IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG100782292

Sitting remotely using Microsoft Teams

Date: 16 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — ; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556]; the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]); *Gardiner & Theobald LLP v Jackson (VO) [2018] UKUT 0253 (LC)*; *The valuation for the hereditament is not reasonable; disturbance allowance; material day; appeal allowed in part.*

Before:
MS R SHARMA
MISS N CLARKE

Between:

ELLIOT WOOD PARTNERSHIP LIMITED **Appellant**

- and –

ANDREW RICKETTS
(VALUATION OFFICER) **Respondent**

Regarding:
BASEMENT AND GROUND FLOOR,55 WHITFIELD STREET, LONDON, W1T 4AH
(the "subject property")

Mr R Bourchier of Allsops LLP (instructed by the appellant)
Ms R Begum for the **Respondent**

Hearing date: 25/04/2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. We find that the Rateable Value for the hereditament of £530,000 from 19 September 2019 was not reasonable and should be reduced to £375,000 including a temporary allowance of 20% to reflect the disturbance suffered from 9 September 2019 to 24 June 2020.

Introduction

3. A check was submitted on 10 February 2022 in respect of an effective date of 9 September 2019 which was the date on which the hereditament was occupied by the appellant. The check decision notice was issued on 15 February 2022.

4. On 7 March 2023 a Challenge was lodged on the grounds that the Rateable Value (RV) for the basement and ground floors, Asta House, 55 Whitfield Street was incorrect by reason of a Valuation Office Notice (VON), dated 12th July 2021, which altered the subject RV from £570,000 to £530,000 with effect from 9 September 2019. The appellant was seeking an RV of £432,500 based on £400 per m^2.

5. The appellant was also seeking an allowance of 37% for the duration of the disturbance caused by the building work as this was the rent reduction received from the landlord. The VO had granted an allowance of 15% in recognition of the disturbance suffered.

6. Mr Bourchier appeared on behalf of the appellant as advocate and expert witness. He declared that he was instructed under a contingency based fee, a type of success-related fee arrangement. In his declaration, he stated that he understood and accepted that his duty was to the Tribunal in giving his evidence, that he would comply with this duty, and the requirements of his professional body, regardless of whether or not the evidence supported the Appellant's case.

7. Noting the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), the Tribunal Panel nevertheless accepted this expert witness evidence on the above basis because –

   (1) the appeal was not complex;

(2) to do otherwise would be contrary to the requirements to deal with cases proportionately, avoiding unnecessary formality and ensuring parties are able to participate in proceedings (provided by Regulation 3 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations")); and

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

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

Background

9. The subject property is located on the corner Whitfield Street and Chitty Street in the London borough of Camden. It was originally constructed in 1951 with concrete frame and brick cladding. The building is arranged over six floors. The subject property occupies the basement and ground floors. The building was removed from the Rating List in 2016 whilst it was being redeveloped as offices with residential accommodation being created on the upper floors. The refurbishment to the offices was completed in 2019 and the residential accommodation was completed in June 2020.

10. The appellant signed a lease in June 2019 and occupied the subject property from 9 September 2019. The lease was for a ten-year term at a stepped rent of £310,118 per annum from 19 September 2019 to 19 March 2021 (half rent for 21 months). Rent of £620,236 per annum from 19th March 2021 with a rent review date and tenant break option on 19 June 2024 (5th year of term) Effective full repairing and insuring lease.

11. It was the appellant’s case that the net effective rent on 19 June 2019 adjusting for the three months’ rent-free period for fit out equated to £527,200 per annum. Therefore, the RV of £530,000 based on an unadjusted rate (UAR) of £650 per m^2, represented the annual net effective rent at AVD at a very similar level to the June 2019 net effective rent of £527,000 per annum. This was considered to be excessive as there had been significant market rental growth between the AVD of 1 April 2015 and June 2019.

12. The appellant’s representative also argued that the tone was excessive compared to other basement and ground floor offices in the locality. He stated that the subject property had not been refurbished to the highest standard, nor was it located in the best locality. The unadjusted rate was excessive given the “goldfish bowl” effect of having offices on the ground floor with full height glazing. There was no dedicated reception area, ground floor offices command lower rents and offices in residential blocks also command lower rents.

13. The challenge disputed a VON dated 12 July 2021 where the RV of the subject property was reduced from £570,000 to £530,000, effective from 9 September 2019. This reduction in RV solely reflected that the VOA accepted the correct floor areas and did not reduce the UAR.

14. The appellant considered the subject property's RV should be much lower, for two main reasons:

15. Excessive Tone the unadjusted rate per m^2 applied to the office was excessive and does not reflect that the premises are primarily ground floor offices, which do not attract such high rents as office premises on upper floors in traditional office buildings.

    i) The VON does not reflect the extensive disturbance suffered at the Material Date of 9 September 2019 as the hereditament was severely affected by building works to the upper parts of the subject building and neighbouring / nearby construction sites.

16. The VO and appellant agreed the rent analysed to £612 per sm^2. It was not agreed that £554 per m^2 after toning back to AVD and £579 per m^2 after fitting out uplift was correct.

17. The VO considered the tone was correct having had regard to the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council, [1976] RA 141* and the comparable properties that were identified as the subject rent was agreed four years post AVD and therefore could not be given weight.

Relevant Law

The non-domestic rate

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

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

The material day

3. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the "material day". The Non-Domestic Rating (Material Day for

List Alterations) Regulations 1992 [SI 1992 No 556] (the "MD Regulations") provides for determining the material day. So far as is relevant for these proceedings, Regulation 3 of the MD Regulations provides –

> ***"3 Material day for list alterations***
>
> *(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.*
>
> *…*
>
> *(7) In any other case—*
>
> *…*
>
> *(b) where the determination is with a view to making an alteration to a list compiled on or after 1st April 2005, the material day is—*
>
> *(i) where the alteration is made in pursuance of a proposal, the date on which the VO received a confirmation under regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as stated in an acknowledgement served by the VO under regulation 4D(1) of those Regulations);"*

Discussion

18. The panel had regard to the original challenge decision notice, rebuttals and various appendices submitted by the appellant's representative.

19. The appellant provided a number of comparable offices to illustrate that the tone was excessive including:

    - 85-86, NEWMAN STREET, LONDON, W1T 3EX in the Rating list at £450 per m^2
    - 19-20, BERNERS STREET, LONDON, W1T 3NW in the Rating list at £475 per m^2
    - 87-91, NEWMAN STREET, LONDON, W1T 3EY in the Rating list at £425 per m^2

20. The panel noted that these were built in the 1950's and 1960's and had been refurbished between 16 and 23 years ago. The panel placed less weight on these properties as they had not been recently refurbished which would reduce the value to the hypothetical tenant.

21. The appellant also provided details of other comparable properties he considered were superior to the subject property that were in the Rating list at £650 unadjusted rate. 55 Wells Street was built in 2017, and The Met Building was recently refurbished. The panel noted that there had been an inspection of the subject property, and the VO accepted that the subject property was of a lesser standard than other refurbishments locally.

22. The ground floor of 1 Stephen Street appeared to have some similar features to the subject property, however, it was refurbished in 2013 and was a converted recording studio. The lower UAR of £525 the panel considered reflected the fact that the refurbishment was 12 years earlier and that as a conversion it may not have layout disadvantages compared to a bespoke office.

23. The VO provided the following comparable properties:

24. 128-134, CLEVELAND STREET, LONDON, W1T 6PH built circa 1950's and not refurbished. The ground floor is currently in the Rating List at £577.50 per m2 (adopted rate) where there are no raised floors and £606.38m2 (adopted rate) with raised floors.
   - 76-80, WHITFIELD STREET, LONDON, W1T 4EZ It was built in 1964 not refurbished. The ground floor is currently in the Rating List at £577.46 per m^2 (adopted rate).
   - BST MEZZ & PT GND F 7-9, WHITFIELD STREET, LONDON, W1T 2AS This comparable was included as the upper floors are residential with the ground floor, mezzanine and basement occupied as offices. Currently in the Rating List at £650 per m^2 (unadjusted rate).
   - BST PART GRD -3RD FLRS 4-8, MAPLE STREET, LONDON, W1T 5HD This building was refurbished in 2019. The property has air conditioning and raised floors. Currently in the Rating List at £650 per m^2 (unadjusted rate).
   - GND & 1ST FLRS 20, TOTTENHAM STREET, LONDON, W1T 4RF Built circa 1960's. The property has air conditioning and lift, no raised floors. Currently in the Rating List at £577 per m^2 (adopted rate).

25. The panel also noted that the subject hereditament was in the 2010 Rating List at £400 per m^2. The challenge was seeking the same value per m^2 as had been ascribed to the property before any refurbishment. The panel found this would not reflect the refurbishment or the market growth since 1 April 2008, the AVD for the 2010 list.

26. The panel found that the subject property was over assessed at £625 per $m^{2.}$ Having had regard to the principles in *Lotus and Delta* taking the rent on the subject property as the starting point this analysed to £614 per m^2. Adjusting for market growth of approximately 10% as per the costar information in the evidence this gave a rental figure of £550.00. The panel then considered the basket of evidence supplied by the parties, all of which was tonal evidence. The panel found that given the inferior fit out that was confirmed following the joint inspection, the subject property was likely to fall below the level of the fully refurbished higher quality properties identified by the appellant that were in the list at £650 per m^2 but above those that were older and where refurbishment

had been undertaken many years ago. Therefore, the panel concluded that the rate of £550 with an uplift of £25.00 to reflect fitout was reasonable.

4. The appellant's representative contended that there was a significant disruption to the subject hereditament from the noise, dust and interruptions caused by the development works. This included the completion of the domestic accommodation on the upper floors and the erection of scaffolding and hoarding which surrounded the subject hereditament.

5. The appellant's representative advised that the starting point must be to consider the passing rent on the subject hereditament. He referred the panel to an agreement between the appellant and the landlord in which a rent-free period of 3.5 months was agreed to reflect the loss of quiet enjoyment and the reduced rental value of the subject hereditament. This represented a 37% reduction in the rent for the period of the works.

6. The respondent's representative considered that, by the material day, the works had been ongoing for many months and that the majority of the work of the conversion had already been undertaken, the work completed only a few months after the appellant occupied the subject property. Some of the allowance that had been given by the landlord reflected snagging issues. As per the *Stoppenbach & DeLestine Ltd v Probert (VO) 1991 LT 31 RVR* case, it is reasonable to assume that the rent cessation reflected both the property's snagging issues and disturbance from the works. If this were not the case, then there would be evidence of separate negotiations (rent reduction/rent cessation) for the snagging issues and for the disturbance. He considered that in view of the reduced nature of the works the 15% allowance already granted was sufficient to reflect the reduced rental bid which would be brought by the hypothetical tenant.

7. The VO provided the panel with examples of other instances where end allowances for similar disturbances had been granted. In particular, the allowances granted at –

- 249-259 Regent Street where a 15% allowance had been given for internal refurbishment.

- Ground Floor 89 Bolanchi Buildings where a 7.5% allowance had been given for scaffolding and hoarding masking the entrance whilst cladding work was completed.

- 4 Chitty Street which were retails premises where a 20% allowance was given for works to the party wall and demolition of a property directly opposite and road closures around the building.

27. The panel had regard to the correspondence submitted between the appellant and landlord and the difficulties experienced during the period. In particular the hoarding that affected the tenant's ability to occupy and advertise the space effectively, lifted paving slabs and poor access to the entrance and excessive noise, other items complained of appeared to be landlord tenant issues with the

equipment and finishes of the building. Given the proximity to Chitty Street the subject property would have been affected in a similar way by the disturbances and therefore the panel considered that a 20% allowance for disturbance should be awarded.

Determination

28. In view of the above findings and conclusions, we are satisfied that the UAR of £625 per m^2 was excessive and considered that a reasonable figure was £575 per m^2. This being based on the rental analysis of the subject property toned back to the AVD plus £25.00 uplift for fit out. The reduced base rate reflects the fact that the subject property was newly refurbished but not to the highest standard as conceded by the VO. An allowance for disturbance should also be granted from 9 September 2019 as the panel had regard to the physical factors on that material date.

line	floor	description	Area m^2	£ per m^2	Value £
1	basement	office	394.30	287.5	113,361.25
2	ground	office	618.95	575	355,896.25
		Total area	1094.99		
		Subtotal			£469,257.5

29. Accordingly, we order that the RV for the subject property is reduced to £469,000 from 9 September 2019 and a temporary allowance of 20% is allowed to reflect the disturbance due to building work from 9 September 2019 to 24 June 2020.

Right of further appeal

30. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

31. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Ms R Sharma, Senior Member (Presiding)

Miss N Clarke, Senior Member

16 May 2025

Clerk to the Tribunal
Date issued to the parties: 16 May 2025