VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeals: Local Government Finance Act 1988; offices and premises; rental evidence close to the valuation date; appeals against the accuracy of the rateable value for the hereditaments; appeals dismissed.

APPEAL NUMBERS: CHG101084548, CHG101109081, and CHG101084463

RE: 1st Floor, 8 St James's Square, London SW1Y 4JU
2nd Floor Rear, 8 St James's Square, London SW1Y 4JU
2nd Floor Front, 8 St James's Square, London SW1Y 4JU
(the “subject properties”)

BETWEEN: Point72 UK Ltd — Appellant

and

Ms L Dyer
(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 28 March 2025

PANEL: Mr K Everett, Presiding Senior Member
Prof P Catterall, Member

CLERK: Mrs H Beresford

APPEARANCES: Mr N Bell of Knight Frank representing the Appellant
Mr A Powell, representing the Respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are dismissed. The panel made no change to the rating list entries in respect of the subject properties.

Introduction

2. The appeal process began with proposals made by the appellant's representative against the entries in the 2017 rating list as follows: (all of the entries were with effect from 1 April 2017)

Appeal	Proposal	VOA Decision	Appeal	£/m^2	RV £
1st Floor	07 07 2023	29 05 2024	27 09 2024	1,350.00	890,000
2nd Floor Rear	10 08 2023	30 05 2024	27 09 2024	1,350.00	625,000
2nd Floor Front	07 07 2023	29 05 2024	27 09 2024	1,350.00	500,000

3. The appellant's representative proposed revised assessments based on a reduced tone of value for main space of £1,175/m^2.

Appeal	Proposed RV
1st Floor	£775,000 with effect from 1st April 2017
2nd Floor Rear	£545,000 with effect from 1st April 2017
2nd Floor Front	£435,000 with effect from 1st April 2017

4. Mr Bell 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

5. 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.

6. Mr Powell appeared as both advocate and expert witness.

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

Background

8. The subject properties are offices located in 8 St James's Square, the building occupies a corner position on the north side of the Square and has frontages to Duke of York Street, Apple Tree Yard and St James's Square. Number 8 was built in 2014 and provides 5,778.1m^2 of highly specified, column-free accommodation over lower ground, ground, and six upper floors. The fifth and sixth floors benefit from external terraces with views across St James's Square. There is a spacious, bright and stylish reception. The basement provides 78 bicycle racks, together with showers and lockers. The building has a BREEAM "Excellent" rating. All floors are accessed by a marble-lined lift shaft accommodating four glass-backed lifts.

9. The issue for the panel to determine was whether the rate/m^2 adopted by the Valuation Officer was fair and reasonable.

10. Prior to the hearing the parties agreed that these appeals should be heard together.

Relevant Law

11. 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).

12. 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.

13. 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

14. 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.

15. The rental evidence provided was for offices in 8 St James’s Square which had been analysed by the parties as follows:

Appeal	Rent	Date Agreed	Rent Free	Term	Analysed VOA	Rent £/m^2 Appellant
1st Floor	£1,056,000	24 Sep 2015	15 months	15 years	1,320	1,154
2nd Floor Rear	£677,052	22 Dec 2017	15 months	8 years	905	789
2nd Floor Front	£633,686	19 May 2016	7 months	10 years	1,431	1,379
3rd Floor	£1,499,235	1 Jun 2017	21 months	10 years	1,435	1,119
4th Floor	£1,521,150	29 Sep 2016	21 months	10 years	1,210	1,180
5th Floor	£1,189,200	20 Mar 2015	13 months	11 years	1,398	1,189
6th Floor	£556,000	20 Mar 2015	8 months	15 years	1,635	1,612
Basement/ground	£650,000	14 Mar 2016	15 months	10 years	975	848

16. The panel noted that the 6th Foor rent had a break clause at 11 years and the 4th Floor rent had a break clause at 5 years. Both parties had adopted a time value of money approach based on a yield of 7%, adjustment for rent free periods to reflect a notional fitting out period and ‘toning’ to AVD by adjusting the rents through the use of market growth indices. There were no disputes over fitting out periods or over rent free periods (with the exception of the 3rd Floor which the panel accepted was 21 months, rent free) to be treated as incentives and

both parties had added £25/m^2 to reflect category B fitout. However, the parties differed on how the rents should be amortised where incentives were in place.

17. With regard to the 3rd Floor analysis submitted by Mr Powell the panel noted Mr Bell's comment that Mr Powell had erroneously analysed this rent on the assumption that there was no rent free period. The panel was aware that Mr Bell had provided evidence of a lease which demonstrated that there was a 42 month half rent period which equated to a 21 month rent free period. It was also confirmed that no premium had been paid for the lease. Mr Bell calculated that Mr Powell's analysis of the rent for 3rd Floor of £1,435/m^2 should be reduced to £1,158/m^2.

18. Mr Bell raised an issue regarding the rental growth figures used to tone the rents to the AVD. He pointed out that the Valuation Officer had used the Costar index which is based on asking rents in the market whereas he prefers the MSCI rental indices which are based on completed transactions. The panel noted that this had led to minor differences in the value of the Lower Ground Floor and 2nd Floor front, however, it did not consider this to be significant.

19. Mr Bell submitted that he believed the best rental evidence to be that for 1st Floor, 3rd Floor, 4th Floor, and 5th Floor, he argued that these rents supported his argument for a £/m^2 of £1,175. Mr Bell had amortised the rents to the 5 year review date, and the 10 year review date, however, he argued that the correct approach was to amortise the rents to the first review in each case apart from the 3rd and 4th Floors which had been analysed to the ten year review date. Mr Bell was aware of the judgment in *Dawn Bunyan (VO) v Acenden Limited* LC-2021-478 which referred to the guidance in 'Bernstein and Reynolds' Handbook of Rent Review' and adopted the methodology of amortising to the break clause or, in the absence of a break clause, to the end of the lease. However, he argued that this was not the appropriate approach for central London.

20. Mr Bell submitted that it had been agreed between himself and the Valuation Office that there was rental growth 12 months either side of the AVD in 2014/15 when the best rental evidence in 8 St James's Square was agreed. He referred to an extract of the Carter Jonas Offices Q1 2015 report which he stated shows rental growth from Q1 2014 to Q1 2015 in the prime Mayfair and St James's sub-market of up to 10.9%. Mr Bell was of the opinion that the rent should usually be amortised to the point where it is anticipated the net effective rent will reach the headline level. In central London strong rental growth at the AVD meant that the impact of the rent free periods was limited to the first review at year five. To analyse the rents over a longer period would be incorrect. He argued that this method of analysis had been used for the six year life of the 2017 list.

21. Mr Bell submitted that the Valuation Office had moved away from this method of valuation just two months before the close of the 2017 rating list in light of *Dawn Bunyan (VO) v Acenden Limited.* He argued that the subject properties in the *Acenden* appeal were in Maidenhead, where the market was different to London. He also argued that any reference to the analysis of the rent-free incentives in this judgment was '*obiter dicta*' (i.e. not essential to the decision and therefore not legally binding as a precedent). Mr Bell referred to evidence of an update to 'Bernstein and Reynolds' Handbook of Rent Review' which stated that the judgment in *Dawn Bunyan (VO) v Acenden Limited* "*was based upon assumptions that could be said to be in conflict with the then commonly accepted approach to devaluing incentives for rent review purposes in the Central London office market*". Mr Bell also pointed out that the Valuation Office Guidance Manual had not been updated to reflect the Valuation Officer's change in the approach to this type of valuation in the London area.

22. Mr Powell argued that Mr Bell's amortisation of the rent free periods over an artificially short timeframe of five years, had resulted in an understatement of the effective rental value of the offices in 8 St James's Square. Mr Powell submitted that following the reasoning in the *Acenden* case, he had analysed all incentives up to either the break clause or the lease end, with the exception of one rent with a short rent free period which he thought reasonable to amortise to the rent review despite their being no break. Mr Powell argued that the evidence of rents which were agreed close to the AVD supported a £/m^2 of £1,350.

23. The panel was not persuaded by the arguments put forward by the appellant's representative, it was clear to the panel that the judgment in *Dawn Bunyan (VO) v Acenden Limited* had to be taken into consideration and it determined that to amortise the rent over five years would produce an artificially low net rent. The incentives were given to encourage the tenant to take out a long lease and the panel was of the opinion that this should be written off over the term of the lease or to the first break clause as the landlord's income is then certain. The panel therefore found the rental analysis provided by Mr Powell to be the more persuasive.

24. The panel turned to the rental evidence as analysed by Mr Powell, it noted that the evidence of rents agreed on the 5th and 6th Floors on 20 March 2015 had analysed to £1,398/m^2 and £1,635/m^2 respectively and were for a brand new property very close to the AVD. The panel noted that in Mr Powell's analysis a 10% adjustment had been made to the price/m^2 for the 6th Floor to reflect the terrace and a 5% adjustment had been made to the 5th Floor because it had what Mr Powell described as a 'pencil terrace' around part of the perimeter. The panel noted that after the adjustment, the rents had analysed to £1,398/m^2 and £1,635/m^2 respectively. The panel attached significant weight to this evidence of rents agreed close to the AVD.

25. The panel noted the rental evidence for the subject properties. The 1st Floor rent analysed to £1,320/m^2 and had been agreed on 24 September 2015, the 2nd Floor Front had analysed to £1,431/m^2 and had been agreed on 19 May 2016 and the 2nd Floor Rear had analysed to £905/m^2. The panel was aware that 2nd Floor Rear had certain disadvantages as it is at the rear of the building with no access or outlook over St James's Square and it therefore considered it inferior to the remaining lettings in the building. The panel found this to be good evidence, relatively close to the AVD, and it attached some weight to it.

26. Mr Bell had referred to several comparable properties which he believed supported his argument for a reduction in the £/m^2. The panel noted that 28 King Street (Almack House) SW1Y 6QW was valued at £1000/m^2 and 16 Babmaes Street SW1Y 6HD was valued at £850/m^2 however these offices were situated in less prestigious locations so were not considered useful. 33 King Street (Cleveland House) SW1Y 6RJ was situated on the corner of St James's Square and was valued at £1,100/m^2 the panel noted that this was an older property which had been refurbished to a high standard in 2016, and 11-12 St James's Square, was valued at £1,150/m^2 it had been refurbished in 2007 and was described as a mix of Georgian grandeur and modern office space. The panel found this to be useful evidence, however, it noted that these were not brand new buildings at the AVD, and it could attach only moderate weight to this evidence.

27. Considering the basket of evidence, the panel found the rental evidence for the offices in 8 St James's Square, as analysed by Mr Powell, to be the most persuasive evidence and it determined that the respondent's tone of value for main space for the subject hereditaments was fair and reasonable.

Disposal

28. In view of the above findings and conclusions, the Tribunal panel was not satisfied that any reduction in the rating list entry was warranted. The appeals were therefore dismissed.

Date issued to parties: 17 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.
