VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeals: Local Government Finance Act 1988; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; Bunyan (VO) v Acenden Ltd [2023] UKUT 17 (LC); Shoosmiths LLP and Mando Group Limited and Amanda Hitchings (VO); Offices and Premises; Allowed in part.

APPEAL NUMBER:	CHG101112619 and CHG101104142
RE:	Ground Floor West Front, 85 Uxbridge Road, London,W5 5TH 5th Floor Right, 85 Uxbridge Road London,W5 5TH (the “subject properties”)

BETWEEN:	Allied Irish Bank GB	Appellant
	and	
	Joanne Moore IRRV (Hons) (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	16 January 2025
BEFORE:	Ms LS Marshall, Presiding Senior Member Mrs LR McDermott, Senior Member
CLERK:	James Massey IRRV(Dip)
APPEARANCES:	Mr M Hawkins of Colliers International, representing the appellant Mr J Short, representing the respondent

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are allowed-in-part.

2. The Tribunal Panel determined that an unadjusted rate of £280 per m2 was reasonable and reduced the entries for the subject properties with effect from 1 April 2017 as follows:
    - Ground Floor West Front, 85 Uxbridge Road, London,W5 5TH RV £99,000
    - 5th Floor Right, 85 Uxbridge Road London,W5 5TH RV £204,000

Introduction

3. The appellant's representative had made challenges against the accuracy of the compiled list assessments in the 2017 Rating List, by way of proposals served on the Valuation Officer (VO) as follows;

   CHG101112619 Ground Floor West Front, 85 Uxbridge Road, London,W5 5TH RV £111,000
   Challenge dated 17 August 2023 sought RV £76,000 effective 1 April 2017

   CHG101104142 5th Floor Right, 85 Uxbridge Road London,W5 5TH RV £230,000
   Challenge dated 3 August 2023 sought RV £157,000 effective 1 April 2017

4. After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals in respect of the assessments were not well founded as it was considered that the tone of £300 per m^2 applied to both assessments was reasonable but altered both assessments by way of the removal of a 5% uplift which had been applied for fire protection. Challenge decision notices were issued on 9 April 2024 with revised RVs of £105,000 and £219,000 respectively.

5. The appellant's representative then appealed the VO's decisions to the Tribunal on 9 August 2024, on the grounds that the current valuations for the hereditaments were not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

6. Mr Hawkins 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), he confirmed that he was instructed under a conditional fee arrangement.

7. 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.

8. 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.

9. The statement of truth provided by Mr Short confirmed that he was not instructed under any conditional or other success-based fee arrangement.

10. The appeals had been made by Gareth Flinter on behalf of the appellant company, and the appeals had been registered in his name. The panel was satisfied that Gareth Flinter was an employee of Allied Irish Bank GB and had authority to make the appeals. In the circumstances, the panel directed that Allied Irish Bank GB shall be inserted as the appellant for these appeals instead of Mr Flinter. Neither party had any objection to this. As the subject properties were in the same building, and both parties' submissions were identical in both appeals, the panel was satisfied that they could be heard together as agreed by the parties.

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

Issue

12. The subject hereditaments are ‘Offices and Premises’ located on the ground and fifth floors of a nine-storey building built in 1965 and renovated in 2009. The building was located on the main road linking Ealing and West Ealing, mid-way between the centres of the two conurbations. Ealing Broadway tube station and West Ealing train and Elizabeth Line stations are 0.5 and 0.6 miles away respectively. The building is of steel construction with a mixture of glass and cladding walls and a concrete roof, and the offices benefit from central heating, air conditioning, raised floors and a passenger lift. The Ground Floor West Front office has a total area of 353.83m^2 and the 5th Floor Right office has a total area of 731.04m^2.

13. In the appeal submissions, it was the appellant’s representative’s contention that the current assessments were excessive and that an unadjusted rate (UAR) of £277.50 per m^2 would be more representative of the value of the subject hereditaments at the AVD. At the hearing, Mr Hawkins stated that he now considered that a reduced UAR of £280 per m^2 was reasonable. The respondent was defending the current assessments of the subject hereditaments based on a UAR of £300 per m^2.

Evidence and submissions

14. The evidence bundles before the panel comprised all of the evidence disclosed and exchanged during challenges which included the challenge decision notices, and a combined supporting evidence statement, which contained details of the parties’ comparable properties, the parties’ skeleton arguments, expert witness statements, photographs of the subject property and valuations of the subject property.

Preliminary Issue

15. As a preliminary matter, the appellant had sought the admission of the late submission of his additional evidence which he had sent to the respondent and the Tribunal on the evening before the hearing. This evidence included his analysis of the rent of one of his comparable properties, 2nd Flr East Wing Front 85, Uxbridge Road, London, W5 5TH and an amended rental schedule to reflect fit-out costs of £20.00 per m^2. Mr Short did not object to the inclusion of this evidence, and the panel accordingly allowed its admission.

Decision and reasons

16. The appeal 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 let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for these appeals. When assessing the RV of any property, rating law also requires that the property must be assumed to be ‘vacant and to let’, and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(1) ‘Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in section 19(6) of the General Rate Act 1976 the more weight should be attached to it.

(3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.’

18. The Panel was aware that, following the propositions set out above, the rent on the subject property should be a starting point, followed by those on similar properties. The subject properties had been let on a single 15-year lease commencing 29 September 2014 at a headline rent of £377,197 per annum (pa). The appellant had analysed the rent on the 5th Floor Right at £278.75 per m^2, having stripped out three months of the total fifteen months’ rent-free period (RFP) for fitting out. He had added £20 per m^2 to account for fitting out by the tenant to obtain a UAR of £298.75 per m^2. Mr Hawkins also contended that the combined rent on the subject properties was higher than other rents in the building as it reflected the fact that part of the ground floor assessment had planning for A2 use, but this had not been accounted for in the analysis of the rent.

19. The respondent had analysed the rent for the 5th Floor Right in a similar manner but contended that the value added by tenant fit out was best represented by adding the assumed fit-out costs amortised over the term certain for the lease. As no specific costs had been provided for the subject properties, an assumed cost of £200 per m^2 had been used, giving an UAR of £305.08. Having considered the differing analyses of the rent on the subject properties, the panel considered that they did not show the current UAR of £300 per m^2 to be excessive.

20. The panel then proceeded to test the subject rent by reference to the comparable evidence submitted by the parties. The comparable rents referred to were all for offices in the subject building and were effective from dates between 1 April 2014 and 4 September 2014.

Part Gnd Floor, 85 Uxbridge Road

Headline rent of £235,724 pa from 1 April 2014, adjusted for 13 months RFP, which the appellant analysed to £253.90 per m^2, having stripped out three months RFP for fitting out. He added £20 per m^2 to reflect fit out costs from category A to category B, resulting in £273.90 per m^2.

The rent was analysed by the respondent to £249.35, which included declared fit out costs of £70,998 amortised over the term certain of the lease.

2nd Floor East Wing (front), 85 Uxbridge Road

Headline rent of £258,044 pa effective from 1 May 2014 with a seven-month RFP . The respondent contended there was a capital sum of £154,827 paid by the tenant which resulted in a devalued rent of £353.93 per m^2. The appellant contended that the sum of £154,827 was a reverse premium, paid by the landlord to the tenant and was the equivalent of seven months rent. Factoring this in and stripping out three months RFP for fitting out, had resulted in a devalued rent of £249.68 per m^2, to which he had added £20 per m^2 to reflect fitting out costs resulting in a rate of £269.68 per m^2.

5th Floor Left, 85 Uxbridge Road

Headline rent of £327,000 pa effective 4 September 2014 included a nine-month RFP. The respondent stripped out three months' RFP for fitting out which resulted in an analysed rent of £356.60 per m^2. The respondent stated the declared fit out costs £850,000 were significantly higher than those reflected using the VOA's assumed figure of £200 per m^2. The appellant asserted that the VOA had incorrect records regarding this evidence as CoStar revealed a break option that had not been declared on the Form of Return (FOR), demonstrating the unreliability of FOR information.

21. Mr Short explained that offices are normally let as Category A, on the basis that the tenant would fit out the space to Category B according to their own needs. It was common ground that the vast majority of office rents reflected Category A, and that some sort of addition was required to reflect the increase in value caused by the tenant's fitting out works to Category B. The respondent had referred to the Upper Tribunal case of *Bunyan (VO) v Acenden Ltd* [2023] UKUT 17 (LC), stating that as a result of this case, there had been agreements in Central London for uplifts of £25 per m^2 to reflect fitting-out costs. No such agreement had been made for outer London or the South East, and he stated that it was reasonable to amortise the cost of fitting out over the term of the lease to obtain the cost of fitting out per m^2. Where no fit-out costs had been declared it was the respondent's practice to assume, what was in his opinion, a very conservative fit-out cost of £200 per m^2, which in the case of *Gnd Flr East, 85 Uxbridge Road* had resulted in an uplift of £22.16 per m^2.

22. Mr Hawkins considered that the correct approach for determining the correct addition for Category B fitted out offices was set out in the President of the VTE's decision in *Shoosmiths LLP and Mando Group Limited and Amanda Hitchings* (VO). The President concluded that the agreed uplift of £25 per m^2 for Category B offices in Central London was a maximum ceiling, which reflected higher costs of fitting out in Central London. On the basis that fitting out costs

would be lower in Manchester and lower still in Liverpool, he determined that the appropriate addition for Category B offices in those areas was £15 per m^2 and £10 per m^2 respectively. Mr Hawkins contended that the fitting out costs in Outer London, where the subject properties were located, would be higher than in both Manchester and Liverpool, but lower than in Central London, and an addition for Category B offices of £20 per m^2 was therefore appropriate.

23. The panel considered both *Shoosmith* and *Acendon* confirmed that Category B offices were more valuable than Category A, and that as the subject offices had been let as Category A, an addition was required. Although costs of fitting out had been declared for two of the comparable offices, the panel was not satisfied that the value added by fitting out would be the full amount spent on that fitting out. The panel therefore considered that the addition of £20 per m^2 to reflect Category B fit out, as adopted by the appellant, was reasonable. This was very similar to the addition £22.16 calculated by the respondent based on assumed fit-out costs of £200 per m^2, although the respondent had not specified whether the same approach had been used in all of his analyses.

24. The basket of rental evidence had been analysed by the appellant on this basis resulting in a price per m^2 of £273.90 for Ground Floor East, £269.68 for 2nd Floor East Wing Front, and £298.76 for 5th Floor Right. Considering these sums in the round, the panel was of the opinion that they supported a reduction to £280 per m^2 for the subject properties.

25. The appellant had referred to assessment evidence for four 1990s built offices in in Ealing Gateway, located approximately 50 metres from the subject building. He stated that they were of similar size and specification to the subject properties and had been valued at £280 per m^2 in line with valuation scheme 433296 which is applicable to offices in W5, built or refurbished between 2000 and 2009. He referred to the scheme 433280 within which the subject properties were placed by the VO, which referenced purpose-built offices constructed or refurbished between 2010 and 2019, although they had been refurbished prior to this period.

26. Whilst the panel did not consider that valuation schemes were any more than a tool used by the VO to facilitate the grouping of assessments for valuation purposes, it did consider that the offices in Ealing Gateway provided a useful comparable to the subject properties and supported a reduced price of £280 per m^2.

27. The panel therefore concluded that the RVs shown in the amended valuations below (rounded to RV £99,000 for Ground Floor West Front, 85 Uxbridge Road, London W5 5TH and £204,000 for 5th Floor Right, 85 Uxbridge Road, London W5 5TH) should apply to the subject properties with effect from 1 April 2017. The appeals are therefore allowed in part.

Disposal

28. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Ground Floor West Front, 85 Uxbridge Road, London W5 5TH to £99,000 with effect from 1 April 2017 and for 5th Floor Right, 85 Uxbridge Road, London W5 5TH to £204,000 with effect from 1 April 2017, within two weeks of the date of this order.

29. The ratepayer is also entitled to a refund in full of the fees paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date issued to parties: 6 February 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.

Address:	Ground Floor West Front, 85 Uxbridge Road, London W5 5TH					
	Floor	Description	Area m^2	Line Factor	£/m^2	Value £
	Ground	Office	353.84	1	280.00	99075.20
	Total Area		353.84			
	Total					99075.20

Address:	5th Floor Right, 85 Uxbridge Road, London W5 5TH					
	Floor	Description	Area m^2	Line Factor	£/m^2	Value £
	Ground	Office	731.04	1	280.00	204691.20
	Total Area		731.04			
	Total					204691.20