VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; shop and premises; rental evidence; comparable assessments; appeals dismissed.

APPEAL NUMBER:	CHG101103076 and CHG101103122
RE:	Unit 1045 and Unit 1046, Westfield Shopping Centre, London W12 7GB (the "subject properties")

BETWEEN:	Bucherer UK Limited	Appellant
	and	
	Mr A Mouland (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	11 April 2025
PANEL:	Mr Amran Hussain, Presiding Senior Member Mrs MJ Cole, Senior Member
CLERK:	Mrs H Beresford
APPEARANCES:	Mr M Fanning of Knight Frank, for the Appellant Ms A Hodgson, for the Respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The assessments were confirmed at rateable value (RV) £300,000 with effect from 1 April 2017 for Unit 1045 and RV £223,000 with effect from 1 April 2017 for Unit 1046.

Introduction

3. These appeals have been brought in respect of Unit 1045 and Unit 1046, Westfield Shopping Centre, London W12 7GB (the 'subject properties'), which were entered in the 2017 rating list

as 'shop and premises' at RV £300,000 with effect from 1 April 2017 for Unit 1045 and RV £223,000 with effect from 1 April 2017 for Unit 1046.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Knight Frank made an appeal to the Valuation Tribunal for England (VTE) on behalf of Bucherer UK Limited. The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant sought a reduction to RV £257,500 with effect from 1 April 2017 for Unit 1045 and RV £191,000 with effect from 1 April 2017 for Unit 1046.

5. The appeal to the VTE was made on the grounds that the valuations for the subject properties were not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notices.

6. Mr Fanning 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.

7. 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

8. Ms Hodgson stated that she was appearing as advocate and expert witness.

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

<u>*Background*</u>

10. The base level of value adopted for the subject properties was not agreed. The Valuation Officer has adopted £3,200/m^2 in respect of the subject properties, but the appellant sought a reduction to £2,750/m^2. (This had been amended from the challenge notice at which time the appellant sought a reduction to £1,485/m^2)

11. The subject properties are situated in The Village at Westfield London, on Ariel Way in the London Borough of Hammersmith and Fulham. The subject properties are in Phase 1 of the Shopping Centre and are situated near other similar designer retail occupiers.

<u>*Preliminary issue*</u>

12. Mr Fanning raised a preliminary issue. He stated that he had not been offered the opportunity to inspect a form of return (FOR) relating to a rent on Unit 1045. He stated that Ms Hodgson had provided details of the FOR prior to the hearing but this evidence was late and, in any

event, the FOR should have been available for inspection at the challenge stage if it were to be relied upon by the Valuation Officer.

13. In considering a breach of the Tribunal's directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an inaccurate calculation and the need to enforce compliance with the rules, directions and orders of the Tribunal.

14. The panel found the breach to be significant in that the FOR should have been available for inspection at the challenge stage, but it was not, and details of the FOR which were submitted by email prior to the hearing were not admissible under Regulation 17A of Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended). The panel was therefore unable to admit the evidence as it considered the breach to be significant.

Relevant Law

15. The term "rateable value" was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken on 1 April 2015, the antecedent valuation date (AVD).

16. The subject hereditaments must be valued for the purpose of non-domestic rating on the basis of the rent at which they 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.

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

18. Matters that affected the physical state or enjoyment of the property or the locality are 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 hereditaments, the material day is 1 April 2017.

Discussion

19. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be considered. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted. There was rental analysis available for Unit 1046, this was a rent

agreed in 2018, for £335,500 which devalued to £3,568/m^2. However, this rent was considered by the panel to be somewhat remote from the AVD.

20. The panel considered the rents referred to by Mr Fenning which included rents agreed on the units situated adjacent to the subject properties, specifically within the stretch of Units numbered 1042 through to 1046. The appellant argued that the best evidence was the rents relating to Units 1043 to 1044, which were agreed in 2013 at £257,142 and 2017 at £254,000, and which devalued to between £2,700/m^2 and £2750/m^2 respectively. Mr Fanning believed that these rents supported a base rate of £2,750/m^2 for the adjoining subject properties. The appellant also submitted that Unit 1042 had been reduced from £3,200/m^2 to £1,485/m^2 for the 2017 list whilst Units 1043/1044 had a base rate of £3,200 which had not been challenged.

21. The panel found this to be good evidence, and it attached some weight to it, although it was noted that the subject units were situated in a more prominent and prestigious position to units 1043 to 1044 and had the benefit of a curved window and return frontage. The panel also noted that the curved window of the subject properties meant it was difficult to see Units 1043 to 1044 from the most prestigious area. Furthermore, the panel was aware that these rents were agreed two years either side of the AVD.

22. The panel turned to the evidence of rents referred to by the Valuation Officer. Unit 1016 had a rent agreed at review on 1 July 2014 of £262,750 this rent analysed to £4,085/m^2 and the unit had a base rate of £3,200/m^2, the panel noted that this unit is located on the opposite side of the concourse to the subject properties, and within the same location; Unit 1017 had a new rent of £300,000 agreed on 1 June 2014, this rent analysed to £4,208/m^2, the panel noted that this was a new letting from June 2014, very close to the AVD; and Units 1125 to 1126 had a rent of £732,650 agreed at review on 1 July 2013 which analysed to £4,478/m^2 and had a base rate of £4,300/m^2, the panel noted that this unit was on the opposite side of the concourse to the subject properties which commanded a higher value.

23. The panel noted that the subject properties were situated on a corner and had a frontage on the same stretch of units which were the most highly valued with a base rate of £4,300/m^2. The panel also noted that the subject properties were situated directly opposite the comparable Units 1125-1126 referred to in the Valuation Officer’s rental evidence with a base rate of £4,300/m^2. Having regard to the other units along the same stretch i.e., Units 1042 to 1044 and the units opposite, Units 1013 to 1018, the panel noted that with exception of Unit 1042, all of the units had a base rate of £3,200. Unit 1042 appearing to be an outlier. The panel was also aware that no addition had been made to the subject property for the return frontage which Ms Hodgson had confirmed would have been amended had the 2017 rating list not been closed.

24. With regard to Unit 1042 the panel was aware that this property was situated at the opposite end of the stretch of properties to the subject properties and also had a frontage on a stretch of Units with a base rate of £1,350/m^2 (Units 1040A-C and Unit 1041) and was opposite units with a base rate of £2,000/m^2 (Units 1037-1038A and Units 1039 and Units 1039 A and B) This suggested to the panel that Unit 1042 was in a less prestigious position to the subject properties.

25. Having taken into consideration the full basket of evidence before it the panel did not accept Mr Fenning’s argument that the rents agreed on Units 1043/1044 in 2013 and 2017 supported a reduction in the base rate for the subject properties, the panel determined that a hypothetical tenant coming fresh to the scene would be prepared to pay a higher rent for the

subject properties due to their location. The panel found that an RV £300,000 with effect from 1 April 2017 for Unit 1045 and RV £223,000 with effect from 1 April 2017 for Unit 1046 was fair and reasonable.

Disposal

26. In view of the above findings and conclusions, the Tribunal panel dismissed the appeals.

Date issued to parties: 25 April 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.
