THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; car park and premises; valuation method; receipts and expenditure; appropriate divisible balance; BNPPDS Limited & BNPPDS Limited (Jersey) as Trustees for Blackrock UK Property Fund [2022] UKUT 129 (LC); appeal allowed.

RE:	Multistorey Car Park, The Square, High Street, Newcastle ST5 1PT ("the subject hereditament")

APPEAL NUMBER: CHG100840000

BETWEEN:	KRNS Properties Limited	Appellant
	and	
	Valuation Officer	Respondent

SITTING:	Remotely via Microsoft Teams Conference Call
ON:	14 February 2024
PANEL:	Mr S Levy (Presiding Senior Member) Mr K Everett (Senior Member)
CLERK:	Mr S Fletcher IRRV (Hons)
APPEARANCES:	Mr P Emerick of Altus Group (Appellant's representative) Ms O Gee (Respondent's representative)

DECISION and STATEMENT OF REASONS

Summary of decision

1. Appeal allowed. The panel determined the rateable value (RV) of the subject hereditament to be £89,750 with effect from 1 April 2017.

Introduction

2. The appeal process began with a challenge made by the appellant on 1 April 2018 in respect of the Valuation Officer's (VO) compiled list entry of the subject hereditament at £166,000 RV with effect from 10 August 2022. The appellant's representative proposed a reduced assessment from that date based on a full receipts and expenditure method of valuation.

3. The respondent issued a challenge case decision notice on 30 June 2023, which stated that based on the evidence available, the existing rating list entry of £166,000 RV was unreasonable and determined a revised entry of £150,000 RV with effect from 1 April 2017. The reduced RV was determined following a revised method of valuation. The appellant's representative appealed that decision to this Tribunal on 23 August 2023 on the grounds that the valuation for the subject hereditament remained unreasonable.

4. The subject hereditament was a car park and premises occupied by the appellant. It was a multi-storey car park which comprised 299 spaces and located in Newcastle-under-Lyme. The property was situated in a complex which comprised shopping and entertainment facilities, including a cinema.

5. The appellant's representative appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), the representative confirmed that he was instructed under a conditional fee arrangement. He 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 or not the evidence supported the client's case.

6. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

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

Issue

8. The issue for the panel to determine was the correct RV to be attributed to the subject hereditament in the 2017 rating list. The issue in dispute concerned the application of the appropriate method of valuation.

Evidence and submissions

9. Arguments and factual evidence from both the appellant's representative and

the respondent were provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission, the respondent's challenge decision notice and assessments deemed comparable to the subject hereditament by the parties. The Upper Tribunal judgment of *BNPPDS Limited & BNPPDS Limited (Jersey) as Trustees for Blackrock UK Property Fund* [2022] UKUT 129 (LC) was also referred to.

10. Prior to the appellant's challenge, the respondent had calculated the RV for the subject hereditament using a percentage of the appellant's fair maintainable trade (FMT) figures, also known as the shortened method. During the challenge process, the respondent requested three years of receipts and expenditure at the subject leading to the antecedent valuation date (AVD), which in this instance was 1 April 2015. The appellant took occupation at the subject in May 2014, therefore a full three years of accounts was not available. Furthermore, the financial year began on 1 January and ended on 31 December, so partial accounts were only available for 2014.

11. The respondent contended that it was difficult to undertake a full receipts and expenditure valuation due to the limited financial information available. The accounts from 2014 were annualised due to being partial, and the accounts from 2015 were for the full year. Using the accounts provided, both parties adopted their own figures in order to ascertain a reasonable RV. Both parties differed on the proportion of divisible balance to ascertain the tenant's share, the respondent applying 65% and the appellant's representative applying 50% to the net profit. Both parties also relied on comparable assessments to further support their respectively determined RV of the subject.

12. The accounts and parties' respective figures to determine RV read as follows:

Accounts	**2014* (£)**	**2015 (£)**	**Respondent (£)**	**Appellant (£)**
Gross Receipts			442,000	425,000
Gross Receipts	**417,989**	**466,928**	**442,000**	**425,000**
Expenses				
Salaries	8,828	39,042	30,000	35,000
Security	101,927	65,259	70,000	83,000
Rates	54,389	40,919	41,000	47,000
Electricity	9,532	9,886	9,500	9,500
Water	2,598	2,623	2,500	2,600
Telephone/Alarm	1,031	1,046	1,500	1,000
Lift	14,267	4,483	6,000	9,000
Lift Maintenance	7,131	4,944	6,000	6,000
Equipment Repairs	17,399	10,940	500	14,000
Equipment Maintenance	3,242	3,250	11,000	3,250
Other Maintenance	4,263	15,352	12,000	12,000
Motor				1,500
Admin/Tickets	1,728	1,947	2,000	2,000

Subscriptions				250
Training				200
Sundry			4,800	250
Bookkeeping				2,000
Legal Fees				500
Bad Debts				100
Merchant Charges	1,974	4,214	4,000	4,000
Total Expenses	228,309	204,528	**200,800**	**233,150**
Net Profit before depreciation	189,680	262,400	**241,200**	**191,850**
Depreciation			10,000	10,000
Net Profit = Divisible Balance			**231,200**	**181,850**
Tenant's share			150,280 (65%)	90,925 (50%)
Interest Foregone				1,121
Valuation sub-total			150,280	89,804
Say RV			**150,000**	**89,750**

*2014 figures are annualised

Decision and reasons

13. The subject hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

14. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the AVD. This common date was used to ensure that every property was treated in a consistent way.

15. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 1 April 2017.

<u>Application of method of valuation</u>

16. Both of the parties had determined a RV at the subject hereditament using a receipts and expenditure method of valuation, albeit with limited accounts, arriving at a balance to be split between the landlord in the form of rent, and a return for the tenant. There was a £17,000 difference between the adopted income of the appellant by the respondent and appellant's representative. The

respondent's representative argued that 2014 was the appellant's first year of trading and it was likely it would be 'finding its feet' in terms of staffing, maintenance and costs required to run the business effectively. The respondent adopted a figure of £442,000, the mid-point between the annualised accounts for 2014 and accounts for 2015. This accounted for the for the consideration that income at the AVD would be higher than the ratepayer's first, partial year of trading, but lower than 2015's full year of trading. The appellant's representative argued that the appellant was an experienced business that operated car parks around the country, and it was disingenuous to suggest it would require time to 'find its feet'. As such, he had adopted a figure closer to the income from the annualised 2014 accounts as the end of the financial year was closer to the AVD than that of 2015.

17. The appellant's representative adopted a figure for total expenses which was £32,350 more than that adopted by the respondent. Some of the main expenses where there were large differentials were for security and equipment repair. The appellant had accounted for some expenses which appeared to have not been considered by the respondent such as bookkeeping, training, and legal fees. The respondent's representative stated that those had been accounted for and were listed as sundry debt.

18. The appellant's representative argued that the figure adopted for security by the respondent was too low. He stated that security at the site was a 24-hour operation which required multiple staff to cover multiple rotating shifts. The adopted figure for the respondent was far closer to the accounts for 2015 than the those annualised for 2014 which were significantly higher. The appellant's representative addressed the adopted figure for equipment repair and contended that the figure of the respondent was too low when considering the actual figures in the accounts. For example, figures for equipment repair were £17,399 in the annualised accounts for 2014 and £10,940 for 2015. The respondent had adopted £500. The appellant's representative stated that access to the car park was restricted in width and tight turns in order to gain access and to exit, as demonstrated in photos he had provided. He argued that repair was frequent due to the layout of the car park.

19. The panel acknowledged the difficulty in ascertaining adopted figures, given that only limited accounts were available, which included an annualised set of accounts. It appreciated that both parties' representatives had adopted their figures exercising their professional judgments as valuers. However, it was more persuaded by the adopted figures of the appellant's representative for both receipts and expenditure. It determined that the appellant's representative's adopted figure of £425,000 for receipts was more reasonable than the figure of the respondent, given it was closer to the receipts of the annualised accounts for 2014, of which the financial year end was closer to the AVD than that of 2015.

20. The panel also preferred the adopted figure for total expenses of the appellant's representative than the figure determined by the respondent. It attached little weight to the contention of the respondent that the business may have been 'finding its feet' during the first partial year of trading in 2014.

The premises was not new, and the panel considered that any hypothetical prospective tenant would have undertaken due diligence in appraising costs and overheads prior to agreeing to any lease to occupy. Many of the adopted figures for expenses by the parties were similar. The panel considered those which demonstrated some of the largest differentials such as security and equipment repairs. The appellant's representative had provided figures for those expenses from the accounts for 2016. The panel acknowledged that the accounts were distant from the AVD, however, it found that they demonstrated a trend which showed consistency with figures for the annualised accounts for 2014 and accounts for 2015, which it deemed were more closely aligned to the adopted figures by the appellant's representative. It found the explanations from the appellant's representative pertaining to a higher cost for security and equipment repair to be credible. As such, and assessing the evidence provided as a whole, the panel was satisfied with the appellant's representative's adopted figure of £233,150 for expenses.

21. Both parties had applied £10,000 to the net profit for depreciation. The panel found no reason to depart from that practice, and therefore determined a net profit and divisible balance of £181,850.

<u>Divisible balance</u>

22. The appellant's representative sought a proportion of a 50% split of the divisible balance to be adopted as the tenant's share which he contended had long been used in the practice of receipts and expenditure valuations and was in accordance with the split determined in *BNPPDS Limited*. The respondent sought a proportion of the divisible balance of 65% weighted towards the landlord. In *BNPPDS Limited*, the Upper Tribunal was not satisfied that either expert for the parties had supplied sufficient evidence to support their respective adopted percentages of divisible balance. In that case, it saw no obvious reason why the hypothetical tenant would be prepared to take more risk than the landlord in taking a letting of the property and concluded that a balanced negotiation would always start, and often conclude at a 50% split between the two.

23. The respondent's representative contended that a 65/35 split to the landlord was reasonable and referred to settled agreements where the valuations had been determined following a receipts and expenditure method or applying a percentage to FMT. The settlements provided had all been agreed with splits or percentages of FMT in favour of the landlord. The panel found the agreements to be unreliable evidence, as they were situated in significantly distant locations to the subject hereditament. They were also agreements which may have been settled based on various factors specific to those assessments, of which the panel was not privy to.

24. In accordance with *BNPPDS Limited*, the panel found no reliable evidence to deviate from a 50/50 split to the divisible balance in this instance. The appellant's representative had also deducted £1,121 from the tenant's share for interest foregone, which the panel was content with. Splitting the RV of £89,804 by the 299 spaces resulted in £300.35 per parking space.

25. The panel found the £ per space of the subject hereditament to be reasonable when compared to assessments for car parks and premises in its locality as referred to by the appellant's representative. Riverside Undercroft Car Park, Car Park Guildhall Shopping Centre, Car Park The Medway and Waterfront Car Park had £'s per space in the range of £285.21 and £368.82.

Determination

26. Having regard to the evidence, the panel determined the assessment at RV £89,804 which it rounded down to £89,750. The valuation on the receipts and expenditure approach reads as follows:

Gross Receipts	£425,000	
Gross Receipts		**£425,000**
Expenses	£233,150	
Total Expenses		**£233,150**
Net profit before depreciation		**£191,850**
Depreciation	£10,000	
Net Profit = Divisible Balance		**£181,850**
Tenant's Share @ 50%		£90,925
Interest foregone	£1,121	
Available for Rent = Rateable Value		**£89,804**
£ per space		£300.35

27. The revised assessment for the compiled list entry with effect from 1 April 2017 as determined by the panel was as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Range of Floors	Parking Space(s)	299.00	300.35	89,804
			Valuation sub-total	89,804
			Say RV	**89,750**

28. In view of the foregoing, the appeal was therefore allowed.

Order

29. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £89,750 RV with effect from 1 April 2017. The respondent must comply with this order within two weeks of its making.

30. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date: 11 March 2024

Appeal number: CHG100840000

Right of 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.
