VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Offices and Premises; price per m^2 in dispute; Local Government Finance Act 1988; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; rental evidence; assessment evidence; appeal dismissed.

APPEAL NUMBER: CHG101117982

RE: Sixth Floor, Programme, Bristol, BS1 2LZ
(the "appeal property")

BETWEEN:	Immersive Labs	Appellant
	and	
	(Valuation Officer)	Respondent

SITTING: Remotely using Microsoft Teams

ON: Monday 13 January 2025

BEFORE: Mr S Wood, Presiding Senior Member
Mr P Jennings, Senior Member

CLERK: Mrs L Horne

APPEARANCES: Mr K Rabbette from Rabbette Chartered Surveyors, representing the appellant
Miss C Tasker representing the Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel found that the entry in the 2017 rating list was not unreasonable, and confirmed the rateable value (RV) of £159,000 with effect from 21 October 2021.

Introduction

2. This is a 2017 rating list appeal. Sixth Floor, Programme, Bristol, BS1 2LZ (the 'appeal property') had been entered in the 2017 rating list as 'offices and premises' with an RV of £171,000 with effect from 21 October 2021.

3. The challenge proposal was submitted by Rabbette Chartered Surveyors on behalf of Immersive Labs and was received by the Valuation Officer on 30 August 2023. It had been made on the grounds that the RV shown in the rating list was wrong. A revised RV of £127,000 was proposed with effect from 21 October 2021.

4. The Valuation Officer issued a challenge case decision notice on 16 April 2024, which stated that the rating list entry was unreasonable based upon the evidence and information available, but disagreed with the entry proposed in the challenge submission. A revised RV of £159,000 was confirmed to reflect the removal of the raised floor uplift and a reduction in the floor area.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 14 August 2024, in which the appellant's representative sought a revised RV of £127,000 based upon £80.00 per m^2.

6. Mr Rabbette 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 declared that he was instructed on a contingency based fee as advocate and on a fixed fee as expert witness. He confirmed 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 or not the evidence supported the client's case.

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

Preliminary issue

8. The Valuation Officer served a notice of objection on 2 October 2024 in respect of additional evidence presented by the appellant in the appeal to the Tribunal. This comprised rental and assessment evidence which, it was submitted, was not exchanged during the challenge period.

9. The appellant's representative objected to the notice, which had not been served within four weeks of the receipt of the appeal, in accordance with the Tribunal's Consolidated Practice Statement. He submitted that the Valuation Officer held the power in respect of whether rental evidence was served under Regulation 17(3), when it was served and how many pieces of rental evidence were referred to. The Valuation Officer had only scheduled two pieces of rental evidence, both of which he considered to be irrelevant.

10. The panel had regard to *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460. In this case, the Upper Tribunal's guidance to Tribunal panels in the instance of a breach of standard directions was that the three-stage test as outlined in *Denton v TH White*

Ltd [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction. The test reads as follows:

> Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).
>
> Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the Tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).
>
> Stage 3 - The panel must consider all the circumstances of the case including:
>
> (i) the need for litigation to be conducted efficiently and at proportionate cost;
> (ii) a failure to grant a sanction may leave an inaccuracy being uncorrected;
> (iii) the need to enforce compliance with rules, directions and orders (para. 55)

11. The panel first considered the late service of the Valuation Officer's objection to additional evidence. The panel found that there had been a breach, as the notice had been served five days late. Miss Tasker explained that the delay had been caused by internal processes, which the panel found to be unsatisfactory. However, in consideration of all the circumstances, the panel decided that the notice of objection should be considered.

12. The panel considered that the submission of additional evidence with the appeal constituted a significant breach. PS2 of the Consolidated Practice Statement makes specific provision for parties to apply for additional evidence to be included, however, no such application had been made. The panel considered Mr Rabbette's reasons for providing the additional evidence, and noted that he had requested to inspect the forms of return, prior to serving the appeal documents. In arriving at the decision to admit the additional evidence, the panel found that the evidence related to properties which had been discussed during the challenge period, and was available in the Valuation Officer's database. The panel was satisfied that the Valuation Officer had not suffered any prejudice, and it was therefore in the interests of justice for the additional evidence to form part of the proceedings.

Relevant Law

13. Rateable value is to be determined in accordance with paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988, which provides:

    "(1) 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—

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

    (b) 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.

(c) 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.

14. 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).

15. 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 21 October 2021.

Discussion

16. The subject hereditament comprises the sixth floor of a 1960s office building, previously known as The Pithay. Following refurbishment works completed in 2021, the property has been rebranded as “Programme”. The total floor area had been agreed at 1,517m^2. The only issue remaining in dispute was the price per m^2 to be adopted in the valuation.

17. The appellant’s representative sought a reduction from £100 per m^2 to £80 per m^2, based upon his rental and assessment evidence. The Valuation Officer sought to defend the present £100 per m^2 with reference to two rents and three assessments from the subject building.

18. The Valuation Officer described the subject property as a landmark building in Bristol, which was refurbished to Grade A specification at a cost of £16 million, with the first phase completed in April 2019 and second phase completed in January 2021. At ground level there are various commercial units including a gym, axe-throwing venue and educational facilities.

19. Mr Rabbette described the subject building as having an unusual crescent shape, but disputed that it was a landmark building, as it lacked visibility. He questioned the extent of the refurbishment works as outlined by the Valuation Officer, as the only significant works which required planning permission were those to replace the windows. Mr Rabbette contended that the property suffered from being of an obsolete specification in the context of modern offices, as the “slab-to slab” height between the floor and the ceiling of the office was inadequate to facilitate either a raised floor or suspended ceiling.

20. In appeals of this nature, the starting point would be consideration of the subject rent, in line with *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. However, both parties were in agreement that the subject rent was agreed six years after the AVD, and therefore carried little weight.

21. Mr Rabbette disputed the relevance of the two rents within the subject building relied upon by the Valuation Officer, as they related to rents from 2021 and 2013, in respect of properties less than 10% of the size of the appeal property. In support of his adopted price of £80 per m^2, he referred to three rents from Tower House. This was located on the opposite side of the street from the subject property, and had also been constructed in the 1960s. It had been refurbished in 2015, and was considered to be close in age, specification and location to the subject.

Suites 2.4-2.6, 2nd Floor, Tower House

A smaller property of 525.09m^2, the rent dated 1 July 2014 analysed at £84.88 per m^2.

Pt 4th Flr & Pt 5th Flr, Tower House

A smaller property of 652.40m^2, the rent dated 24 March 2013 analysed at £42.40 per m^2.

Suites 2.2 & 2.3, 2nd Flr, Tower House

A smaller property of 305.23m^2, the rent dated 1 May 2014 analysed at £51.68 per m^2.

22. Mr Rabbette acknowledged that the transactions related to properties smaller than the subject, and was mindful of the large variance in rents agreed, however, he contended that they should be relied upon as offering pertinent rental evidence. As the rental evidence varied significantly, Mr Rabbette submitted that the available assessment evidence provided relevant and reliable evidence:

Various, Whitefriars, Lewins Mead, BS1 2NT

Described as a landmark building, constructed in 1975, and considered to be more modern than the subject and in a more prominent location. The various hereditaments were entered into the 2017 rating list with an unadjusted rate of £120 per m^2, and following a challenge reduced to £85 per m^2.

Eagle House, Colston Avenue, Bristol, BS1 4ST

Constructed in the 1950/1960s and located in the city centre, the property benefits from raised floors, a new feature reception and having recently had an internal refurbishment programme. It was the regional winner of the British Council for Offices' Refurbished/Recycled Workplace Award 2020 and Insider Media's Fit Out/Refurbishment of the Year Award 2020. As a superior property assessed at £90.25 per m^2, Mr Rabbette submitted that the appeal property should be assessed at a lower rate.

Tony Benn House, Victoria Street, BS1 6AY

A refurbished 1950/1960s office building, located in the city centre's office district. It was agreed at challenge that the unadjusted rate should be reduced from £105.00 to £75.00 per m^2.

Tower House, Fairfax Street, BS1 3BN

As outlined previously, this property was considered to be the most materially similar to the subject in respect of specification and location. It was agreed at challenge that the unadjusted rate for this property should be reduced from £125.00 to £80.00 per m^2. Mr Rabbette contended that this provided the best possible evidence for the subject property at £80 per m^2.

23. In response to the rental and assessment evidence presented by Mr Rabbette, the Valuation Officer submitted that the properties were all inferior in quality to the subject property. The

Programme had been built between 1955-1964 and refurbished in 2021. The following details were confirmed for Mr Rabbette's comparable properties:

Whitefriars – built in 1975, and had not been refurbished.
Eagle House – built between 1955-1964 and refurbished in 2019.
Tony Benn House – built between 1955-1964 and refurbished in 1996.
Tower House - built between 1955-1964 and refurbished in 1993.

24. The closest comparable in terms of the refurbishment date was Eagle House, with a tone of £90 per m^2, however, the Valuation Officer considered it to be inferior to the subject property. It was argued that the subject property benefitted from more recent modernisation to a better standard. The quality of refurbishment, the open layout and amount of natural light was considered to be superior at the subject property.

25. It was further highlighted by the Valuation Officer that offices neighbouring Whitefriars had largely been redeveloped into other uses, such as student accommodation, apartments and hotels. As a result, the office market was weaker in this location, which was reflected in its lower value. It was submitted that Whitefriars and Tower House were valued separately to the other offices as they were either too large or individualistic.

26. In response to the appellant's rental transactions from Tower House, Miss Tasker made the following comments:

Suites 2.4-2.6, 2nd Floor, Tower House

The property had not been refurbished since 2013. Mr Rabbette's analysis at £84.88 per m^2 did not reflect that it was on an FRI basis, or that there had been a nine months incentive for fit out. Miss Tasker's analysis was higher at £92.96 per m^2. As an unrefurbished office, she contended that £100 per m^2 for the appal property was not unreasonable.

Pt 4th Flr & Pt 5th Flr, Tower House

Stated by Mr Rabbette to be a new letting, Miss Tasker confirmed that this was a lease renewal. Her analysis of the rent at £47.77 per m^2 reflected an adjustment for a two year and nine months rent free incentive. This was stated to be out of kilter with the other rents, and reflected an unrefurbished office with no air conditioning.

Suites 2.2 & 2.3, 2nd Flr, Tower House

Mr Rabbette's analysis of £51.68 per m^2 required adjustment to reflect a nine months incentive for fit out. Miss Tasker's analysis was higher at £76.21 per m^2.

27. Miss Tasker acknowledged that there had been a light refurbishment of the second floor in Tower House in 2013, but this could not be compared with the significant refurbishment undertaken at the appeal property. Tower House had been inspected in 2014 and photographs showed that it was basic, average quality office space with poor natural light. Miss Tasker further confirmed that Tower House had recently undergone a complete transformation and had been renamed The Fairfax. Tower House had been deleted in 2021, and works completed in 2023. This, she suggested, indicated how poor the quality had been prior to the recent refurbishment.

28. The Valuation Officer contended that rental transactions, assessment evidence and settlement evidence from within the subject building provided the best evidence of tone. The two rental transactions comprised:

    Ad Lib Pt 2nd Flr, East Wing

    A smaller property of 143.33m^2, the rent dated 26 November 2012 analysed at £94.43 per m^2.

    Mr Rabbette had disputed that this was a new letting and had analysed the rent at £72.44 per m^2. Miss Tasker stated that the form of return confirmed that this was a new letting, and that the difference in the analysis was as a result of Mr Rabbette not analysing the fit out costs.

    Void Pt 2nd Flr, East Wing

    A smaller property of 127.45m^2, the rent dated 30 April 2013 analysed at £102.41 per m^2.

    Miss Tasker stated that Mr Rabbette's analysis of £92.78 per m^2 did not reflect an additional three months rent free for fit out.

29. The Valuation Officer highlighted that both rents reflected the properties prior to refurbishment on the material day. As such, £100 per m^2 for the appeal property in its refurbished state as at 21 October 2021 appeared reasonable.

30. In the assessment summary, the Valuation Officer scheduled 5th Floor, 7th Floor, and 8th Floor, which were the same size as the appeal property and assessed at £100 per m^2.
Mr Rabbette's contention that those assessments had only been in the rating list for a negligible period of time was rebutted by the Valuation Officer:
    - 5th Floor had been split into East and West. East was brought into the 2017 rating list effective from 15 June 2018 at £100 per m^2; West was brought in effective from 1 November 2018 at £100 per m^2.
    - 7th Floor had been brought into the list on 2 November 2022, then deleted with effect from 21 October 2021, due to a split in the assessment. Pt 7th Flr Left remained in the list at £100 per m^2 effective from 14 April 2022. No challenge had been received.
    - 8th Floor entered the list prior to the subject property, with effect from 12 August 2021 at £100 per m^2. No challenge had been received.

31. Reference was made to 5th Floor as settlement evidence, as it had been subject to a challenge on tone, but had not been appealed as at the date of the challenge decision notice. Mr Rabbette confirmed that 5th Floor was subject to an outstanding appeal, and therefore could not be relied upon as settlement evidence.

32. After full consideration of the evidence and arguments presented, the panel considered that the most persuasive evidence was derived from within the subject building. While Mr Rabbette submitted that Tower House provided the most reliable evidence in support of £80 per m^2, it was evident to the panel that the Tower House rental transactions in 2013 and 2014 related to properties which had not been refurbished to the same standard as the appeal property at the material date.

33. The rental transactions from within the subject building also reflected unrefurbished properties, however, it was significant that those rents analysed at £94.43 and £102.41 per m^2. Taking into account the fact that they had not been refurbished and were significantly smaller, the panel considered that the present tone of £100 per m^2 for the subject property did not appear unreasonable.

34. The panel found further support for the present tone of £100 per m^2 with reference to the assessment evidence from within the subject building. Miss Tasker had confirmed that there were 79 assessments within the subject building, 37 of which were assessed at £100 per m^2, 42 assessed at a higher price of £120 per m^2. The panel found no compelling evidence to alter the present tone of £100 per m^2 for the subject property.

Disposal

35. The panel concluded that the appellant's representative had failed to demonstrate that the valuation of the hereditament was unreasonable, and therefore the appeal was dismissed.

Date issued to parties: 10 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.