adjourned for an hour to discuss the new evidence.

21. Mr Bell, on behalf of the agents, stated they would not seek either adjournment offered and wished to proceed with the appeals. Mr Bowles and Mr Barney agreed.

Relevant Law

The Local Government Finance Act 1988

22. Schedule 6 of the Act 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.

23. 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).

24. 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 properties, the material day was 1 April 2017.

Discussion

25. Both parties referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
    2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
    3. Where rents of similar properties are available, they too are to be 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.
    4. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
    5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
    6. 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 be clearly more difficult to reject the evidence of the actual rent.

26. In addition, the Upper Tribunal judgment of *Dawn Bunyan (VO) v Acenden Limited* [2023] UKUT 17 (LC) was central to these appeals. The judgment had determined that there was a difference in value between a building in Category A condition and one in Category B condition, with the latter having a higher value.

27. Following the *Acenden* decision, there had been an agreement between a consortium of Central London rating agents and the VOA on what uplift should be applied for the fitting out from Category A to Category B. This was agreed at £25 psm. The agreement was not disputed at the hearing.

28. The panel heard that most properties were let in a Category A condition which finished to a basic standard and were incapable of beneficial occupation. It would include raised access floors and suspended ceilings and basic utility connections. By comparison a Category B condition included the fittings required for immediate beneficial occupation such as full electrical wiring and lighting, air conditioning, sprinkler systems, server rooms, and kitchens or tea points.

29. The issue before the panel was what the correct RV for the appeal properties should be, based on the unadjusted base rates to be applied to the assessments.

30. The dispute between the parties was the treatment of the rents provided and whether they were Category A or Category B rents which would determine whether an uplift should be applied. The agents have provided rents which they contend were already in Category B condition and therefore did not require any uplift. Therefore, the analysis of the rents equates to a lower price per square meter, and lower RV's for the subject properties. Mr Ivers has applied the uplift to the rents and reduced the rent-free period allowing for fit out which resulted in a higher price per square meter, and higher RV's for the subject properties.

31. Five rents were provided from within Woolgate Exchange:

PT 5th FLR NW (Item 1)
This was a five-year new letting sub-let with effect from 15 May 2015. There was an eleven-month rent free period.
The agents analysed this rent to £396.88 psm allowing for the full eleven months rent free and not adding a £25 psm uplift as they considered it to be let in a Category B condition.
Mr Ivers analysed the rent to £449.49 psm allowing for an eight-month rent free period, having deducted three months for fit out works, and adding the £25 psm uplift.

PT 5TH FLR SW (Item 2)
This was a five-year new letting sub-let with effect from 1 September 2015. There was an eight-month rent free period.
The agents analysed this rent to £392.03 psm allowing for the full eight months rent free and not adding a £25 psm uplift as they considered it to be let in a Category B condition.
Mr Ivers analysed the rent to £442.18 psm allowing for a five-month rent free period, having deducted three months for fit out works, and adding £25 psm uplift.

PT 3RD FLR WEST & SOUTH (Item 3)
This was a six and a half year new letting sub-let with effect from 14 January 2014. There was an eighteen-month rent free period.
The agents analysed this rent to £387.14 psm allowing for the full eighteen months rent free and not adding a £25 psm uplift as they considered it to be let in a Category B condition.
Mr Ivers analysed the rent to £443.40 psm allowing for a thirteen-month rent free period, having deducted five months for fit out works, and adding £25 psm uplift.

PT 1ST FLR (Item 4)
This was a rent review with effect from 27 April 2015. The rent review was upward only and settled at a 0.6% increase following a Calderbank offer not at market value. Neither party added £25 psm uplift with the agents analysing to £442.62 and Mr Ivers analysing to £442.17.

5TH FLR (Item 5)
This was a rent review with effect from 1 December 2014. The rent review was upward only and settled at a 0.6% increase. Neither party added £25 psm uplift with the agents analysing to £481.37 and Mr Ivers analysing to £483.21.

32. In addition to the rental evidence, the following comparable assessment evidence was provided:

City Place House, 55 Basinghall Street (appellant's evidence)
The building was built in 1991 and refurbished in 2006 and 2008. Mr Bell had been involved with the challenge for this property when it was reduced from £475 psm to £400 psm. It was stated at the hearing that the reduction was based on the rental evidence from within City Place House. The agents contended that City Place House was similar in specification and quality to Woolgate Exchange, and a similar level of assessment was reasonable. Mr Ivers did not consider this to be a good comparable as it was built almost ten years before Woolgate Exchange.

Finsbury Circus House, 15 Finsbury Circus (appellant's evidence)
This was built in 1988 and was redeveloped over two years, between 2011 and 2013, at which time it was stripped back to a shell. The unadjusted base rate of Finsbury House was reduced from £475 psm to £425 psm based on open market lettings in the building. The respondent had considered Finsbury House to be inferior to Woolgate Exchange due to unconventional floor plates. The agents provided floor plans for Finsbury House and Woolgate Exchange to demonstrate the floorplates, in their opinion, were similar.

29 Clements Lane (appellant's evidence)
This was built in the 1980's and was comprehensively refurbished between 2010 and 2012. The unadjusted base rate was reduced from £475 psm to £400 psm following a check in 2021. The agents stated this was the least comparable to the subject property due to its location, however still found it to be similar in specification and warranted a reduction in the base rate for Woolgate Exchange.

10 Aldermanbury, 65 Greshing Street (respondent's evidence)
This was built in 2000 and refurbished in 2012. The unadjusted base rate was reduced from £475 psm to £435 psm by agreement at the challenge stage of the process. Mr Ivers considered 10 Aldermanbury to be inferior to Woolgate Exchange due to having an awkward floorplate with multiple atriums and columns, which in turn led to less light in some areas. The agents were of the view that whilst it was fairly local to Woolgate Exchange, it was in a superior 'city core' office location, close to retail areas, and the 2012 refurbishment gave it a higher value.

10 Nobel Street (respondent's evidence)
This was built in 1999 and underwent a renovation in 2017. It was in the list with an unadjusted base rate of £450 psm. The tone was challenged, however the VO well-founded the challenge and no appeal was made. Mr Ivers argued that the base rate remained at £450 psm both pre and post renovation and was in an inferior location to Woolgate House. The agents contended 10 Nobel Street was superior to Woolgate House. They stated it was not in the immediate locality but was in a unique historic setting with attractive views, which was a feature of the building.

33. The panel heard from Mr Ivers that he was not arguing that a Category B condition had no value, but that the rents provided did not conform to the rating hypothesis and were not open market rents due to the positions of the parties to the agreements and that they were sub-lettings. He agreed that items 1-3 above were let in Category B conditions, however item 1 and item 3 had completed forms of return (FOR) that stated fit out works were carried out. The lease and condition report had been provided for item 2 and based on the condition report stating a refurbishment was needed. Due to this, Mr Ivers had reduced the rent-free periods of all the rents to allow for fit out work and added the agreed £25 psm for the value of the fit-out work.

34. The panel reviewed all the evidence before it and noted there were photographs included of Item 1 within a condition report, which demonstrated it was in a Category B condition at the time of the letting. It showed office space with all floor coverings, meeting rooms, cupboards and storage, lighting, air conditioning, kitchen and tea points, and communications and server rooms in place.

35. The panel heard that the FOR stated that the office was occupied in May 2015 and some work was done in July 2015, £400,000 had been spent on a partial demolition of the existing

fit out and new tea points were fitted. No breakdown was provided on the FOR and further details were unavailable to the panel. The agents contended that minor alterations were not the same as a Category A to Category B fit out where Category A was incapable of beneficial occupation.

36. The panel placed no weight on the lease renewals of item 4 and item 5 due to the upwards only rent reviews and the Calderbank offer stating the rent was not open market.

37. The panel accepted, as did the parties, that items 1-3 were in a Category B condition at the time of the lettings. However, it did acknowledge that some works were undertaken by the occupiers for item 1 & 3, though it was not of the opinion that this reduced the value to that of Category A which would result in the £25 psm uplift. Instead, it preferred the agents' alternate analyses which allowed for one and a half months and two and a half months respectively for these works. The agents' alternative analyses for items 1 & 3 were £408.09 psm and £405.52 psm.

38. The panel noted that the *Acenden* judgement was clear in its rejection of the argument that Category B was worth no more than Category A. The panel also had sight of the Central London agreement where it was agreed that Category B lettings are to be regarded as the best evidence in these cases, where they conform to the rating hypothesis.

39. Whilst Mr Ivers argued that the sub-lets did not conform to the rating hypothesis as the tenant landlord was trying to reduce the amount of space they rented and were therefore in a weaker negotiating position, there was no evidence provided to support this view. On the contrary, the head lease for the 5^{th} floor in Woolgate Exchange stated that any sub letting was required to be no less than the 'open market rack rental value'.

40. It was the panels view that Finsbury Circus House was the best comparable assessment evidence due to having a similar specification and in a similar location. The panel found the floor plates to be similar. Finsbury Circus House had been reduced to £425 psm based on the rents within the building which ranged between £375 psm to £412 psm, which was similar to those at Woolgate Exchange.

41. 10 Aldermanbury and 10 Nobel Street at £435 psm and £450 psm were found to be superior to Woolgate Exchange. 10 Aldermanbury was built at the same time as Woolgate Exchange yet had been fully refurbished in 2012. Therefore, the panel would expect its rental value to be higher than Woolgate Exchange at the AVD.

42. The panel found the quality of the evidence provided by both parties to be useful, however on the balance of the evidence, settlement agreements, and rents in the subject building, it found that the current RV for the subject properties was unreasonable. Based on the basket of evidence, and allowing for some works but not those equivalent to a Category A to Category B fit out, the panel found the unadjusted base rate for the subject properties at Woolgate Exchange should be reduced to £425 psm.

Disposal

43. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the existing assessments are unreasonable and determined RV's as per the attached Schedule of Valuations at an unadjusted base rate of £425 psm.

44. The Tribunal Panel 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 2017 list in respect of the listed appeals at Woolgate Exchange, 25 Basinghall Street, London, EC2V 5HA, within two weeks, as per the attached Schedule of Valuations.

Date issued to parties: 18 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.

Schedule of Appeals at Woolgate Exchange, 25 Basinghall Street, London, EC2V 5HA:

Appeal Number	Subject Property
CHG100399486	PT 5TH FLR SW
CHG100392609	PART 1ST FLOOR
CHG100309756	PT 6TH FLR REAR, 7TH & PT 8TH FLR REAR
CHG100151925	2ND FLOOR EAST
CHG100309775	PT 2ND FLOOR WEST
CHG100309784	PART BST LEVEL 1
CHG100559432	PT 1ST FLR NW

Schedule of Valuations at £425 psm with effect from 01/04/2017:

Subject Property	Area (m^2)	Relativity	Total (£)	RV (£)
PT 5TH FLR SW	537.07	1	228,255	**228,000**
PART 1ST FLOOR	2,537.34	1	1,078,370	**1,078,000**
2ND FLOOR EAST	1,733	1	736,525	**735,000**
PT 2ND FLOOR WEST	817.92	1	347,616	**347,500**
PART BST LEVEL 1	181.84	0.25	19,321	**19,250**
PT 1ST FLR NW	607	1	257,975	**257,500**

PT 6TH FLR REAR, 7TH FLR, & PT 8TH FLR REAR:

Floor	Description	Area (m^2)	£/m^2	Value (£)
Sixth	Office	2664.08	403.75	1,075,622
Sixth	Server Room	32.32	403.75	13,049
Sixth	Internal Storage	5.50	201.88	1,110
Seventh	Office	2851.20	403.75	1,151,172
Seventh	Server Room	55.80	403.75	22,529
Seventh	Internal Storage	5.50	201.88	1,110
Eighth	Office Demise Area	1473.99	403.75	595,123
Eighth	Extra Area in Use	26.32	403.75	10,627
			TOTAL	**2,870,342**
		RATEABLE VALUE		**2,870,000**