VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; car park and premises; valuation method; receipts and expenditure; BNPPDS Limited & BNPPDS Limited (Jersey) as Trustees for Blackrock UK Property Fund [2022] UKUT 129 (LC); interim decision; disposal of appeal by way of ratification.

APPEAL NUMBER: CHG101120274

RE: RMBC, The Market, Rochdale OL16 1EB ("the subject hereditament")

BETWEEN: REI Nederland BV — Appellant

and

Lucy Formela-Osbourne (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 14 February 2025

BEFORE: Mr W Read (Presiding Senior Member)
Ms L Owusu-Afriyie (Senior Member)

&

ON: 26 March 2025 (*Reconvened hearing in the absence of parties*)

BEFORE: Mrs M Chaggar (Presiding Senior Member)
Mrs M Cole (Senior Member)

CLERK: Mr S Fletcher

APPEARANCES: Mr P Gould of Colliers International (Appellant's representative)
Mr N Ferreira (Respondent's representative)

INTERIM DECISION, REASONS, DIRECTIONS & RATIFICATION

Interim decision

1. The panel determined that the correct method of valuation for the subject hereditament was

a full income and expenditure approach. An interim decision with directions is given for the parties to exchange evidence in respect of the determined valuation method.

Introduction

2. The appeal process began with a proposal made by the appellant's representative on 4 September 2023 in respect of the Valuation Officer's (VO) list entry of the subject hereditament at £140,000 rateable value (RV) with effect from 1 April 2017. The appellant's representative proposed a revised assessment of £50,000 RV from that date based on a full income and expenditure valuation method.

3. The respondent issued a challenge case decision notice on 17 May 2024 which stated that, based on the evidence available, the existing rating list entry was unreasonable, and determined a revised entry of £87,500 RV with effect from 3 October 2023. The revised RV accounted for a revised tone of value for main space to £100 per m^2. The appellant's representative appealed that decision to this Tribunal on 10 September 2024 on the grounds that the valuation for the subject hereditament remained unreasonable. Prior to the hearing, Mr Ferreira provided a revised valuation of £76,500 RV following an inspection at the property and revised survey details. At the hearing, Mr Gould confirmed he was content with the VO's changes to the survey unit details.

4. The subject hereditament was a car park and premises. It was a multistorey car park attached to the Rochdale Exchange Shopping Centre in the town centre of Rochdale.

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

7. Prior to the hearing, the Tribunal had been informed by Mr Gould that the appellant was no longer the ratepayer and the current ratepayer, Adhan Group – Adhan Properties Ltd was added as a party to the appeal.

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

Issue

9. The panel was required to determine the correct RV to be attributed to the subject hereditament in the 2017 rating list. The issue in dispute concerned the method of valuation.

Evidence and submissions

10. Arguments and factual evidence from both the appellant's representative and the respondent was 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 reference to properties deemed comparable to the subject hereditament. The Upper Tribunal judgment of *BNPPDS Limited & BNPPDS Limited (Jersey) as Trustees for Blackrock UK Property Fund* [2022] UKUT 129 (LC) and *Wishart v Hulse (VO)* [2018] UKUT 224 (LC) were also referred to.

Discussion

11. 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.

12. 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 antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

13. 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.

14. Mr Gould sought for the subject hereditament to be valued using a full income and expenditure approach in accordance with *BNPPDS Limited*, an appeal where such a method was preferred by the Upper Tribunal to a shortened receipts approach. He cited paragraph 49 of the judgment, "Given that we lack the necessary evidence for a valuation by rental comparison it follows that in this instance the shortened method is inappropriate, this latter method being a derivation of the former", paragraph 50, "Having examined the arguments for and against the shortened method, and concluded that it is inappropriate for this property, we now scrutinise the parties' approaches to the full receipts and expenditure valuation" and paragraph 59, "We see 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 we conclude that a balanced negotiation would always start, and often conclude at a 50% split between the two".

15. Mr Gould stated he used the approach in *BNPPDS Limited* using the accounts of the ratepayer at the subject hereditament from 2013, 2014, 2015 and 2016. He had arrived at an RV of nil for 2013 and 2016, so had taken an average from 2015 and 2016 resulting in a tone of value per car parking space of £57, and a RV of £50,000. He stated that his client had provided a statement detailing the figures in the accounts and argued that any reasonable operator would have performed the same in terms of trade. He contended that the VO had been over-reliant on comparing his sought tone of value for main space with comparable assessments.

16. The VO contended that an income and expenditure approach at the subject hereditament would produce an unreliable valuation. It was stated that at the AVD and material day that the subject hereditament made free parking available all day on Sundays and Bank Holidays. It was operated in conjunction by the appellant with the adjacent Rochdale Exchange Shopping Centre. It was argued that when valuing vacant and to let, it was on the assumption that the car park was separate from the shopping centre. The VO referred

to *Wishart v Hulse*, where it was stated that "The basis of the valuation is the assumption of a letting to a to a reasonably competent or efficient operator who will expect to achieve a level of income, or turnover and to incur a level of expenditure which are broadly representative of an average level of performance." It was contended that the gross receipts submitted with the challenge did not reflect those of a reasonable operator, as free parking was provided as an incentive to attract customers to the shopping centre. The VO submitted that a more reliable valuation was based on tone and comparable assessments within the wider region.

17. The VO contended that the appellant's sought tone of value for main space was out of kilter with the rates adopted on multi-storey car parking in Rochdale and the wider Northwest region which ranged from £75 to £315 per car park space. It was argued the same for the open surfaced car parking in Rochdale Town Centre which ranged from £75 to £315 per space.

18. The VO further contended that the receipts provided were unreliable due to the presence of a hand car wash at the subject hereditament which was not present in the rating list. It was argued that income from the car wash should be included in receipts for the car park. The VO also argued that free parking at the subject hereditament was not the action of a reasonable operator as multistorey car parks in Rochdale Town Centre such as the Wheatsheaf car park offered none, and the Riverside car park offered four hours free to visitors of Reels Cinema, despite the competition from free local authority car parks which was argued by the appellant.

19. The panel considered the rationale in applying a full income and expenditure approach in the *BNPPDS Limited* judgement and determined that the same should be applied for the subject hereditament. The main reason the shortened approach was rejected by the Upper Tribunal in that instance was that although it was convenient, it was prone to error unless the valuation was supported by a rigours analysis of available rental evidence and comparison with agreed assessments where there was a settled tone derived from rental evidence or fair maintainable trade (FMT). In the subject appeal, the comparable assessments relied on by the VO were not provided with any rental evidence and merely the number of car parking spaces and adopted tones of value per parking space. Furthermore, the VO had included assessments of open surfaced car parks in Rochdale and multi-storey car parks in the Northwest Region. The panel found such comparables of little use in supporting any such tone of properties similar to the subject hereditament as some were of a different type and some were remote from its locality.

20. The panel found that the VO had essentially 'jumped the gun' in dismissing the full income and expenditure approach on the basis of its perceived reasonableness of the operator and the impact of free parking on the reliability of the gross receipts. The panel considered that whilst receipts should be examined to ascertain whether they fairly represent those likely to be earned by the hypothetical tenant, valuers should avoid the danger of assuming they know better than the actual occupier how to finance or control a business. A valuer can account for any perceived out-of-the-ordinary activities by making adjustments to the accounts when adopting their own respective figures to determine RV when undertaking an income and expenditure exercise.

21. The panel was satisfied that the VO had not demonstrated that rental evidence was used which established a tone of assessments similar to the subject hereditament in its locality, and as per *BNPPDS Limited*, it determined the appropriate method of valuation was a full income and expenditure application. As the VO had rejected the appellant's representative approach, no evidence had been provided as to its perceived RV of such an approach. Accordingly, the panel issues directions inviting the parties to submit the accounts and their respective approaches to that method of valuation.

22. Having determined that the subject hereditament should be valued using a full income and expenditure approach and in the absence of any appeal to the Upper Tribunal, the Tribunal issues the following directions to the parties pertaining to evidence disclosure, and its intention is to re-list the appeal in order to determine the RV of the subject hereditament with effect from 1 April 2017.

Directions

23. The panel **directs that**—

(a) Unless the disposal of this appeal is agreed by the parties or this interim decision is appealed to the Upper Tribunal (Lands Chamber), the appeal shall be listed to a hearing to determine the correct valuation of the subject hereditament using a full income and expenditure approach (which may be heard by the same or different members of the Tribunal) to take place not earlier than ten weeks following the issue of this interim decision;

(b) the **respondent VO and appellant's representative** shall, no later than **5pm on 29 April 2025**, serve upon the opposing party and the Tribunal their full submissions regarding their respective valuations of the subject hereditament on a full income and expenditure approach; this should be based on the accounts which were referred to at challenge (please exchange the accounts again if necessary, at the earliest opportunity);

(c) the **respondent VO and appellant's representative** shall, no later than **13 May 2025,** serve upon the opposing party and the Tribunal, any rebuttal to the opposing party's evidence should they wish to do so;

(d) the parties must file any documentation with the Tribunal by email to appeals@valuationtribunal.gov.uk, ensuring that the appeal number is included.

(e) unless otherwise agreed by the parties, service in accordance with the proceeding directions shall be made –

(i) when serving upon the **appellant's representative**, by email to Peter.Gould@Colliers.com;

(ii) and when serving upon the **respondent VO**, by email to neville.ferreira@voa.gov.uk;

(f) either party is at liberty to apply for a variation of these directions;

(g) a failure by a party to comply with a requirement of these directions may –

(i) in the case of the **appellant's representative**, result in the striking out of these proceedings or in the exclusion of all or part of their evidence or arguments, or

(ii) in the case of the **respondent VO**, result in their barring from further participation in these proceedings or the exclusion of all or part of their evidence or arguments.

Date: 4 March 2025

Ratification

24. Following the release of the interim decision and directions for subsequent evidence disclosure, the parties notified the Tribunal that they had agreed a reduced RV for the subject hereditament at £60,500 with effect from 1 April 2017.

25. The panel was satisfied that there were no longer any matters in dispute and therefore ratified the agreement.

Order

26. 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 £60,500 with effect from 1 April 2017. The respondent must comply with this order within two weeks of its making.

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

Date: 26 March 2025

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.
