VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Local Government Finance Act 1988; restaurant and premises; pioneering allowance: appeal dismissed.

CHG100827558

RE: UNIT 1 AT 6, TIME SQUARE, WARRINGTON,WA1 2NT (the "subject property")

BETWEEN: New World Trading Company (UK) Limited — Appellant

and

Amanda Hitchings (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 30 January 2025

BEFORE: Mrs N Carman, Presiding Senior Member
Mr A Sheth, Senior Member

CLERK: Miss N Shepherd IRRV (Hons)

APPEARANCES: Ms E Draycott of Altus Group on behalf of the appellant
Ms E Lowe, on behalf of the Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that the entry in the 2017 rating list was not unreasonable and confirmed the Rateable Value (RV) at £96,000 with effect from 2 December 2019.

Introduction

3. The appeal process began with a challenge made by the appellant's representative on 12 July 2022 in respect of the Valuation Officer's rating list entry of the subject property at £96,000 RV

with effect from 2 December 2019. The appellant's representative proposed a revised assessment of £73,500 RV from that date based on a 20% allowance being awarded due to the subject property being a pioneering unit.

4. The respondent issued a challenge case decision notice on 11 April 2023, which found that the proposal was not well founded, and the current rating list entry was reasonable based on the information and evidence available. The appellant's representative appealed that decision to this Tribunal on 4 August 2023 on the grounds that the valuation for the subject hereditament remained unreasonable.

5. The subject property is a restaurant and premises constructed in 2019. It is located in Times Square in Warrington City Centre and has a Gross Internal Area (GIA) of 1,652m^2.

6. Ms Draycott appeared on behalf of the appellant as advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) her statement of truth included a statement that she was instructed under a conditional fee arrangement. She declared that she understood and accepted that her duty was to the Tribunal in giving his evidence and that she would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

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

Discussion

8. In accordance with paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, the appeal property must be viewed vacant and to let and valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions. The date of the hypothetical rent is 1 April 2015, the AVD for the 2017 rating list.

9. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 2 December 2019.

10. Ms Draycott submitted that Times Square, where the subject property was located was a speculative development comprising of a new market hall, a Grade A office building, a cinema, a multi storey car park and units for seven leisure or restaurant occupiers. The subject property was the largest of these units and the first to be occupied. It was run as "The Botanist" which was described on it's website as a "Gastropub style dining, kebabs, brunch & botanical cocktail bar and restaurant".

11. Ms Draycott contended that as of the last inspection on 6 January 2022, the six other retail and leisure units remained vacant and that currently Units 4,5,6 and 7 still remined unoccupied. She submitted that it was likely that these units would remain empty, with further stores across Warrington Town Centre also becoming vacant, including the ex-Debenhams store, which had vacated on 12 May 2021, and which had been an anchor tenant. As such there was an oversupply of vacant units within the area and a lack of demand for these, which had an impact on the Times Square development and the subject property.

12. She therefore considered a 20% pioneering allowance to be appropriate to reflect the disadvantages suffered by the ratepayer at being the first occupant of Times Square and the effect the surrounding vacant units around it had upon it. She referred to 903 other assessments at which a pioneering allowance of between 5% to 60% had been awarded, with specific reference to Units 1 & 2, the Moorings, Clarence Docks, Leeds. These had a 60% pioneering allowance awarded in the 2005 list, which was then also carried through to the 2010 list. However, she was unable to confirm the reason for the award of pioneering allowance.

13. During questions Ms Lowe submitted that the 903 Assessments referred to by Ms Draycott were not evidence that a pioneering allowance should be applied at the subject property, just that in specific circumstances it could be appropriate. However, she did not consider that it was warranted in this case. With regard to Units 1 & 2, the Moorings Ms Lowe submitted that a pioneering allowance was appropriate in this instance and was as a result of a material change of circumstance due to a high percentage of void units between the lists, with only 24 out of the 39 assessments at Clarence Docks carrying on into the 2010 list. She did not consider this comparable with the subject property as this was a retail failure due to Clarence Dock being situated 1.5 miles from Leeds City Centre and therefore being too remote from the main shopping area. With regards to the subject property this was situated 0.2 miles from the town centre and therefore was not subject to the same disadvantages.

14. Ms Lowe also referred to the fact that when entering into a lease, the ratepayer at the subject property would have been aware that they were the first occupant of the development at Times Square. As such, it would not be unreasonable to expect there to have been some sort of allowance or incentive within the terms of the agreement to reflect this. She submitted that a copy of the lease had been requested, but none had been provided.

15. Whilst the unadjusted rate was not in contention Ms Lowe also referred to several other restaurants and premises located within 0.2 miles of the subject property and which all had unadjusted rates ranging from £170/m2 to £240/m2, significantly more than that of £135/m2 at the subject property, demonstrating this rate to be reasonable. She submitted that the £135/m2 would have been based upon the rent at the subject property and other market evidence at the time, and it would also have considered as to whether any allowance was applicable at that time.

16. Both parties also referred to two properties within the Times Square development. Unit 1 Dolmans Lane, 3-4 Times Square was a café and premises which had an adopted value of £335/m2, and which Ms Lowe submitted supported no allowance being applicable. Unit 3 at 6 Time Square was a public house and premise which had originally entered the list at 25 February 2022 with an RV of £41,500; this had subsequently been reduced to £37,500. Ms Draycott submitted that based upon this assessment it was not reasonable to expect the adjacent subject property to be trading at £96,000.

17. Ms Lowe submitted that the reduction in RV at Unit 3 at 6 Time Square was due to there being no trade figures at the date it first entered the list and therefore the RV would have been an estimate of what it was expected to make. However, the reduction was highly likely as a result of trade figures being supplied and the RV being updated to reflect this. The panel therefore considered that this reduction was not a result of any allowance being applied. The panel also

noted that there would be more than a likely a difference between clientele and trading figures between the subject property and Unit 3 at 6 Time Square due to the subject property being a restaurant and premises.

18. On the issue of whether any pioneering allowance was applicable to reflect disadvantages at the subject property in respect of it being the first unit occupied at Times Square and the effect the surrounding vacant units around it had, the panel ultimately found in favour of the Valuation Officer. The panel was not satisfied that it had been provided with sufficient evidence to demonstrate that there would be any impact upon the hypothetical rental value that could have been achieved at the AVD. It did not consider the circumstances of the subject property to be similar to that of Units 1 & 2, the Moorings, as the subject property was located within immediate proximity of the town centre, and it found the details provided by the Valuation Officer of other assessments of neighbouring restaurants to support that no allowance was warranted.

Disposal

19. In view of the above findings and conclusions, the panel therefore confirmed the RV at the subject property to be £96,000 with effect from 2 December 2019 and dismissed the appeal.

Date issued to parties: 18 March 2025

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error