THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Office and Premises; Local Government Finance Act 1988; Statutory Assumptions; Economic Repair; Material Day; The Rating (Material Day for List Alterations) Regulations 1992 (S.I. 1992 No. 556); The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (S.I. 2009 No. 2268); Appeal allowed in part.

Re: Furness Building Society, 51-55 Duke Street, Barrow-In-Furness, LA14 1RT

APPEAL NUMBER: CHG100438049

BETWEEN:	Furness Building Society	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

PANEL:	Mrs T Watson (Presiding Senior Member) Mrs S Patel (Senior Member)
CLERK:	Mr James Massey
REMOTE HEARING 2:	18 April 2023
PARTIES PRESENT:	Mr A Allan of Allan Associates - Appellant's representative Mr R Fuller - Respondent's representative

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Summary of decision

1. The appeal was allowed in part. The panel did not consider that Furness Building Society, 51-55 Duke Street, Barrow-In-Furness, LA14 1RT ("the subject property") was beyond economic repair but determined that the amended rateable value of £73,500 proposed by the Valuation Officer was excessive.

Introduction

2. This appeal has been brought in respect of the subject property, which was entered in the 2017 rating list as "offices and premises" at rateable value (RV) £97,500 with effect from 1 April 2017 but was reduced to £89,000 as a result of a check which was completed on 23 September 2020.

3. The challenge process began on 4 November 2020 when the appellant had made a proposal to the Valuation Officer (VO) that the entry shown in the rating list for the appeal property on 4 May 2018, was wrong and that it should be reduced to RV £1 on the basis that in its state of

repair at the material day it was obsolete taking into account the demand for the subject property at the AVD. As this was a compiled list appeal the material day was 1 April 2017.

4. Having considered the challenge the VO issued a decision on 27 March 2022 stating that the VO was of the opinion that the proposal was not well founded but considered that the entry of £89,000 was unreasonable and proposed a revised RV of £81,500.

5. In accordance with the regulations[1], an appeal was made on 28 April 2022 to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

6. The subject property is a three story office building comprising two interconnected buildings with a net internal area of 2,370.2m^2. The main building fronts Duke Street and was purpose built in 1975 with a concrete frame structure, concrete panel walls and a flat roof. To its rear it is connected to a building fronting Sydney Street via a stairwell. The Sidney Street building is of Victorian construction with brick walls and pitched slate tile roof.

7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

8. The correct RV for the subject property based on rent achievable on the AVD of 1 April 2015 and considering its physical state of repair on the material day of 1 April 2017.

Evidence and submissions

9. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; appellant's challenge submission; photographs and location plans of the appeal property; Bleasdale Wand structural report; asbestos report by Vega Environmental Consultants Ltd; respondent's revised valuation and appellant's alternative valuation.

10. As Mr Allan 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).

11. Mr Allen declared that he was not instructed under any conditional fee arrangement. He confirmed 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 regardless of whether or not the evidence supported the client's case.

12. Mr Allan stated that whilst the appellant occupied part of the subject property on the material day, it had been its intention to vacate the premises since 2010, they were no longer fit for purpose as the size and layout of the building no longer met their requirements without major refurbishment, which would not be cost effective. He considered that the costs of the refurbishments required would not be considered economic by a reasonable landlord in light

[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

of the lack of demand for offices in Barrow-in-Furness of the size of the subject property. The appellants had eventually vacated the majority of the premises in 2017.

13. In the alternative, if the panel found that the subject property was capable of reasonable repair, Mr Allan had provided a proposed valuation of RV £43,500 based on amended areas agreed with the respondent and a main space rate of £43 per m^2. He had also valued the first floor offices in the Duke Street building at £21.85 per m^2, and the vacant second floor offices in the Duke Street building at £0 per m^2. He considered that a rate of £15.30 per m^2 was reasonable for the offices situated in the older building on Sidney Street.

14. Mr Fuller stated that the ground and first floors of the subject property were occupied on the material day and it was therefore capable of beneficial occupation on that date. He considered that, in the main, the damage to the subject property was superficial and the cost of repairs required to the subject property were in the region of £159,900 inclusive of VAT. He was of the opinion that a reasonable landlord would consider it economic to carry out these repairs in order to command a rent equivalent to his revised RV of £73,500 for the repaired subject property.

15. He did not agree that the evidence showed that there was no demand for properties of the size age and location of the subject property at the AVD and in support of this he quoted the Supreme Court decision in *Telereal Trillium v Hewitt (VO)* [2019] UKSC 23.

16. In his revised valuation submitted to the tribunal on the morning of the hearing, Mr Fuller had adopted a main space rate of £43 per m^2 and removed the addition for 14 parking spaces and plant and machinery. He had also applied a 5% reduction to the rate applied to the second floor offices in the Duke Street building. This had resulted in a revised valuation of £73,500 RV.

Decision and reasons

17. The subject property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions set out in paragraph 2(1), 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;

    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”.

18. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any

property, rating law also requires that the property must be assumed to be 'vacant and to let' and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

19. The panel examined the photographic evidence submitted by the parties. It did not consider that this evidence demonstrated that there were any major repairs required. There did appear to have been a leak in the flat roof of the Duke Street building which had caused internal damage to parts of the ceiling. The kitchens and bathrooms, whilst dated, appeared to be functional and there was no damage apparent. It noted that some services required updating and whilst the lifts may require modernisation and refurbishment, there was no indication that they were not functional, although the panel was aware that they do not service the second floor.

20. The panel also noted that whilst some windows had broken hinges or latches, this would not require all of the windows to be replaced. The asbestos report identified the presence of asbestos but did not recommend removal apart from some minor areas.

21. The appellant's representative had not provided a breakdown of costs, but considered that repairs and improvements, costing in the region of £700,000 would be required in order to achieve a rental value in the region of that achieved by Phoenix House, which the respondent had considered to be the prime comparable property. The respondent had included a costed summary of the estimated repairs drawn up following a visit to the subject property by a VO Building Surveyor in 2020. The panel noted that this contained repair costs for the items identified as disrepair rather than improvements and the total costs of these was estimated at £159,900 including VAT.

22. The panel concluded that the works envisaged by Mr Allan included a large amount of improvement rather than repair and found that the estimated repair costs put forward by the respondent reflected the works required to bring it back into a state of reasonable repair. It considered that these costs were around twice the current RV of the subject property and that a reasonable landlord would consider these repairs economic.

23. The appellant had argued that had the subject property been vacant and to let and in reasonable repair at the AVD, there would have been no demand for the subject property due to the circumstance prevailing in Barrow at that time. He argued that rental evidence in the locality showed that there was no longer a demand for offices of the size and age of the subject property in the locality. He stated there were no direct comparables for the subject property, and those offices which had let around the AVD were much smaller and more modern premises or had been modernised. He considered that the *Telereal Trillium* case was for a large office building which needed no major refurbishment and where the parties had agreed that there was no demand. In that case the Supreme Court had determined that if it was agreed by the parties, or the evidence showed that there was no demand for a property, the rating hypothesis does not require the valuer to assume demand exists.

24. The panel noted that in this appeal, Mr Fuller did not agree that there was no demand for the subject property, citing its occupation at the material day by the appellant company. He stated that whilst it was only physically occupying part of the subject property, a valuation must be carried out on the whole property. He also referred to the letting of Phoenix House for £95,000 per annum on a lease renewal with effect from 1 April 2014. This was an office building of 2069m^2, originally built between 1965 and 1970 and refurbished in 1992 and was located close to the subject property. He contended that this lease renewal indicated that there was a

demand for similar properties around that time and provided a strong guide to the correct rate to be applied to the subject property.

25. The panel noted that this was the only office premises similar in age and size which had been proffered in evidence by either party. It considered that it's location adjacent to the main shopping area was similar to that of the subject property. It therefore concluded that the evidence did not show that, in reality, there was no demand for the subject property as there was a comparable property in the locality let at a substantial rent. The panel therefore concluded that it must assume that demand did exist and that the subject property should be valued in accordance with the rating hypothesis. As it had already determined that the cost of repairs was economic, the panel concluded that the subject property was neither obsolete nor beyond reasonable repair.

26. With regard to the correct main space rate to be applied to the subject property, the panel was satisfied that the rent on Phoenix House was the best evidence as it was most comparable to the subject property. The rent on this property had been devalued to £43.71 per m^2 and was effective from one year before the AVD. The panel considered that none of the appellant's comparable properties were remotely similar to the subject property in terms of size and age and the rents passing on them were of little assistance. It therefore considered that the revised main space rate of £43.00 per m^2 applied to the subject property was reasonable.

27. With regards to the reduced rate of £0 per m^2 sought by the appellant for the second floor area of the Duke Street building, the panel had regard to the report from the structural survey carried out by Bleasdale Wand. It did not recommend immediate remedial work on the second floor in view of it being currently unoccupied. It went on to recommend that the partition walls should be either completely removed or replaced with more modern lightweight alternatives if the floor was to become occupied as offices again. No costs had been provided to carry out these works and the panel noted that the respondent had applied a 5% allowance in his latest valuation to allow for restricted use of the second floor.

28. The panel considered that reconfiguration of the office would normally take place as part of a fit out for a new tenant, and therefore such works would not be a major encumbrance. However, it did consider that the restricted use and the reduced accessibility due to it having no lift access warranted a more generous allowance for the second floor area of Duke Street. In the circumstances it considered that an increased allowance of 15% was reasonable.

29. Applying this allowance to the total second floor area of 178.42m^2 resulted in a reduced RV of £73,085 (say £73,000) and the panel therefore determined that the appeal was allowed in part.

Order

30. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VO is ordered to alter the list entry for the subject property to £73,000 RV with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

31. A refund of the paid fee will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refund will take around six weeks to process.

Date: 9 May 2023

Appeal number: CHG100438049

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.