VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC); Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA141; comparable evidence; *tone within the development; appeal dismissed.*

APPEAL NUMBERS:	CHG100856740 and CHG10083138
RE:	Unit 4 at 16, Porteous Place, London ,SW4 0AP Unit 8-10 at 16, Porteous Place London SW4 0AP (the "subject properties")

BETWEEN:	Burgess Mee LLP	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	20 November 2024
BEFORE:	Ms A G Cole Roberts, Presiding Senior Member Mrs F Cortese, Senior Member
CLERK:	Mrs J Routledge IRRV(Tech)
APPEARANCES:	Mr Matthew Parvin of Altus representing the appellant. Mr Christopher Cates representing the respondent.

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel concluded that the unadjusted rate per m² of £325 was reasonable on both subject properties having taken into account the range of rental values within the immediate locality.

Introduction

3. This was a 2017 Rating List appeal. The subject properties had been entered in the 2017 rating list as offices and premises with an unadjusted rate (UAR) of £325.00 per m^2. Therefore Unit 4 had a rateable value (RV) of £16,000 and Unit 8-10 of £51,000 with effect from 1 April 2017.

4. The challenge proposals were submitted by the appellant's representatives and were received by the Valuation Officer (VO) on 20 September 2022. They had been made on the grounds that the RV shown in the rating list on 1 April 2017 was unreasonable. A revised UAR of £300 per m^2 was proposed with effect from 1 April 2017. The VO issued challenge case decision notices on 12 September 2023, which stated that based upon the evidence and information available, the rating list entries for the two units were reasonable and there would be no amendment.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuation for the hereditaments were not reasonable. The appeals were received by the Tribunal on 14 December 2023.

6. Mr Parvin appeared on behalf of the appellant as both advocate and expert witness and advised he was instructed on a conditional fee basis. This was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC). He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether the evidence supported the client's case.

7. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

8. Mr Cates' declaration of truth included a statement that he was not instructed under any conditional fee arrangement and declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether the evidence supported the client's case.

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

Background

10. The subject properties are within a mixed development that includes commercial and residential premises that enjoyed secure access situated within a Mews located in Clapham and were constructed in 2014. The subject properties are described as "offices and premises" with raised floors and full air conditioning. The subject properties are held on 125 year leases taken out on 25 December 2013. Unit 4 measures 49.35m^2 and Unit 8-10 measures 157.44 m^2.

11. The original challenge relied on Unit 7 at 16 Porteous Place which had a UAR of £300 per m^2 at the time, but which has now been revised to £325 per m^2 as it was considered erroneous by the Valuation Officer. Following the initial check the appellant also provided seven pieces of comparable evidence. These were from various locations and had been selected as it was argued that the rents on the units in Porteous Place were not reliable as they were between connected parties and the leases were for lengthy periods.

12. The Valuation Officer maintained that having identified that the UAR on Unit 7 was erroneous the remaining comparable evidence was not within the same locality, the age of the buildings was different as was the type of building and therefore these did not support a reduction in the UAR. The Valuation Officer relied principally on rental evidence from the units within the building to support the UAR of £325 per $m^{2.}$

Preliminary Matter

13. In advance of the hearing it was raised that the original challenge document had proposed that the UAR should be £300 per m^2. In the supporting submission of the expert witness following the appeal the UAR was calculated to be £225.00 per m^2 and in advance of the hearing Mr Parvin had revised his opinion and was now seeking a UAR of £275.00 per m^2.

14. Mr Cates argued that the basis of the check and challenge procedure was to ensure that there was full disclosure of the evidence and arguments. The original proposal of £300 per m^2 should be the only one considered as this was what the original decision notice was based upon. The Valuation Officer had been put at a disadvantage as the expert report document used a different analysis and referred to a completely different UAR to that originally submitted in the challenge proposal. Mr Parvin had now changed the figure again, although it was closer to the original proposed UAR it was still below it. The Valuation Officer's case was promulgated on the original proposed UAR and it was unfair to the Valuation Officer to have a different UAR considered at the hearing as no preparation had been done to address the altered UAR proposed.

15. Mr Parvin confirmed the original proposal was for a UAR of £300 per m^2. During the evidence exchange the Valuation Officer provided a schedule of rents and Altus then introduced a further rent which had been objected to by the Valuation Officer. He now accepted there had been an error in the supporting evidence document and the £225.00 was based on inadmissible evidence. However, he had calculated the revised tone sought of £275.00 per m^2 on evidence provided by the Valuation Officer.

16. The panel retired to consider whether the scope of the proposal should be limited and determined that it would hear the appeal and reserve its decision regarding the scope of the proposal.

17. The panel found there is one decision notice and that is in response to the initial check and subsequent challenge. Where a decision notice is issued and the proposer makes an appeal on the basis of the evidence and argument exchanged during the challenge process that exchange of evidence and decision notice is the one to be considered by the Tribunal unless new evidence is agreed by the parties or the panel.

Relevant Law

18. The term ‘rateable value’ is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

19. “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 –

    (1) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

    (2) 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;

    (3) 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”.

20. 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).

21. 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 1 April 2017.

Discussion

22. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141 which was referred to by both parties.

23. The rents on the subject properties were not given weight as they were long leases at a peppercorn rent and therefore not reliable to establish the market rent at AVD.

24. One of the main contentions between the parties was the analysis of the rent, the value of the rateable fit out and the amortising of the rent free period on Units 5 & 6 Porteous Place which was a new letting from 1 August 2014 for ten years with a five year break clause.

25. Mr Parvin argued that the rent on Unit 5 & 6 was the only “clean” letting available as the majority of the units were freehold owners or let with connected party leases. This in contrast was a new letting from 1 August 2014 eight months before AVD. A twenty two month rent free period included three months for fit out and nineteen months as an incentive, it had been fully refurbished from shell, at a cost of £88,000. The rent was £55,518 per annum. There was no breakdown of the expenditure provided.

26. Mr Parvin had allowed 2 months’ rent free for the fit out, with an adjustment for toning back to the AVD of 1% per month (8%) as the lease was eight months before the AVD and a nineteen month rent free period amortised to the five year break clause as this was standard practice. The resulting analysis gave a UAR of £255.10.

27. Mr Cates argued that the Valuation Officer’s analysis of the rent on Unit 5 & 6 was correct, 50% of the fit out was taken into account as rateable, a three month rent free period allowed for this to be completed with a further incentive rent free period of 19 months and the resulting figure with a toning back of 7.5% for the lease being eight months pre AVD. The resulting adjusted rent was amortised over the ten year lease term, this gave an analysis of £299.23 with an uplift of £25.00 per m^2 for fit out.

28. The panel was aware that 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. This period was usually three months and there was no evidence provided to support the appellant’s statement that it was less than three months. Therefore the panel considered it

appropriate to allow a three month rent free period. The panel also considered that the Valuation Officer's assumption that 50% of the cost spent on the fit out was rateable was reasonable.

29. The panel disagreed with the Valuation Officer over the period that the rent free period and fit out costs should be amortised over. There was a five year break clause and the adjustments should be made to that point and not over the full ten years in accordance with *Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC).* This resulted in an adjusted UAR of £284.56.

30. The panel considered that the strongest evidence was that of the properties in Porteous Place. Unit 1 within Porteous Place was a new letting on 13 October 2014, although between connected parties, the rent analysed to £370.64 well above the level sought by the appellant. Unit 7 was a new letting eighteen months post AVD which was incorrectly valued originally, the appellant did not dispute the rent analysed to £334.21 toned back to AVD. Unit 16 was a new letting on 1 October 2016 ten months post AVD with a stepped rent that analysed to £323.77. Unit 1, 5&6, and 16 all had an uplift of £25.00 per m^2. The panel found this analysis of the rents supported the tone of £325 per m^2 applied to the properties in Porteous Place.

31. The appellant's comparable properties were given less weight, although within a reasonable distance the panel was of the opinion that there could be a considerable difference in the tone of offices within a short distance, particularly in large cities. They were between 0.6 and 1.3 miles away. The comparable hereditaments measured between 334.44 m^2 and 728.88 m^2 and therefore were not comparable in size, were older buildings and also in different locations with different tones. The closest comparable as far as location was concerned was the Units at Abbeville Mews that had a tone of £250.00 per m^2, however, these were situated in a much older building and were much larger without air conditioning or raised floors.

32. The panel having had regard to the basket of evidence provided by the parties and having applied the principles in *Lotus and Delta* considered that the strongest evidence was the Valuation Officer's evidence on the various units at Porteous Place. All were in the list at £325 per m^2 and were the most comparable to the subject properties. It was an unusual building with greater security than other offices within the vicinity and therefore the panel found that this had to be taken into account as having a value to the hypothetical tenant over and above the appellant's comparable properties that did not enjoy the greater security. The rental analysis on these properties showed a range between £284.56 to £370.64 before an uplift for fit out was applied. The subject properties' RV at £325.00 per m^2 including the uplift was within this range and not considered unreasonable by the panel.

Disposal

33. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the UAR of £325.00 per m^2 was not excessive and therefore the appeal was dismissed.

Date issued to parties: 16 December 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.
