



VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeals; Proposal challenging Valuation Officer's notice of alteration; Offices and premises; rental analysis of Category A lettings; valuation in Category B state; tenant's fit out; Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC); Appeals allowed.

APPEAL NUMBERS: (1) CHG100528632; and (2) CHG100396080

RE: (1) Pt 5th (East) & 6th Flrs XYZ Building, 2, Hardman Boulevard, Manchester M3 3AQ ("Shoosmiths property"); and
(2) Part 4th Floor 5 St Pauls Square, Liverpool L3 9SJ ("Mando Property")

BETWEEN: (1) Shoosmiths LLP
and
(2) Mando Group Limited Appellants
and
Amanda Hitchings Respondent
(Valuation Officer)

SITTING: *remotely using Microsoft Teams*

ON: 22, 23, 24 July and 9 August 2024

BEFORE: Gary Garland (President)

CLERK: David Slater (Registrar and Chief Clerk)

APPEARANCES: Luke Wilcox from Landmark Chambers (Appellants' Counsel)
David Cownie from CBRE (Expert Witness for the Appellants)
Mark Hayes from CBRE (Expert Witness for Mando Group Ltd)
Jenny Wigley KC from Landmark Chambers (Respondent's Senior Counsel)
Aaron Walder from Landmark Chambers (Respondent's Junior Counsel)
Aidan Bailey (Expert Witness for the Respondent)
Michael Brankin (market expert for the Respondent)
Tim Brown (Respondent's Expert Witness – Shoosmiths appeal)
Greg Willetts (Respondent's Expert Witness – Mando Group appeal)

DECISION AND STATEMENT OF REASONS

Decision(s)

1. The Shoosmiths LLP appeal is allowed and the entry for the Shoosmiths property reduced to £595,000 Rateable Value with effect from 6 June 2017.
2. The Mando Group Limited appeal is also allowed and the entry for the Mando property reduced to £44,000 Rateable Value with effect from 1 April 2017.

Introduction

Shoosmiths appeal

3. The appeal process began when the Appellant served a proposal on the Valuation Officer on 15 December 2020, challenging a Valuation Officer's notice of alteration. The effect of the Valuation Officer's alteration was to enter the Shoosmiths property into the 2017 Rating List as a new hereditament. At the date of the proposal, the existing assessment was £640,000 Rateable Value with effect from 6 June 2017. The Appellant's proposed valuation, in its proposal, was £510,000 Rateable Value, based on £179 per m², with effect from 6 June 2017. 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 11 May 2023. 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 11 September 2023. The appeal was made on the grounds that the valuation for the Shoosmiths property was not reasonable.
4. The Shoosmiths property was a modern office and premises spread over 2 floors and its survey area was agreed at 2,839.8m², following the installation of an internal staircase. The property was let to the Appellant on a shell basis with the tenant receiving a capital contribution to carry out the Category A works and further capital sums which are detailed in paragraph 7 below.
5. The Shoosmiths property formed part of an eight-storey office building situated in the business core of Manchester city centre, known as Spinningfields. It was located immediately to the south side of the River Irwell, which formed the boundary between Manchester and Salford City centres. The building itself comprised modern offices on the 1st to 7th floors with a further mezzanine floor over the 7th floor. There was a reception area and a restaurant at ground floor level and 2 floors of car parking in the basement. Construction was completed in 2016 and it was first entered into the rating list in June 2017. The building was let in various separate sections to separate rateable occupiers.
6. The property was let to Shoosmiths LLP on the basis of two separate leases, one for the part 5th floor (East) and the other for the 6th floor. The agreements for the leases were dated 17 August 2015. The headline rent for Part 5th floor (East) of £323,460 per annum was formally agreed as at 17 August 2015 but the lease did not commence until 10 October 2016. The headline rent for the 6th floor of £542,025 per annum was also formally agreed as at 17 August 2015 but again the lease did not commence until 10 October 2016.
7. The term in both leases was for 15 years with rent reviews every five years. There were incentives within the leases which included a 4 months' rent free period, followed by a 50% discount in the rent for 3 years. The landlord also made the following capital contributions to Shoosmiths LLP as the tenant —

- (i) £1,091,169 for the Cat A works, based on £30ft²
- (ii) £97,220.50 for the installation of carpets and floor boxes
- (iii) £49,000 for the installation of an internal staircase
- (iv) £1,673,172 as a further payment

8. Shoosmiths LLP then spent £2,766,583 fitting out the offices to its own bespoke specifications.
9. The material date for the purposes of this appeal was 6 June 2017. The effective date for any reduced entry was also 6 June 2017.

Mando Group appeal

10. The appeal process began when the Appellant served a proposal on the Valuation Officer on 14 September 2020, challenging the accuracy of the compiled list entry. At the date of the proposal, the existing assessment was £74,000 Rateable Value with effect from 1 April 2017. The Appellant's proposed valuation, in its proposal, was £33,000 Rateable Value with effect from 1 April 2017. Having considered the merits of the proposal, the Valuation Officer disagreed with the Appellant's proposed alteration. The Valuation Officer did, however, decide to reduce the list entry to £71,000 Rateable Value with effect from 1 April 2017, in their decision notice dated 3 May 2022. The Appellant subsequently appealed the Valuation Officer's decision to the tribunal, under Regulation 13A of the NDR Regulations on 2 September 2022. The appeal was made on the grounds that the valuation for the Mando property was not reasonable.
11. The Mando property formed part of an eight-storey office building, 5 St Paul's Square, which was built in 2008. It was located in Liverpool City Centre around a half a mile away from the waterfront, the location of Pier Head, and 1.3 miles from Lime Street Railway Station. The Mando property was 493.5m² in size. It was the subject of a new letting to the Appellant. The agreement for the lease was dated 9 May 2016 and the lease commenced with effect from 1 August 2016. The term of the lease was ten years on a full repairing and insurance basis. The lease had a five-year break clause with the tenant entitled to terminate it at that point without incurring any financial penalty for doing so. The headline rent was £81,933 per annum with a rent-free period of 30 months.
12. The Mando property was let already fitted out on a Category A basis, as was the norm in modern office buildings. It was then fitted out to Category B, to accord to the tenant's requirements, before the Mando Group Limited moved in. It was accepted that, under the rating hypothesis, offices were valued on the assumption they were fitted out in a Category B state.
13. The material date for the purposes of this appeal was 1 April 2017. The effective date for any reduced entry was also 1 April 2017.
14. Although the headline rent took effect from 1 August 2016, the parties were in agreement that rents agreed in 2016 did not require any adjustment to accord with values as at the antecedent valuation date of 1 April 2015.

15. Both Mr Hayes and Mr Cownie were instructed by their clients on a success related fee arrangement. This was important for me to be aware of in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).
16. I accepted this expert witness evidence on the above basis as I considered to do otherwise would have been contrary to Regulation 3 of the Tribunal's Procedure Regulations and was nonetheless 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). I therefore considered the "expert" evidence and attached such weight to it as I saw fit.
17. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Issues in dispute

Shoosmiths

18. The issues that were in dispute were identified as follows;
 - a) the rental value of the appeal property in a shell state. The Valuation Officer had made an addition of 6% to represent the hereditament in "shell plus capital contribution" form and then another addition to arrive at a true "turn key" Category A rent. The Appellant maintained that no addition was required to reflect lettings in a shell condition other than a deduction from the rent-free period to reflect Category A works.
 - b) The rental value of the appeal hereditament in a Category A state. The Appellant has analysed the appeal rent at £190 per m², whereas the Valuation Officer has analysed it to £209 adjusted to £230 per m², to represent it in a turn key Category A state.
 - c) The relevant date for the transaction. The Appellant believed it was the lease completion date, the respondent maintained it was when heads of terms were agreed. This was important for any tonal adjustments to the antecedent valuation date. The parties were agreed that rents, within XYZ Building, should be toned back at 1% per month to account for rental growth.
 - d) What, if any, adjustment should be made to reflect the rental concessions agreed for the car parking spaces. The Appellant considered an adjustment necessary to reflect the fact that the financial inducement agreed for the offices and car spaces formed a single transaction. This incentive was not reflected in the valuation of the car parking, which was separately assessed. The Valuation Officer's position was that no adjustment was appropriate.
 - e) The appropriate quantum adjustment (allowance for size).
 - f) The appropriate fit out period deduction for the tenant to undertake the fitting out works. The Appellant had deducted three months for the Category A works, the Valuation Officer six months to reflect all fitting out works, including Category B, for which the Appellant had made no deduction.
 - g) Although it was agreed that Category B fit out was rateable, the Appellant had made no addition to their valuation on the basis that market evidence showed that there was

no difference between Category A and B rental levels. The Valuation Officer had had regard to the Category B fitting out costs and had amortised these to arrive at the virtual rent to reflect the value of the tenant's final fit out.

- h) The Appellant's revised valuation was £540,000 Rateable Value, based on £190 per m², whilst the Valuation Officer's position was that the existing assessment of £640,000 Rateable Value, based on £225 per m², was not excessive and following their review was considered too low. However, as the Rating List was closed, if I found for the Valuation Officer, the appeal would simply be dismissed.

Mando Group

19. The issues that remained in dispute were identified as follows;

- a) the correct analysis of Category A rental evidence, in relation to the Mando property and the comparable evidence. For the Appellant, Mr Hayes had analysed the actual rent, in terms of Category A to be £76.01 per m², whereas for the Valuation Officer, Mr Willetts had determined a slightly higher figure of £79.45 per m².
- b) The main dispute between the parties was the uplift, if any, to the Category A rent to reflect the appeal property in a Category B state. The Appellant was of the opinion that no uplift was justified, whilst the Valuation Officer has determined an analysed rent of £142.01 per m² to represent the appeal hereditament in a Category B state based upon its known rateable fit out costs. However, after having regard to all of the rental evidence, the Valuation Officer's proposed basis was £105 per m².
- c) What adjustment, if any, should be made to reflect the period for tenant's (Category B) fit out. The Appellant was of the opinion that no deduction should be made. In contrast, the Valuation Officer was of the opinion that 3 months' rent-free period should be deducted when analysing the rental evidence for Category A lettings.

Relevant Law

20. 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.

21. 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.

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are—

- (a) matters affecting the physical state or physical enjoyment of the hereditament,
- (b) the mode or category of occupation of the hereditament,
- (c) the quantity of minerals or other substances in or extracted from the hereditament,
- (cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,
- (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
- (e) the use or occupation of other premises situated in the locality of the hereditament.

Valuation evidence

Analysis of the actual rent on the Shoosmiths property

22. The Shoosmiths property was let on two separate leases. Mr Cownie's analysis of the rent attached to the Part 5th Floor East produced a net effective rent of £227,449 per annum which devalued to £212.83 per m² before any adjustments were made to reflect quantum and toning back to the antecedent valuation date. His analysis of the rent attached to the 6th Floor produced a net effective rent of £383,718 which devalued to £215.12 per m² before adjustment for toning back and quantum.
23. Mr Cownie had analysed the rent over the full 15 years' term adopting a 7% discount in line with the yield used by the Valuation Officer for office assessments in the 2017 Rating List. In his analysis, he adjusted to reflect the 4 months' rent free period followed by 3 years at half rent applicable to both the offices and car parking. He had also adjusted the rent to reflect the capital payments received by the tenant of £626,882 (Part 5th Floor) and £1,046,290 (6th Floor). He had ignored the landlord's capital contributions towards the internal link staircase, carpets and floor boxes as they were specifically towards tenant fit out works. He then divided the total rent over 14.75 years to reflect the fact that the tenant had carried out the

Category A works. However, he made no deduction for the Category B works, since the property was assumed to be already fitted out to Category B under the rating hypothesis. He explained in his expert report that, in his opinion, the correct approach for determining any adjustment to a Category A rent for the fit-out period is to start with the Category B rental analysis and then identify any difference with the Category A rent.

24. Mr Cownie had toned the rent back from 17 August 2015, which was the date when the rent was agreed in the Agreement for the lease.
25. In his supplementary report to the challenge document, he had compared Category B fit out and Category A rents. Whilst he conceded that some of the evidence suggested that an adjustment may be required to the Category A analysis (with regard to the relationship between Category B rents and Category A rents) there were as many which suggested that no deduction should be made (as the Category B analysis was the same as or below Category A analysis). It therefore appeared to him that when agreeing the Category B rents, the parties were not incorporating a fixed Category A fit out period deduction, otherwise Category B rents would always be higher than Category A.
26. Mr Cownie had adjusted the actual rent to reflect quantum by deducting 7½% having regard to the Valuation Officer's quantum scale for offices in the appeal building and immediate locality for the 2017 Rating List. Ultimately, he arrived at an analysed rent of £190 per m².
27. For the Valuation Officer, Mr Brown's had analysed the actual rent on the Shoosmith's property from a Category A perspective, Mr Bailey's report dealt with the Category B aspect. Mr Brown's analysis had had regard to the combined rent payable under the separate leases. Mr Brown had toned the level of rent back to the antecedent valuation date from the date when Heads of Terms were agreed which was 14 May 2015. Like Mr Cownie, he had analysed the rent over 15 years and adopting a yield of 7%. Mr Brown had divided the total rent over 14.5 years to reflect the fact that the tenant fitted the property out to Category B. Unlike Mr Cownie, Mr Brown had not adjusted the rent to reflect any incentives for the car parking spaces.
28. When analysing the adjusted rents for the XYZ building, Mr Brown formed the view that quantum was shown in the net rents. However, as the Shoosmiths property and the 2nd to 4th floors were let on an individual lease basis for each floor, he felt it appropriate to make an adjustment to reflect the greater degree of flexibility offered by separate leases. He therefore deducted an allowance of 2½% in his analysis.
29. His analysis of the rent on a shell basis was £209 per m² which when adjusted to reflect to represent the hereditament in a turn key Category A state came to £230 per m².

Comparable Category A evidence in Manchester

Part 7th Floor East and Mezzanine East, XYZ Building

30. This property was in the same building as the Shoosmiths property. It was let to Global Radio for a term of 10 years from 1 December 2016 at a headline rent of £464,996 per annum. The agreement for the lease was dated 7 August 2015. The lease had a 5-year review (upwards only clause) subject to a minimum uplift of £513,042 per annum based on 2% compound per annum but capped at a maximum uplift of 4% compound per annum.

31. As an inducement to take the lease, the Landlord granted a 29 months' rent-free period. In addition, the developer also gave the tenant £497,000 to undertake their own Category A works (based on £30 per ft²). Further capital contributions of £38,875 towards the carpets, £11,610 for floor boxes and £8,500 towards blinds were made.

2nd, 3rd and 4th Floors, XYZ Building

32. This property was let on a 17 years' term to NCC Services Ltd on 3 separate leases (one for each floor) with effect from 7 October 2016. The headline rents were £523,978 per annum for the 2nd Floor, £544,131 per annum for the 3rd Floor and £544,104 for the 4th Floor.
33. The agreement for each lease was dated 14 September 2015. There was a tenant's break option after 12 years with no penalty, subject to the tenant serving 9 months' notice. Each lease had a 5 yearly rent review clause with fixed rent increases based on 2% per annum compound interest.
34. As an inducement to take out the lease(s), the Landlord granted the tenant a 26 months' rent-free period. The landlord also made a capital contribution of £1.5 million plus VAT, as an additional rent-free period. Further capital contributions of £100,000 for not having an internal staircase, £157,268 for carpets and £50,841 for floor boxes.

Other Category A rental evidence in Manchester

35. In his expert report, Mr Brown had had regard to the rents passing on the following properties;
- (1) KPMG, Part 10th to 13th Floors, 1 St Peters Square (area 6,441m²), which he had analysed to £198.16 per m² before adjustment to arrive at £214.39 per m² on a shell basis.
 - (2) Part 5th Floor at 3 Piccadilly Place (area 711.39m²) which he had analysed to £195.98 per m², before adjustment to arrive at £205.78 per m² on a Category A basis.
 - (3) 7th Floor at 3 Piccadilly Place (area 1,449m²), which he had analysed to £246.94 per m², before adjustment to arrive at £266.69 per m² on a Category A basis.
 - (4) 3rd Floor, Vantage Point, Hardman Street (area 494.12m²) which he had analysed to £290.13 per m² which reflected Category A basis.
 - (5) 7th Floor, 3 Hardman Square, Manchester (area 2,053m²) which he had analysed to £226.53 per m², before adjustment to arrive at £242.38 per m² on a Category A basis.
36. Mr Brown had also had regard to rent review evidence derived from the 1st Floor at 12 Booth Street (area 1,279.3m²) and the 4th Floor, 12 Booth Street (area 1,436m²) which he had analysed to £307.82 and £266.02 per m² respectively. Following adjustment, the respective adjusted rents were £277.04 per m² and £279.32 per m² in Category A condition.

Category B rental evidence in Manchester11th Floor, Orange Tower, Salford Quays

37. Orange Tower was a high specification modern office building in Media City, Salford. This property was originally let by the landlord, Peel Media Limited, to Japanese Tobacco International (JTI) in 2017 at a headline rent of £401,000 per annum (£25 per ft²). Despite having signed a 10 years' lease (with a break at the end of the 5th year) JTI vacated the space after a short period of time and surrendered the lease back to the landlord on 17 May 2021. Prior to its occupation, JTI had carried out the Category B fit out to a high standard.
38. The landlord remarketed the property in Category B condition seeking an increased rent of £31.50 per ft² to reflect the level of fit out.
39. On 6 July 2021, Heads of Terms were issued to Autocab International Ltd, who were advised by CBRE. The landlord's asking rent was £31 per ft² but the tenant would have had the benefit of a 21 months' rent-free period.
40. On 26 July 2021, Autocab responded amending the Heads of Terms offering a rent of £28 per ft² and it sought an increased rent-free period of 28 months. The transaction did not proceed.
41. The property was eventually re-let in a Category B condition to Horwich Farrelly Solicitors. Heads of Terms were prepared on 25 July 2022 and the Agreement for the lease was completed on 12 October 2022. The commencement date for the lease was delayed until 1 December 2022.
42. By July 2022, according to Mr Cownie, the prevailing Category A headline rent had increased to £27.50 per ft² which reflected a 10% increase in headline rents since 2017.
43. Under the terms of the lease, the rent was at a peppercorn rate from 1 December 2022 to 30 November 2023 before increasing to half rent (£236,590) until 30 November 2024. On 1 December 2024, the full rent of £473,180 per annum became payable.
44. There was a tenant's break clause after the 5th year of the term with a penalty attached of £118,295 if the break clause was exercised.
45. In his supplementary report, Mr Cownie referred to the letting of the 10th Floor, Orange Tower, Salford Quays by Peel Media Ltd to the Hut Group under a lease dated 23 October 2018 for the purposes of comparison with the above Category B letting. The agreed rent of £401,000 per annum (£25 per ft²) reflected Category A condition. The term of the lease was 5 years. As an inducement to take the lease, the landlord gave the tenant a 6 months' rent-free period followed by 12 months at half rent. His analysis of this rent devalued to £217.48 (if 3 months of the rent-free period was deducted for fit out) or £208.26 per m² (with no deduction for fit out).

Part 8th Floor Quay West, Salford Quays

46. This property was let to Tuscor Lloyd in 2009 and when the tenant vacated the offices, its fit out was retained by the landlord. The property was then re-marketed in Category B condition and re-let to SLR Consultancy Ltd on a 5 years' lease with effect from 10 July 2015. The rent agreed was £42,883 per annum with a 9 months' rent-free period. There was a break clause

at the end of the 3rd year subject to a penalty of £10,720. The new tenant also received a capital contribution of £20,000 from the landlord. Mr Cownie had analysed the rent to £110.81 per m².

47. In his supplementary report, for the purposes of comparison, he referred to the letting of Part 6th Floor West Wing, Quay West to Lend Lease, with effect from 21 November 2015, where he had analysed the Category A rent to be £111.42 per m².

Part 2nd Floor, XYZ Building, Spinningfields

48. NCC Services took out leases for the 2nd, 3rd and 4th Floors and fully fitted them out to Category B. NCC Services then looked to reduce its level of occupation by marketing the whole of the 2nd floor. The Barcrest Group Ltd took a 5 year lease on part of the 2nd floor on 10 June 2022 and retained the vast majority of NCC's fit out.
49. Based on the lease terms, the initial rent was £355,591.21 per annum. The full monthly rent of £29,632.60 was payable for the first month of the term. This was followed by a 6 months' rent-free period and then half rent for 6 months.
50. Mr Cownie's analysis of Barcrest's rent devalued to £268.43 per m².
51. For the purposes of comparison, Mr Cownie referred to the rent set, following a rent review, for the Part 7th and 7th Floor Mezzanine which was let to Global Radio. The analysed rent, from the rent review date 26 December 2021, devalued to £368.99 per m², which Mr Cownie stated in his report represented Category A specification.

7th and 8th Floors, 3 Piccadilly Place

52. This property was originally let to NuGeneration under two separate leases from 31 January 2015 and 21 September 2015 respectively. NuGeneration fitted the offices out before occupying them. However, within a short period of time, both leases were surrendered to the landlord and the floors remained in Category B and Category C condition.
53. The premises were marketed by the landlord in a fitted state and Barclays Bank, the occupier of the adjacent and contiguous building, acquired both floors under separate leases retaining NuGeneration's fit out, furniture and equipment. Heads of Terms were dated 21 February 2019 and both lease terms were for 10 years from June 2019.
54. Mr Cownie's analysis of the rent paid by Barclays Bank devalued to £252.53 per m² for each floor.
55. For the purposes of comparison, in his supplementary report, he summarised the Category A rental evidence within 3 and 4 Piccadilly Place to establish the relationship between the Barclays Bank Category B rents and two Category A rental transactions one dating from either side of the Barclays agreements. He analysed the Category A rent on part 5th Floor from May 2019 paid by Instant Office Ltd at £276.86 per m². The other Category A rent transaction was for part of the 1st Floor with effect from December 2019 where the Secretary of State's rent was analysed to £259.10 per m².

Part 5th Floor, Belvedere, Booth Street

56. This office suite was originally let to CBRE Ltd in 2010 and it was fitted out to a high standard. CBRE vacated the premises in 2018 and the lease was surrendered, without any surrender payment, to the landlord. The landlord then immediately re-let the offices to Arrow Global, retaining CBRE's full fit out.
57. Arrow Global already occupied part of the same building and was looking to expand, so Mr Cownie accepted it was a special purchaser. Arrow Global's lease commenced from 30 May 2018, for a term of 9 years, 10 months and 2 days. There was a rent-free period of 15 months. Mr Cownie's analysis of this rent devalued to £282.34 per m².
58. For the purposes of comparison, in his supplementary report, he had had regard to the agreed rent reviews dated 1 February 2016 on two office suites on the 1st Floor within the same building. The analysis of those agreed rents by Savills devalued to £293.32 per m² (Suite A) and £298.70 per m² (Suite B) and were both Category A rents.

Think Park, Trafford Park

59. Think Park was the head lessee of three buildings which formed Think Park. In 2018, it decided to downsize so a number of sub-lets were agreed with third parties. The sub-lets now account for more than half the office space.
60. One sub-let was agreed with ADM Wild with the lease commencing on 22 August 2018. Mr Cownie's analysis of this rent devalued to £119.25 per m². Another sub-let was agreed with CHEP with the lease commencing on 1 December 2019. Mr Cownie's analysis of this Category B rent devalued to £128.86 per m².
61. In his supplementary report, Mr Cownie's analysis of the Category A evidence on Think Park indicated that the average rent for Category A offices was around £147.58 per m².

Part 3rd and 4th Floor, 1 New Bailey Street

62. These offices were let to Freshfields Bruckhaus Deringer solicitors who surrendered the lease(s) in October 2021. The landlord then re-marketed them as fully fitted out Category B office space at the same level of rent as other floors which were in a shell state.
63. The 4th Floor was re-let to The Competition and Markets Authority in a Category B state for 5 years, the lease term beginning in April 2023. Mr Cownie's analysis of the rent devalued to £271.89 per m².
64. In his supplementary report, he compared the above Category B rent with a Category A letting to Matillion, who took out a lease on part of the 6th Floor and the whole of the 7th Floor in 2 New Bailey. Mr Cownie's analysis of the rent devalued to £255.45 per m².

Analysis of the actual rent on the Mando property

65. The Mando property was a new letting for a term of 10 years commencing on 1 August 2016. The headline rent was £81,933 per annum. As an inducement to take the lease the Landlord granted the appellant 30 months' rent free. The tenant was provided with a capital contribution of £13,258 to put towards carpets and floor boxes. There was a break clause, in the tenant's favour with no penalty involved, at the end of the 5th year of the term, subject to

at least 6 months' prior notice. If the tenant chose not to invoke the break clause, it would be entitled to a further 12 months' rent-free period.

66. Mr Hayes' analysis, for the Appellant, had produced a net effective rent of £37,510 per annum which devalued to £76.01 per m² and it was agreed that no adjustment for toning back to the antecedent valuation date was required. He had analysed the rent over 5 years to reflect the term certain adopting a 7% discount in line with the yield used by the Valuation Officer for offices in the 2017 list. Mr Hayes had ignored the capital contributions towards the carpets and floor boxes, as they were specifically towards tenant fit out works.
67. Mr Willetts for the Valuation Officer had no disagreement with the above. The only issue in dispute between them was whether or not a deduction in the rent-free period should be made, as the property had to be assumed to be in Category B condition for the rating valuation. Mr Hayes had made no deduction, since both he and Mr Cownie had looked at the Category B evidence in comparison to Category A and found no discernible difference between the two. Mr Willetts had made a deduction of three months to reflect the required fit out period for the works to convert the offices from Category A to B. Mr Willetts' analysis of the rent devalued to £79.45 per m² on a Category A basis.

Main Comparable Category A evidence in Liverpool

Part 2nd Floor, 5 St Pauls Square

68. This office suite of 688.78m² was in the same building as the Mando Group property. It was let on a new lease, for a term of 10 years, to Denholme Logistics on 1 December 2014 at a headline rent of £112,240 per annum. As an inducement to take the lease, the landlord granted 30 months' rent free. The tenant was provided with a capital contribution by the landlord of £18,500 to put towards carpets and floor boxes. There was a break option at the end of the 5th year of the term. The break was subject to a 6 months' rent penalty if exercised. However, if it was not exercised, an additional 30 months' rent-free period would be granted.
69. In view of the penalty clause for the break, the rent had been analysed by Mr Hayes over the full term of 10 years at a 7% yield. Mr Hayes had disregarded the capital contribution towards the carpets and the floor boxes. His analysis produced a net effective rent of £51,385 per annum which devalued to £74.60 per m².
70. In his analysis, Mr Hayes had ignored the capital contribution towards carpets and floor boxes as it was specifically towards tenant fit out works.
71. Mr Willetts stated in his rebuttal report that his analysis differed from that of Mr Hayes because he had analysed the rent up to the break clause and had incorporated the six months' rent penalty that would occur as a result. There was also a dispute over the length of the rent-free period, if any, to be excluded from the amortization period. Mr Willetts had disregarded 3 months for the tenant's fitting out to Category B state. Even though the rent was analysed differently, Mr Willetts had arrived at the same Category A devalued rent of £74.60 per m² as Mr Hayes.

Part 4th Floor, 5 St Pauls Square

72. This office suite of 908.8m² was let on a new lease, for a term of 10 years, to Mann Island Finance commencing on 1 October 2015 at a headline rent of £165,660 per annum. As an

inducement to take the lease, the landlord granted the tenant a 30 months' rent-free period. The tenant was also provided with a capital contribution of £26,128 to put towards carpets and floor boxes. There was a break clause after 5 years with no penalty. If the break clause was not exercised, the tenant was entitled to a further rent-free period of 27 months.

73. In his analysis, Mr Hayes had ignored the capital contribution towards carpets and floor boxes, as they were specifically towards tenant's fit out works. he had analysed the rent over 5 years to reflect the term certain adopting a 7% yield. His analysis of the rent produced a net effective rent of £75,841 per annum which devalued to £83.53 per m².
74. In his analysis, Mr Willetts had deducted 3 months from the total rent-free period to reflect the tenant's fit out to Category B. His analysis of the Category A rent devalued to £87.22 per m².

Part 2nd Floor, 5 St Pauls Square

75. This office suite of 748.24m² was let on a new lease, for a term of 10 years, to Hays Recruitment commencing on 1 August 2016 at a headline rent of £124,837 per annum. As an inducement to take the lease, the landlord granted the tenant a 30 months' rent-free period. The landlord also gave the tenant a capital contribution of £20,202 to put towards carpets and floor boxes. There was a break clause after 5 years with no penalty. If the break clause was not exercised, the tenant was entitled to a further rent-free period of 15 months.
76. In his analysis, Mr Hayes had ignored the capital contribution towards carpets and floor boxes, as they were specifically towards tenant's fit out works. he had analysed the rent over 5 years to reflect the term certain adopting a 7% yield. His analysis of the rent produced a net effective rent of £57,152 per annum which devalued to £76.38 per m².
77. In his analysis, Mr Willetts had deducted 3 months from the total rent-free period to reflect the tenant's fit out to Category B. His analysis of the Category A rent devalued to £77.10 per m².

4th Floor, 4 St Pauls Square

78. In his report, Mr Hayes referred to 4 St Pauls Square as the sister building to 5 St Pauls Square, where in which the Mando Group's offices sat.
79. The 4th Floor at 4 St Pauls Square, area 1329.73m², was let on a new 10 years' lease to Mercer Limited commencing on 14 April 2014 at a headline rent of £277,190 per annum. As an inducement to take the lease, the landlord granted the tenant a 36 months' rent-free period. The landlord also gave the tenant a capital contribution of £617,511 with no stipulation on its use. An additional allowance of £20 per m² was given for carpets and floor boxes. As the lease included 14 car spaces which were valued at £1,600 per space, he had discounted the rent accordingly. He had also adjusted the rent to reflect the tenant's 12 months' service charge holiday.
80. The rent was analysed over 10 years adopting a 7% yield. Mr Hayes' analysis produced a net effective rent of £64,431 per annum which devalued to £48.45 per m².
81. In his expert report, Mr Willetts had arrived at a net effective rent of £105,625 which devalued to £79.42 per m². He had deducted 3 months from the amortization period to reflect the tenant's fitting out. The other main difference between the competing analyses was that Mr Willetts had disregarded the landlord's large capital contribution and the service charge cap.

Suite A, Part 3rd Floor, 4 St Pauls Square

82. This office suite of 490.24m² was let on a new 10 years' lease to Mercer Limited commencing on 14 July 2014 at a headline rent of £93,072 per annum. The lease included a tenant's break clause which could have been engaged on 14 April 2019 (4.75 years into the term). As an inducement to take the lease, the landlord granted the tenant a 24 months' rent-free period. The landlord also gave the tenant a capital contribution of £22,443 with no stipulation on its use which Mr Hayes had reflected in his analysis. He disregarded the additional allowance of £20 per m² that was given for carpets and floor boxes. As the lease included 3 car spaces which were valued at £1,600 per space, he had discounted the rent accordingly. He had also adjusted the rent to reflect the tenant's 12 months' service charge holiday.
83. The rent was analysed over 4.75 years adopting a 7% yield. Mr Hayes' analysis produced a net effective rent of £35,174 per annum which devalued to £71.75 per m².
84. In paragraph 44 of his expert report, Mr Willetts' table indicated that his analysis of the rent on this office suite had devalued to £110.88 per m² in terms of Category A. He had deducted 3 months from the amortization period to reflect the tenant's fitting out. The other main difference between the competing analyses was that Mr Willetts had disregarded the landlord's large capital contribution and the service charge cap.

Suite B, Part 3rd Floor, 4 St Pauls Square

85. This office suite of 298.09m² was let on a new 10 years' lease to Mercer Limited commencing on 14 July 2014 at a headline rent of £61,536 per annum. The lease included a tenant's break clause which could have been engaged on 14 April 2019 (4.75 years into the term). As an inducement to take the lease, the landlord granted the tenant a 24 months' rent-free period. The landlord also gave the tenant a capital contribution of £14,307 with no stipulation on its use which Mr Hayes had reflected in his analysis. He disregarded the additional allowance of £20 per m² that was given for carpets and floor boxes. As the lease included 3 car spaces which were valued at £1,600 per space, he had discounted the rent accordingly. He had also adjusted the rent to reflect the tenant's 12 months' service charge holiday.
86. The rent was analysed over 4.75 years adopting a 7% yield. Mr Hayes' analysis produced a net effective rent of £22,693 per annum which devalued to £76.13 per m² in terms of Category A.
87. Although I could not find any specific analysis of this particular rent within Mr Willetts' reports, his devalued rent would have been considerably higher than Mr Hayes' bearing in mind their differences in approach as outlined in the analysis of Suite A above.

5th Floor, 20 Chapel Street

88. This office suite, area 1,178.31m², was let on a new 10 years' lease to Police Mutual commencing on 17 February 2014 at a headline rent of £195,120 per annum. As an inducement to take the lease, the landlord granted the tenant a 48 months' rent-free period.
89. Mr Hayes' analysis of the rent produced a net effective rent of £101,021 per annum which devalued to £85.73 per m². Mr Willetts' analysis of the rent devalued to £87.30 per m² in terms of Category A.

5th Floor, 1 Mann Island

90. This office suite, area 986.7m², was let on a new 10 years' lease to Seadrill commencing on 1 December 2014 at a headline rent of £223,368 per annum. As an inducement to take the lease, the landlord granted the tenant a 28 months' rent-free period. The tenant had a break option at the end of the 5th year of the term. Mr Hayes' analysis of the rent produced a net effective rent of £102,553 per annum which devalued to £103.94 per m².

4th Floor, 1 Mann Island

91. This office suite, area 911.55m², was let on a new 9 years' lease to Seadrill commencing on 1 December 2016. As an inducement to take the lease, the landlord granted the tenant a 25 months' rent-free period. Mr Hayes' analysis of this rent, in terms of Category A, devalued to £74.85 per m². In his expert report, Mr Hayes stated that he had been unable to obtain full details of this deal, so he had relied on the information provided by the Valuation Officer and was prepared to accept their analysis.
92. On page 19 of his expert report, Mr Willetts had analysed the combined rent on the 4th and the 5th floors to be £171.17 per m².

Category B rental evidence in LiverpoolPart 7th Floor, 20 Chapel Street

93. 20 Chapel Street was a high specification modern city office building. The office suite on the part 7th Floor was leased to IDOX Plc and fitted out in March 2017. In August 2018, Mason Owen and Partners entered into discussions with IDOX regarding the assignment of the residue of the latter's lease. The assignment was completed in December 2018 for £1 with Mason Owen and Partners paying the passing rent of £105,070 per annum.
94. In his supplementary report, for the purposes of comparison, Mr Cownie referred to another office suite on the 7th Floor which was let to Mason Owen Financial Services Ltd on a 10 years' lease dated 15 October 2018.
95. Mr Cownie's rental analysis indicated that the rent on the assigned Category B let devalued to £107.88 per m², whilst the Category A rent paid by Mason Owen Financial Services Ltd devalued to £155.99 per m².

Discussion

96. As explained by the Upper Tribunal in *Bunyan (VO) v Acenden Ltd* [2023] UKUT 17 (LC), in paragraph 1 of its judgment, the way the modern high quality offices market worked was that office properties were normally marketed in Category A condition.

Modern high quality office buildings are usually offered to the letting market in a "Category A" condition. If the building has been newly constructed or recently refurbished, its owner will typically have installed raised floors and suspended ceilings, basic mechanical and electrical services including lighting and air-conditioning, a fire detection system and basic internal finishes. By marketing the building in this condition, the owner will hope to generate interest from the widest range of potential occupiers. Once a letting has been achieved, the new tenant will be free to fit the building out to meet its own requirements. The tenant's fitting out

work will bring the building into a “Category B” condition and is likely to include the installation of kitchens and tea points, partitioning, the re-routing of air conditioning and power points to accommodate its preferred layout, and the addition of IT infrastructure.

97. As was the case in *Acenden*, I am bound to value the appeal properties in a Category B condition as that was what is required by the rating hypothesis. Even though the Upper Tribunal firmly rejected the proposition that a building in a Category B condition was worth no more than a building in Category A, that has not deterred the Appellants in these appeals from arguing that this was not the case in the Liverpool and Manchester office markets. In paragraph 109 of its judgment, the Upper Tribunal stated (with my *emphasis* added):

We were informed before the hearing of the appeal that this appeal is regarded as a test case for the valuation of office buildings in Category B condition for the 2017 list. We have firmly rejected the proposition that a building in Category B condition is worth no more than a building in Category A condition, which should assist parties in other cases. On an appeal of such importance, we would have welcomed better market evidence demonstrating the differential between Category A and Category B space, enabling the unsatisfactory two stage approach to be avoided. Given the resources and expertise available to the parties, it ought to have been possible in this case to demonstrate that differential by evidence of the value of the Arc building when first let in Category A condition. A smaller basket containing evidence of better quality would have provided a more satisfactory test.

98. In the above paragraph, the Upper Tribunal said its decision in *Acenden* should assist parties in dealing with other cases. I am aware that in and around London, office assessments are being agreed with an uplift of £25 per m² to reflect the additional value of the Category B fit out. However, the two appeals that were before me provided an indication that the Upper Tribunal’s judgment in *Acenden* had not put this contentious issue to bed. The question of whether there should be an uplift from Category A to reflect a tenant’s Category B bespoke fit out was still a hot topic upon which it was not possible to reach universal agreement. In my opinion the Upper Tribunal’s decision is clear authority on the point.
99. On behalf of the Appellants, Mr Wilcox argued that whilst *Acenden* provided a framework for the determination of these types of appeal, the real *ratio* of *Acenden* was that the valuation exercise should be driven by a close analysis of the market evidence. He warned me against theorising about markets in an ivory tower and invited me to use the real world as my guide. He contended that in the real world, there was no evidence to support the Valuation Officer’s case, since there was no difference in rental values between offices marketed in Category A condition, in comparison to those marketed in Category B state. Moreover, Mr Wilcox stated that landlords who tried to let offices in Category B state were in a weaker position, as the vast majority of tenants were in the market for Category A space, so that they could fit it out to their own bespoke requirements.
100. In *Acenden* the Upper Tribunal decided that the Arc, Leatherhead a headquarters office building let in Category B condition was key in its determination that the fit out to Category B condition justified an increase in assessment. The Upper Tribunal commented that it would have been helpful to know what the Arc’s passing rent in a Category A state was. Unlike the Upper Tribunal, I had the benefit of that information and the passing rent for the Arc was the same whether it was Category A or B. In his expert report, Mr Cownie made the point that had the Upper Tribunal been in possession of this information, the outcome in *Acenden* may well have been different.

101. Mr Wilcox advocated that as the determination of the Category A unit price would be essential for valuing the appeal properties, whichever valuation method was adopted, this would be my logical starting point for the determination of the appeals. I therefore agreed with him that it was the appropriate place to start.
102. Both appeal properties were located in Grade A modern buildings. In order to assist me, the parties had provided me with an agreed statement of facts for each appeal property and clarified the matters on which they could not agree and what they wanted me to decide.
103. Both parties' experts had had regard to the six propositions set out by J H Emlyn-Jones in the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141. This guidance was as follows;
- (i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as a starting point.
 - (ii) 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 1976 the more weight should be attached to it.
 - (iii) 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.
 - (iv) 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.
 - (v) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing 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.
 - (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 be clearly more difficult to reject the evidence of the actual rent.
104. Applying the above to the present cases, both properties were subject to new lettings with the respective tenants coming fresh to the scene. Both properties were let on full repairing and insurance terms with the level of rent agreed, close to the antecedent valuation date. As the Category A price for the Mando Group letting was more straightforward for me to decide, because there was only one sub issue in dispute, it seemed appropriate for me to determine this one first.

Mando Group letting

105. This property was let in a Category A condition and I found it helpful that the two experts Mr Hayes for the appellant and Mr Willetts were largely in agreement with regard to their analysis of the actual rent. The first issue in dispute between them was whether or not 3

months' rent free should be deducted from the analysis of the Category A deal, to reflect the period required for the tenant to undertake the Category B fit out works to facilitate its occupation. The second issue in dispute which would be more difficult to decide was the uplift, if any, to reflect the value of the Category B fit out. I decided to park the latter until I had determined the Category A base price.

106. Although the headline rent was £81,933 per annum, this figure required significant adjustment downwards to reflect the landlord's concession of a 30 months' rent-free period. As the tenant could walk away without any penalty at the end of the 5th year, both Mr Hayes and Mr Willetts agreed that the actual rent had to be analysed over 5 years. Where they differed was that Mr Willetts had deducted 3 months from the 30 months' rent-free period which meant that Mr Hayes' calculation of the Category A unit price, having regard to the actual rent, was higher than Mr Willetts'.
107. Given the fact that it was accepted that offices in a Category A state were incapable of beneficial use as offices until the Category B fit out was undertaken, it was agreed that the property was not a hereditament, I determined that Mr Willetts' approach was correct. When a property was not fitted out, it was custom and practice for landlords to concede a rent-free period to allow the tenant to fit a property out to its bespoke requirements. The concession of a rent-free period for fit out was to reflect the fact that the tenant could not beneficially occupy the property until it had been fitted out. It was not in dispute that the normal fit out period for fitting out from Category A to B was three months. Where the rent-free period was greater than the "norm" for fit out, this was treated as an incentive and the actual rent adjusted accordingly.
108. Mr Hayes' analysis of the subject rent was £76.01 per m² whilst Mr Willetts' analysis, which I preferred because he had correctly deducted 3 months to reflect the Category B fit out, was £79.45 per m².
109. No further adjustment to the actual rent was required to arrive at the Category A price.
110. In order to test the reliability of the actual rent, I have had regard to the indirect rental evidence, derived from the rents passing on other Grade A office buildings in Liverpool City Centre, which were itemised above, and the analysed rents appeared to be similar to that which was agreed on the Mando property.
111. Even though more than 7 years had elapsed since the 2017 Rating List came into force, no relevant comparable/tone of the list evidence was presented before me.
112. As it appeared to me to be reasonable to round the analysed rent figure to the nearest £5, I decided that Mr Willetts' Category A price of £80 per m² was correct. What uplift, if any, should be added to reflect the tenant's Category B fit out will be addressed later.

Shoosmiths letting

113. In comparison to the Mando Group letting, where apart from the question of a Category B uplift, where only one sub-issue was in dispute which did not take me long to decide, there were a number of sub issues in dispute in Shoosmiths.

Sub issue – when should the rent be toned back from?

114. When looking at the actual rent, the first sub issue in dispute was the date when the transaction fell to be assessed for the purposes of toning back to the antecedent valuation date. The Appellant argued that the relevant date for the Shoosmiths property should be 17 August 2015, which was the date when the level of rent was formally agreed in the Agreement for Lease. In the ratepayer's supporting challenge statement, it stated that this approach was consistent with the guidance in the Valuation Officer's Rating Manual Section 4 – Valuation Methods Part 1, Practice Note 1, 2017 Rental Adjustment Guidance – Relevant Date of rent which was as follows;

The relevant date is usually the start of the period during which the adjusted rent takes effect. This will be the date of commencement or assignment of the lease, or the date of review. It will coincide with the date on which the occupier started paying the rent, except where the rent is paid in arrears or there is a rent-free period. However, it is quite common for some buildings to be pre-let and the date the rent was agreed (see question 3.3 of VO 6003 may well be some time before the commencement of the lease. In such circumstances the relevant date should be taken as the date that the rent was agreed, unless it is believed that rental movements in the period to the commencement of the lease have been anticipated.

115. Mr Brown, the expert witness for the Valuation Officer, had toned back from when the heads of terms were agreed which was 14 May 2015. Mr Brown was of the opinion that his was the right approach, as if the level of rent was agreed in the heads of terms and not varied in the agreement for lease, then the rent should be toned back from the date of the heads of terms.
116. On behalf of the respondent, it was put to me that I should not be focussing on when contracts were signed and when the level of rent became contractually enforceable, the only real issue was whether or not the level of rent agreed in the heads of terms was representative of the open market rent. As the level of rent remained constant between heads of terms being agreed and the date when the lease was agreed, it must follow that the rent must be toned back from when the heads of terms were agreed.
117. On behalf of the Appellant, Mr Wilcox argued that it was only at the date of the contract, when the landlord and tenant crystallise their respective rights and obligations, including the rent.
118. Whilst I understood the Valuation Officer's argument on this point, this transaction related to a disposition of property. The heads of terms document was not a formal agreement and did not set the level of rent, instead it was a mere starting point for detailed negotiations. The tenant could have walked away at any time, before closing the deal. I therefore agreed with Mr Wilcox that it was not until those negotiations resulted in a legally binding contractual agreement that the level of rent could be said to be agreed.
119. I therefore upheld the Appellant's argument that the rent should be toned back from when the Agreement for the Lease was made. Mr Cownie's toning back allowance of 4% was therefore adopted in my analysis of the actual rent.

Sub issue – should car parking incentives be reflected in the analysis?

120. The Shoosmiths property was let under two separate leases. In the lease for the Part 5th Floor, in addition to the rent for the offices, there was an additional principal rent of £14,000

per annum for the right to use 4 car spaces. In the lease for the 6th Floor, in addition to the rent for the offices, there was an additional principal rent of £10,500 per annum for the right to use 3 car spaces. As an inducement to take the lease, the four months' rent-free period, followed by 3 years at half rent attributable to the offices was also extended to the car parking. As the leases for the offices and the car spaces formed a single transaction, the appellant argued that the landlord's incentive in relation to the car parking element needed to be factored into the analysis of the rent. I understood that this was because the landlord's rental concession could not be factored into the assessments for the car spaces, as the tone of the list for car spaces in the building was well established at £3,500 RV given the rental evidence. As the Appellant could not reflect the landlord's incentive for the car spaces in the car space assessments, it sought to reflect them in the office hereditament, save losing out.

121. The Valuation Officer's argument on this point was simple and straightforward. As the offices were valued independently from the car spaces, they had to be valued independently. In my judgment, the Valuation Officer was clearly right on this point. It was the value of the offices that I was being asked to determine and therefore any valuation matters attributable to the car parking element had to be removed from the analysis.

Sub issue – the length of the fit-out period to be deducted

122. The Shoosmiths property was acquired by the appellant in a shell state. In his analysis, Mr Cownie had deducted three months for the Category A works but no further deduction for the Category B works. Mr Brown had deducted 6 months, 3 to get from a shell to Category A and a further 3 to get to Category B. Given the fact that it was accepted that offices in a Category A state were incapable of beneficial use as offices and until the Category B fit out was undertaken, it was agreed that the property was not a hereditament, I determined that Mr Brown's approach was correct. When a property was not fitted out, it was custom and practice for landlords to concede a rent-free period to allow the tenant to fit a property out to its bespoke requirements. The concession of a rent-free period for fit out was to reflect the fact that the tenant could not beneficially occupy the property until it had been fitted out. It was not in dispute that the normal fit out period for fitting out from Category A to B was three months. Where the rent-free period was greater than the "norm" for fit out, this was treated as an incentive and the actual rent adjusted accordingly.

Sub issue – Quantity allowance

123. Both parties accepted that quantum was a factor in the net rents passing within the XYZ building, where the Shoosmiths property sat. However, the appeal property was let on the basis of 2 separate leases. The 2nd to 4th Floor hereditament in the same building was also let on a floor-by-floor basis to allow the tenant greater flexibility. Mr Brown therefore felt it appropriate to make an adjustment to reflect this greater degree of flexibility offered by separate leases and had adopted an allowance of 2½%. This did not appear to me to be the correct approach. Under the rating hypothesis, the hypothetical tenant had to be assumed to have taken the appeal property on a single lease, a point Mr Brown conceded in cross examination.
124. Mr Cownie's approach had regard to the quantum scale for the 2017 Rating List and the table from page 38 of the Ratepayer's supporting statement was as shown below.

XYZ Building M3 3AQ	Size/m²	2017 List (Price/m²)	Quantum discount
Pt 7th East & Pt 7th Mezz East	1,507.70	250	0%
2nd Flr	1,867.80	245	2%
Pt 5th (East) & 6th Flrs	2,839.80	225	10%
3rd & 4th Flrs	3,735.60	215	14%
2nd 3rd & 4th Flrs	5,609.60	215	14%
3 Hardman Street M3 3HF			
Suite B Pt 6th Flr	909.90	265	0%
Baker Tilly Pt 9th Flr	1,326.90	250	6%
10th Flr	1,603.16	250	6%
Suite A Pt 6th	2,347.66	245	8%
Beachcroft Pt 7th Flr	2,369.00	245	8%
11th - 12th Flrs	3,236.72	225	15%
Gnd & 1st Flrs	3,356.47	217.86	18%
Pt 4th & 5th Flrs	4,793.00	215	19%
Pt 2nd & 3rd Flr	5,791.00	215	19%
No 1 Spinningfields M3 3EB			
17th Flr	1,040.40	300	0%
8th Flr & Pt 9th Flr East	1,555.58	275	8%
Pt 3rd Flr West	1,693.60	275	8%
15th & 16th Flr	2,058.28	275	8%
10 11 & Pt 12th Floors 2	2,632.80	270	10%
Gnd Flr Mezz 1st & 2nd Flr	5,358.95	248	17%
5th 6th & 7th Flr	7,002.90	236.5	21%
4th 5th 6th 7th Flrs	8,651.60	236.5	21%
3 Hardman Square M3 3EB			
Michael Page Holdings Pt 1 st Floor	953.35	265	0%
Pt 5 th Floor South	1,189.00	250	6%
7 th Floor	2,053.44	245	8%
6 th Floor	2,078.70	245	8%

125. The narrative to the above report explained that it could be seen that at the XYZ Building, the Valuation Officer had adopted a 10% quantum allowance for the appeal property compared with the Part 7th Floor East and Mezzanine (£225 versus £250). It could also be seen that a 14% quantum allowance had been applied to the 2nd to 4th floors given its size (£215 v £250). Similar patterns of quantum could be seen in the other buildings.

126. Collating the above information together, the following additional table was produced on page 39 of the Appellant's supporting statement which was based on the Valuation Officer's own

pattern of quantum scale in the list to support the appellant's case for a 7½% quantum discount.

Assessment	Area/m ²	Quantum allowance	Price per m ²
Part 7 th & Mezz East	1,508	0%	£206
Part 5 th & 6 th Floors	2,852	7½%	£190
2 nd to 4 th Floors	5,610	14%	£177

127. The Valuation Officer argued that Mr Cownie's approach was flawed, because it did not take into account the fact that a number of the buildings and assessments shown in the above table were the subject of outstanding appeals. I was not impressed by this argument because the existing list entries would have been determined, following analysis of the rental evidence derived from forms of return when the rating list was compiled. Whilst I accepted that the entries may alter, depending on the outcome of the appeals, I could only make a decision on the basis of the evidence that was before me, as opposed to hypothesising about what may or may not happen in the future. The Valuation Officer had not challenged the accuracy of Mr Cownie's tables or his analysis, they had merely alerted me to the fact there were a number of assessments under appeal. Mr Wilcox responded to this argument by saying it was not open to the Valuation Officer to impugn their own list and to my mind he had a valid point. The Valuation Officer's quantum scale did not appear out of a thin air, it would have been evidence based. It was therefore not open to them to muddy the waters by suggesting it the quantum scale was still open to review depending on the outcome of undecided appeals, I therefore found for the appellant on this sub issue and upheld the appellant's argument for a 7½% allowance for quantum, based on Mr Cownie's detailed analysis.

Sub issue – Should there be an addition to the shell rent to arrive at a turn key Category A level of rent?

128. When the offices in the XYZ building were marketed, tenants were given a choice to take the premises either in a Category A state or in a shell condition, with the landlord contributing to cover the cost of the Category A works. The appellant opted for the latter and so too did the other tenants in the building. In his rebuttal report, Mr Cownie said that the reason why the tenants opted to take the space in a shell condition and receive the Category A capital contribution was because it was attractive to them to undertake the Category A fitting out works so they could tailor them to their own individual requirements. This provided flexibility over lighting, exposed ceilings/suspended ceilings and combining the Category A and B works.
129. Mr Cownie was of the opinion that no deduction was required to reflect the fact that the lettings were in a shell condition, other than a deduction from the rent-free period to reflect that the tenant undertook the Category A works. Mr Brown stated in his expert witness report that the landlord's capital contribution had to be added to the rental analysis, in order to arrive at an approximation of the Category A rent. In his rebuttal, Mr Cownie stated that as the landlord had covered the cost of the Category A works, it seemed clear that the rents were effectively Category A rents.
130. Having given this matter considerable thought, I decided that Mr Cownie was right not to make an addition for the capital contribution. Whilst I appreciated that a property in a category A state would be more valuable than a property in a shell state, in this case as the

landlord was covering the cost of the Category A works, there was no difference in the rent. As a corollary, the rents passing in the XYZ building were effectively Category A rents. Had the tenant been spending its own money on the Category A fit out, an addition to the analysis would have been required, but that was not in the case here as the landlord's money was paying for the fit out.

131. In view of the foregoing, my analysis of the actual rent was as follows:

TOTAL RENT	£7,464,789
LESS CAPITAL CONTRIBUTION	£1,673,172
RENT LESS CAP CON	£5,791,617
DIVIDED YP 14½ YEARS @ 7% 9.3171 = EQUIVALENT CONSTANT RENT	£621,612
DIVIDED BY 2,852.4 DEMISED AREA	£217.93 per m ²
ADJUSTED FOR 4% TONING ALLOWANCE	£209.21 per m ²
ADJUSTED FOR 7½% QUANTUM	£193.52 per m ²

132. As previously stated, this was a new letting and the level of rent was agreed close to the antecedent valuation date, so it was accepted that it was good evidence that attracted weight.
133. In order to test the reliability of the actual rent, I have had regard to the indirect rental evidence, derived from the rents passing on other Grade A office buildings in Manchester City Centre, which were itemised earlier and the analysed rent did not appear to be out of line with the competing rental evidence.
134. Even though more than 7 years had elapsed since the 2017 Rating List came into force, no established tone of value had emerged and a number of appeals remained outstanding. In the Appellant's challenge supporting statement, the settlement by agreement of the rateable value for 1 Hardman Street was referred to. This was an office property in Spinningfields and the assessment was agreed between the Valuation Officer and Evans & Payne for the ratepayer at a basis of £207 per m². According to the Appellant, the agreement on 1 Hardman Street reflected Category B fit out. The survey area of 1 Hardman Street was 1,531m².
135. Having regard to the basket of evidence, I was satisfied that the actual rent passing on the Shoosmiths property formed the best evidence. For the purposes of the valuation exercise, I have adopted a basis of £195 per m² as it appeared to be reasonable to round my analysis to the nearest £5. Consequently, that would form the basis of my valuation of the appeal property subject to any additional value to be applied to reflect that it was in a Category B state on the material day.

The uplift for Category B fit out

136. Having navigated through the mine field populated by sub-issues, before I arrived at the respective Category A values, I then turned my attention to the main issue that the parties had asked me to decide which was what uplift, if any, should be made to reflect the Category B fit out. Ultimately, this was the reason why these cases were brought before me to determine, because of the complexity of the legal issue involved.
137. As explained earlier, my task was not helped by the fact that Grade A offices were usually marketed in Category A condition. I was informed that this was because the vast majority of tenants want to take a property in Category A, so that they can undertake the Category B fit out works to suit their own bespoke requirements. It was therefore custom and practice for office leases to include terms which obligated tenants, upon the expiry of their lease either to return the property to the landlord in a Category A state or for the tenant to pay the landlord a surrender or dilapidations payment, if the landlord had to do the reinstatement works. I was informed that landlords prefer to market their office properties in a Category A condition as opposed to Category B state, as this widens the pool of potential tenants and makes vacant premises easier to let. It was also put to me that it was not in the landlord's interests to market vacant premises already fitted out to Category B state, as that would expose the landlord to unoccupied property rates, if they could not find a new tenant quickly. Therefore, the way the office marked worked, there was no value differential between offices in Category A and B states.
138. In support of the Appellants' case, Mr Cownie had referred to a number of comparable properties, which I have referred to previously, which were let out in a Category B state. In paragraphs 3.3 and 3.4 of his supplementary report, Mr Cownie stated;

The Category B rents are derived from pre-existing fit outs all of which are in a very good condition. This is in line with the rating hypothesis where the hypothetical landlord is marketing a pre-existing fully fitted hereditament with the burden of being liable for the void holding costs of rates, service charge and insurance, while the office space is being marketed.

I have not referred to any evidence where a landlord has only fitted out the premises to Category B condition after contracting with the incoming tenant. Such circumstances are not consistent with the rating hypothesis, as the landlord in those circumstances would clearly not agree to fit the premises out unless paid to do so. To include such evidence would be to alter the relative bargaining position of the hypothetical landlord and tenant and bypass the reality principle.

139. Therein lies the rub. Mr Cownie's expert evidence acknowledged that under the rating hypothesis, a landlord would expect a greater return on their investment, in other words a higher rent, if they carried out the Category B fit out for an incoming tenant. However, in the real world, such evidence was scarce, as offices were normally brought to the market in Category A condition.
140. The other point which kept coming constantly to mind was that it was accepted that offices which were in a Category A state were not rateable hereditaments. So, whilst they may attract a rent that an incoming tenant was prepared to pay, for rating purposes such offices would be of no value because they could not be rated, save for those instances when a completion notice has been served by the billing authority. This point was established by the

Upper Tribunal in *Porter (VO) v Trustees of Gladman SIPPS* [2011] RA 33. In paragraph 66 of its judgment, the Upper Tribunal stated;

The authorities, in our judgment, establish the following. A building is only a hereditament if it is ready for occupation, and whether it is ready for occupation is to be assessed in the light of the purpose for which it is designed to be occupied. If the building lacks features which will have to be provided before it can be occupied for that purpose and when provided will form part of the occupied hereditament and form the basis of its valuation it does not constitute a hereditament and so does not fall to be shown in the rating list. There is in consequence no scope for including in the list a building which is nearly, even very nearly, ready for occupation unless the completion notice procedure has been followed.

141. Offices brought to the market in Category A condition were, in effect, speculative developments. Until they were fitted out to a Category B state, whilst they may look like offices, they had no value because they were incapable of beneficial occupation. With this in mind, the essential fitting out to enable the offices to be capable of use had to be of some value and this value had to be reflected in the rating assessment. This was because without such fit out, there was no hereditament to value.
142. It was on this point that I found Mr Brankin's evidence particularly helpful. His report was concise and straight to the point. Although his working experience was confined to the public sector, he had had market experience, both from a tenant's and landlord's perspective, when he was the head of the Valuation Office Agency's Corporate Estate.
143. In Section 3 of his report, Mr Brankin had regard to the tenant's approach. If the property was let either on a shell or Category A basis, the tenant would need to invest more of their money into it, to put it in a useable state for occupation. The further from a state of readiness it was, the more time and money would need to be budgeted for.
144. In the event that a property was in a Category B condition, the incoming tenant would need to assess whether the layout fully met their requirements. If it was sub-optimal, investment to alter or improve it would be required. In addition, if the Category B fit out was not recently done, additional investment may be required in terms of decorative or more substantial work. It therefore stood to reason that any divergence from a tenant's ideal requirements would result in a lower rental bid.
145. As Mr Brankin's report had highlighted, there were probably numerous reasons why the incoming tenant did not pay a premium to occupy Category B space. Whilst it may have suited the tenant to acquire an office already fitted out, the likelihood was that it was not fully fitted out to its bespoke requirements, so there was probably an element of making do with what was in situ, in the tenant's mind, and what was there would do for now. As far as the landlord or the head lessee was concerned, if they were in a position to let a vacant office suite, it would mean that it avoided any exposure to non-domestic rate liability for surplus office space. So, it was a win-win situation for both parties to the transaction.
146. By comparing the limited Category B lettings with the Category A lettings, Mr Cownie's evidence sought to substantiate the Appellants' case that there was little or no differential between the two. Even though taken at face value, there was no discernible difference in the rental evidence between the Category A rents being achieved in the market and the Category B rents, I was not convinced that the comparable properties which were let out in Category B

condition were reliable. I would have thought differently had they been let at the outset in Category B condition with the incoming tenant commissioning the fit out but they were not. The Category B lets were, for want of a better expression, second hand deals.

147. On behalf of the Valuation Officer, it was argued that the Appellants' Category B evidence was predominantly comprised of business failure transactions and it was an argument well made and difficult to ignore. Miss Wigley's analogy of someone looking to buy a made to measure suit hit the nail on the head for me. Made to measure suits were significantly more expensive to buy, in comparison to those chosen off the peg. In her analogy, she painted the picture of the tailor being left with a made to measure suit, which they could no longer sell to the client because the latter could no longer afford it. Rather than dispose of the suit, the tailor would look to sell it but it was unlikely that a potential buyer would pay the same price as the original client, who the suit would have fitted perfectly. Instead, the new client would probably be only prepared to pay what they would have done for a similar suit chosen off the peg. This was because although the suit fitted and would serve a purpose, it was not a bespoke perfectly tailored measured suit.
148. Having rejected the Appellants' Category B evidence as being unreliable, I was not persuaded that the Valuation Officer's approach to the valuation of the Category B fit out was correct. The Valuation Officer's approach was to amortize the relevant expenditure expended on rateable Category B fit out and adjust the Category A value upwards to reflect the value to the tenant when fitted out to its requirements. I had a number of misgivings about the correctness of this approach. Firstly, cost did not necessarily equate to value. Secondly, two identical offices fitted out to suit the bespoke requirements of the respective tenants may have been fitted out completely differently, because say one tenant sought a more open plan environment, whilst the other suite was partitioned throughout. If the respondent's virtual rent uplift approach was correct, it would mean that identical office suites were valued at different rates depending upon how much the respective tenants spent on their fit out. This, in my opinion, did not seem right. Mr Wilcox's argument that the Valuation Officer was wrong to use the landlord's capital contributions as a proxy to establishing the value for the Category B fit out also struck a chord with me. After the hearing, when I had time for reflection, it occurred to me that in the Shoosmiths appeal, it was the landlord who was meeting the whole or a large proportion of the costs for the Category B fit out works, not the tenant. These capital contributions did not affect the level of rent that Shoosmiths LLP was paying. In his report, Mr Bailey acknowledged that the deal for the Shoosmiths property that had been agreed between the parties covered the demised shell premises and financial inducements sufficient enough for the tenant to pay for all necessary works to complete the hereditament. Therefore it appeared to me that apart from the rent, Shoosmiths LLP was not paying anything additional to reflect that the property was fully fitted out, as the landlord had met the cost. In contrast, Mando Group Limited met the cost of its fitting out.
149. Regardless of whether or not the landlord or the tenant met the cost of the Category B fit out, amortizing the capital outlay spent on rateable fit did not appear to be the right valuation approach. In paragraph 85 of *Acenden* the Upper Tribunal stated;

Both experts approached the valuation of Ascot House in its Category B condition by adding an amount to reflect the value of the tenant's fitting-out works to the rental value derived from the letting of the building in its original Category A condition. In principle there is nothing wrong with that approach. Faced with limited direct evidence of new comparable lettings in Category B condition it might be the only possible approach, although that is not the case here. But it gives rise to a number of issues and uncertainties. It assumes that there is a consistent relationship between

the cost of fitting-out works and the enhancement of rental value over and above a Category A figure established by market evidence. But that is simply an assumption, and it is not itself confirmed or supported by market evidence. Nor, in the absence of evidence, is there agreement in principle (at least in this case) about how the capital cost of works is to be translated into an annual rental value.

150. The key takeaway from the above citation was that in principle an amortisation-based approach could be employed but it assumed a consistent relationship of costs to value and this was where it fell down and it was not supported by market evidence. In reality, most tenants would take a property in a Category A state paying a rent to reflect that, then spend a considerable amount of capital on its bespoke fit out to Category B, or in some cases Category C. Throughout its occupation of the offices the tenant would then enjoy the benefit of its bespoke fitting out, until such time as the tenancy was ended. Then at the cessation of the tenancy, normally the tenant would remove its fit out or make a surrender or dilapidations payment to the landlord, for the latter to reinstate the property back into Category A state. Whilst it was argued that the Category B fit out did not have any positive effect (uplift) on the level of rent, this argument completely ignored the benefits the tenant would have derived from this fit out over the duration of its occupation.
151. I therefore accepted the Valuation Officer's argument that the value to a tenant of an office fitted out to its bespoke requirements, in a Category B state, was higher than if it was in Category A. This would be normally evidenced in the level of rent that the tenant was prepared to pay. However, in the real world, because of the way the office market operated, reliable evidence to establish what additional rent that a tenant would be prepared to pay for a Category B fit out to its bespoke requirements, was nigh on impossible to find.
152. The Category B fit out, even if paid for by the landlord, would normally be commissioned and managed by the tenant, in order to ensure the fit out in readiness for occupation was bespoke to its needs. The cost of a Category B fit out was normally higher than the cost of Category A works and often well in excess of the headline rent. Category B fit out was a tenant's improvement, there could not be a valid argument to suggest otherwise, because without same the premises were useless. Therefore, I could not accept the Appellants' argument that a tenant's fit out had no value. Of course it did, the difficulty was where to pitch the level of value.
153. I was aware that, following the Upper Tribunal's judgment in *Acenden* a large number of office assessments, which had been under appeal, had been agreed on the basis that a flat rate figure of £25 per m² was an appropriate uplift to reflect the value of a Category B fit out. This appeared to me to be a commonsense approach, which had regard to the rating hypothesis. Given that £25 per m² was universally accepted in and around London to reflect the increased value from Category A to B, this to my mind represented the ceiling value that I could apply in these cases.
154. Although I could have adopted an uplift of £25 per m² to reflect the uplift to reflect Category B, in my valuation of the two appeal properties before me, I was conscious that the cost of fitting out in London would have been greater, in comparison to Manchester and Liverpool. Both manpower and material costs would be greater in London. Similarly, in my judgment, the costs of fitting out would be greater in Manchester, in comparison to Liverpool. I therefore determined that the Category A basis in Manchester should be increased by £15 per m², to reflect the property in a Category B state and in the Liverpool, I determined that the uplift was £10 per m².

155. In view of the foregoing, my respective valuations were as follows:

Valuation of Part 4th Floor, 5 St Pauls Square, Liverpool

Area 493.5m² x £90 = £44,415 say £44,000

Valuation of Part 5th (East) & 6th Floors, XYZ Building, 2 Hardman Boulevard, Manchester

Floor	Description	Area/m ²	Rate/m ²	Value
Fifth	Office	1,062.4	£210	£223,104
Sixth	Office	1,777.4	£210	£373,254
Total		2,839.8		£596,358
				RV say £595,000

Disposal

156. In view of the above findings and conclusions, both appeals were allowed as the appellants grounds of appeal were successfully made out. As I found that both existing valuations for the appeal hereditaments were not reasonable.

Order

157. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to give effect to the following reduced entries;

- (1) Part 5th (East) & 6th Floors, XYZ Building, 2 Hardman Boulevard, Manchester £595,000 RV with effect from 6 June 2017;
- (2) Part 4th Floor, 5 St Pauls Square, Liverpool - £44,000 RV with effect from 1 April 2017

158. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

159. As the grounds of the appeal have been made out, a refund of the fees paid will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.



PRESIDENT

Date issued to parties: 6 September 2024

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.
