

THE VALUATION TRIBUNAL FOR ENGLAND



Non-Domestic Rating, fit out costs, burden of proof, test of whether fit out added value to the assessment, in one case all fit out costs taken as no breakdown provided and in the other a significantly reduced cost taken. One appeal allowed and the other dismissed.

Re: Ascot House, Maidenhead Office Park, Westacott Way, Maidenhead, Berks, SL6 3QH

APPEAL NUMBER: (1) CHG100018760

Re: Hollywood House, 3rd Floor, Church Street, Woking, Surrey, GU21 6HA

APPEAL NUMBER: (2) CHG100066431

BETWEEN: *Acenden Ltd* Appellant (1)

Fe Fundinfo (UK) Ltd Appellant (2)

and

Dawn Bunyan Respondent

(Valuation Officer)

BEFORE: Mr A Clark (a Vice - President of the Tribunal)

REGISTRAR & CHIEF CLERK: Mr J Bestow

REMOTE HEARING: 28 July 2021

Appearances:

Mr Cain Ormondroyd of Francis Taylor Building on behalf of the Appellants.

Ms Sarah Sackman of Francis Taylor Building, instructed by Mr G Little of HMRC, on behalf of the Respondent Valuation Officer.

Expert Witness evidence provided by:

Mr David Wagstaffe (in writing only as unable to attend due to ill health);

Mr Aidan Bailey MRICS (present)

Mr Stephen C Jones MRICS (present)

Mr Phillip Emerick (present)

Summary of decision

1. The Valuation Officer had significantly over calculated the value of the fit out costs in respect of Ascot House which, when adjusted, produced a rent of £847,947 at £179.72 per m². This I amended to £180 per m² and in the absence of better evidence to the contrary, was taken for the valuation and an entry of RV £875,500 from 1st April 2017 ordered to that effect as the entry in the Rating List was not reasonable.
2. However, in respect of Hollywood House the Appellant failed to provide a breakdown of the fit out costs so the full amount was taken (as the burden was on them to provide the necessary details). On that basis and with some rental evidence in support (but by no means all) the appeal was dismissed as the entry in the Rating List was not unreasonable.

Introduction

3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. By virtue of Part 2

Regulation (5)(arrangement for appeals) and Regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to face to face hearings. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.
5. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by me before coming to my decisions. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.
6. These appeals were heard together, primarily as test cases, in accordance with the Tribunal's procedure regulations. In accordance with the Tribunal’s Consolidated Practice Statement the Appellant's case was presented first.
7. The parties' bundles were provided in advance of the hearing. The new bundle followed a case management hearing on 19th May 2021 where the parties sought agreement and Directions on the evidence to be provided. At that hearing the parties agreed to produce and exchange new evidence (in accordance with regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009 (as amended) so that not only were the parties able to better understand each other’s case, but that I would be in a position to make a more meaningful decision. I was grateful to the parties for their cooperation.

Background

The Hereditaments

Ascot House

8. Ascot House was a 1996 purpose built headquarters office building located within Maidenhead Office Park on the outskirts of Maidenhead. The

property was located 4 miles from Junction 8/9 of the M4 and 4 miles from Maidenhead Railway Station.

9. The Landlord carried out a comprehensive “Category A” refurbishment between 2012 and 2015.

10. The First Appellant carried out fit out works of £3,454,238 net of VAT.

11. The parties had agreed that within the commercial office market Category A and B typically contained the following works:

- Cat A
 - - Raised floors and suspended ceilings
 - - Basic mechanical & electrical services
 - - Fire detection & smoke alarms
 - - Air Con & Ventilation (HVAC)
 - - Internal Finishes

- • Cat B
 - - Fully fitted kitchen and communal office amenities (e.g. tea points)
 - - Partitioning, incl. meeting rooms, offices and breakout spaces
 - - Floor coverings (if not provided in Cat A)
 - - Workstations & furniture-not rateable
 - - Re-routing mechanical & electrical services being alterations, additions and alterations to existing Cat A works.

- - IT Installation-personal & not rateable

- - Design & Brand detailing-not rateable

12. The relevant terms of the Ascot House lease were provided by the Respondent as follows:

- a. The subject property was an open market letting dated 12th October 2015 with a headline rent of £1,123,375 per annum. The term of the lease was for 11 years, with a 15 month rent free period and a reduced 50% rent for 8 months (cl. 2.1), with a tenant break option in the 6th year, with no penalty, but with a 3 months rent-free incentive to remain.
- b. The lease contained obligations on the tenant to keep the premises in good repair (cl. 3.7) and to decorate the interior and exterior during the term (cl 3.8). Alterations could be made with the consent of the landlord (cl. 3.11) save for adding partitions which could be done without specific consent (cl 3.11.4). The tenant was expected to yield up the premises vacant but with all fixtures, fittings and additions to the premises in place (save for the tenant's branding etc.) (cl. 3.9.1).
- c. Rent reviews were covered by Schedule 4 of the lease. The assumption made under the lease was that at the review date (at year 6), the premises were for "*immediate use and occupation for trading*" and were "*fully fitted out and equipped to meet the requirements of the willing tenant*" (Sch 4, 1.1.5). The reviewed rent was the "*market rent*" defined as the yearly rent at which the Premises might reasonably be expected to be let as a whole in the open market, vacant in a fitted out state (Sch 4, cl 1.1).

13. The VO's position was that the total value for Ascot House equalled an adjusted rent of £1,111,427 per annum which had been rounded down to £1,110,000 in terms of rateable value (RV) from 1st April 2017.

14. That comprised of:

1st floor - 2384.47 m² @ £230 m² = £548,428

2nd floor - 2333.69 m² @ £230 m² = £536,749

105 car parking spaces @ £250 per space = £26,250

15. The Appellant was seeking a RV of £850,000.
16. A rateable value (RV) of £1,110,000 was entered in to the compiled Rating List with effect from the 1st April 2017. The Appellant challenged the entry on 27th February 2018 seeking a value of £790,000 and a VO's Decision Notice was issued on the 25th February 2019. This was followed by the Altus Group (on behalf of the Appellant) serving a Notice of Appeal dated 24th May 2019 on the Tribunal on the grounds that the valuation was unreasonable and that the RV should be reduced to £730,000 (ITMS $4,718.16/m^2 @ £150/m^2 = £707,724 + £26,250$ for car parking spaces).

Hollywood House

17. The 3rd Floor of Hollywood House was housed in a 6-storey office building, located in Woking town centre. The property was some 4.7 miles away from the M25 and 1 mile away from Woking Railway Station
18. It was constructed in 1990 and refurbished in 2011. The Second Appellant fitted out and occupied the property in 2014.
19. The expenditure on fit out undertaken by the Second Appellant was a total amount of £330,000 (exclusive of furniture).
20. No detailed breakdown of the costs of the tenant works had been provided even though the case was selected by Altus as a test case. However, the tenant had provided a general description of the fit out works carried out in Jan-March 2014 which referred to partitioning, server room and generator supporting their servers, kitchens, lights and blinds.
21. The relevant terms of the Hollywood House lease were as follows:
 - a. The subject property was a letting effective from 1st January 2014 at a headline rent of £154,448 per annum with 15 months' rent free and a tenant break option in the 5th year, with no penalty and a further nine months' rent free granted if not exercised. The rent free period was specifically linked to the tenant undertaking a full fit out of Hollywood House.

- b. Schedule 3 contained the tenant's covenants which included an obligation to decorate (cl. 5.1), maintain the premises in good repair (cl. 6.1) and to yield up the premises *with* all additions and improvements at the end of the lease term (cl. 8.1.1). Structural alterations required the landlords consent but installation or alteration to partitioning did not (cl. 17).
- c. A rent review took place after 5 years (Schedule 6). The reviewed rent would be a market rent (defined at Schedule 6 cl. 3.1) based upon the assumption that at the review date "*the willing tenant has carried out and completed its fitting works at its own costs and has had the benefits of inducements (including any rent free or reduced rent period) to compensate the incoming willing tenant for the time and inconvenience of having to fit out the Premises which are accordingly ready for immediate occupation and use by the willing tenant for the purpose of its business*" (Sch 6, 3.1.8)

22. The VO's position was that the RV for Hollywood House was correct at £173,000:

$$824.69 \text{ m}^2 @ \text{£}210 \text{ m}^2 = \text{£}173,185 \text{ (say } \text{£}173,000)$$

23. The Appellant was seeking a reduction to RV £140,000

$$824.69 \text{ m}^2 @ \text{£}170 \text{ m}^2 = \text{£}140,197 \text{ (say } \text{£}140,000)$$

24. A rateable value of £173,000 was entered in to the compiled Rating List with effect from the 1st April 2017 for the appeal hereditament. The Appellant challenged the entry on 7th January 2019 seeking a value of £136,000 and a VO's Decision Notice was issued on 13th February 2019. This was followed by the Altus Group (on behalf of the Appellant) serving a Notice of Appeal dated 13th June 2019 on the Tribunal on the grounds that the valuation was unreasonable.

Facts

25. A statement of agreed facts had been provided.

Preliminary Point

26. I received advance notice by email from Mr G Little on 23rd July 2021 of a preliminary issue in respect of the expert witness report rebuttal of Mr Emerick. Mr Emerick had replaced Mr David Wagstaffe as expert due to long term illness and produced a rebuttal statement which had formed part of the hearing bundle (the bundle was agreed at the case management hearing).

27. Mr Little brought to my attention that in the rebuttal:

- a. Mr Emerick fully endorsed Mr Wagstaffe's expert witness report;
- b. Mr Emerick had in his rebuttal report drawn attention to any matter which would affect the validity of his opinions contained in the report;
- c. Mr Emerick understood his duty to the Tribunal and had complied with it in giving his evidence partially (*sic*) and objectively;
- d. Mr Emerick confirmed he had no conflicts of interest of any kind other than those already disclosed in this report;
- e. Mr Emerick's report complied with the requirements of the Royal Institution of Chartered Surveyors (RICS), as set down in its practice statements on Surveyors acting as expert witnesses; and
- f. Mr Emerick was acting in the role of expert witness and that he was instructed on a contingency based fee which complied with the RICS guidelines.

28. Mr Little advised that the Respondent didn't accept that Mr Emerick's contingency fee based instruction complied with the requirements of RICS Practice Statement 10 on Conditional Fees. The Upper Tribunal in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 253 (LC) stated that:

"it remains wholly unacceptable for an expert witness, or the practice for which he or she works, to enter into a conditional fee arrangement, without that fact being declared (and in sufficient detail) to the Tribunal and any

other party to the proceedings from the very outset of their involvement in the case. The Tribunal will treat such a failure as a serious matter.”

29. Mr Little was of the opinion that Mr Emerick had not provided the Tribunal with any detail as to the nature of his success based fee. Mr Little stated that the Respondent had reason to believe (but did not know because Mr Emerick's declaration was silent on the point) that in the event of success Altus was in fact entitled to a very significant percentage of the savings in rates liability owing to the ratepayer. Ms Sackman asked Mr Emerick the question at the hearing and to which he replied he was unable to answer as he didn't know the basis of the fee arrangement.
30. A further serious concern Mr Little had was that there were a significant number of Altus represented appeals stayed pending the outcome of the test cases and that not only did Mr Emerick need to be impartial but needed to be seen as such. Mr Little considered he was not and that view was reiterated by Ms Sackman, on behalf of her clients, at the hearing.
31. Mr Ormondroyd argued against any exclusion of evidence on the basis that it was the practice of the VTE to accept evidence from those operating under a conditional fee as it fell very much within the practice and the procedure of the Tribunal.
32. I had already indicated prior to the hearing that I intended to accept the evidence of Mr Emerick and heard nothing during the preliminary point to change my opinion. Mr Emerick has appeared before me on a number of occasions and I have always found him to be professional and when giving evidence acting in accordance with the professional standards required.
33. The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended) required the VTE to, amongst other things, avoid unnecessary formality and enable the parties to fully participate in proceedings. Regulation 17 allowed me to admit evidence whether or not the evidence would be admissible in a civil trial in England (where Mr Emerick's evidence would most likely not be allowed). Furthermore, if I did exclude this evidence it would result in a postponement

of proceedings which would result in a delay which was avoidable, particularly as I had held a case management hearing where the parties agreed to vary their cases in accordance with Regulation 17(A) (1)(b).

34. However, I have considered the weight to be given to Mr Emerick's evidence in view of the significant reward his company would receive on the basis of the conditional fee arrangement.

Issues

35. These appeals were heard by me as 'test cases' at the request of the parties to clarify the correct approach to tenant's ingoing works when determining rateable value.

36. They followed on from an earlier decision of mine in relation to *Butterworth Laboratories Ltd & Berks & Bucks FA Ltd v. Smale (VO)* (CHG100059487 & CHG100057542).

The Law

37. The statutory hypothesis is contained in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988. The statutory definition of rateable value is as follows;

2

(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.

38. For the purposes of these valuations I was considering the rental value (RV) at 1st April 2015 (AVD). Although the rateable value was determined having regard to the AVD, the valuation must reflect physical facts relating to the property and its locality as at the time the date the assessment was made or amended (called the material day). Paragraph 2 (6) and 2(7) of Schedule 6 to the Local Government Finance 1988 set out the matters which are relevant for these appeals:

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.

(7) The matters are—

(a) matters affecting the physical state or physical enjoyment of the hereditament,

(b) the mode or category of occupation of the hereditament,

(c) ...,

(cc)...

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and

(e) the use or occupation of other premises situated in the locality of the hereditament.

39. The material day for the appeals in dispute was 1st April 2017. Nothing appeared to turn on the date and the parties appeared to agree the circumstances surrounding each hereditament at the material day.

40. In the *Butterworth* cases I set out a framework, following analysis of the case law provided, which I believed would assist parties in considering such cases:

Preliminary Point – Analysing Tenants Improvements on Rents

23. *I have set out below how I would approach analysing rents on the basis of the information provided to me in the two appeals. This will not address all cases but hopefully may provide some direction for parties (or a starting point for the Upper Tribunal (Lands Chamber) if my decisions are appealed). I must add at this point that I am only analysing for the purposes of valuing once a list is in force and not necessarily the information that may be used to form a list. I believed there to be a significant difference between the two.*

Identify the class of hereditament to be valued

24. *The starting point must be to identify the class of hereditament and those matters which will affect rateable value. For example, no-one would add to a rent the cost of tenant's plant and machinery which wasn't rateable. If a tenant's improvements will not be included in the valuation, then they should not be added to the rent.*

Improvements or replacement?

25. *The next issue would be to identify tenant's improvements to the hereditament rather than replacements. A tenant may replace certain*

elements which were already included in the agreed rent such as lighting or air conditioning. If the cost of those changes are included as

'tenant's improvements' and added to the rent then there becomes an element of double counting in that they are included twice. However, upgrades may be included where the evidence from the area indicates they impact on rents. However, the danger of including all of the cost is that it may reflect the cost of removal of the old system as well as replacement of a new system rather than just the increased value of the improvement.

Office requirements

26. There are some items that the vast majority of tenants would expect to have in place due to the size of the hereditament and location of the hereditament. For example, it may be that most offices of a certain size would have a kitchen. Where one doesn't exist but is subsequently added by the tenant, the cost of the improvements should be included.

However, if the evidence was that the absence of a kitchen didn't affect rents (maybe due to the premium value of offices and the number of food outlets close by) then the cost of such improvements may be disregarded.

Location and class relevance

27. There will be certain items that will have an impact on rent depending on the location of the premises. For example a shop or office within the jewellery sector would expect to have security measures on the doors and rents will reflect that. I would expect that an office which hadn't and the tenant incurred the expenditure then it would be included as a tenant's improvement. Where there is no evidence that such security impacts rents then there would be no reason to include it as the expectation would be that any future tenant would remove it or not be interested in paying more for it.

41. The Respondent appealed my decision to the Upper Tribunal but then withdrew and since then, it would appear, has accepted my approach.

Discussion

42. Both parties had agreed following my decision in *Butterworth*, which I repeat was after analysing the case law, that these were offices of a type that tended to be let on a stripped out basis and the tenant then undertook a fit out. The issue or test in these appeals was whether all or any of the fit out works had general appeal in the rental market place and if they did, what impact they would have on the rental bid and consequently the RV.

43. These appeals were slightly different to those that I heard earlier in the *Butterworth* decision in that they offered category A office space (see earlier under property details) only and as promoted by the Respondent, would need some works undertaken (reference *Porter (VO) v. Trustees of Gladman Sipp* [2011] RA 337). The Appellants took a slightly different approach in arguing that in the real world the tenant would invariably rent offices such as those considered in these appeals where they were only fitted out to category A standard and then proceed to fit out in accordance with their own requirements. At the end of the lease the landlord would require the tenant to strip out their fittings reverting the premises to cat A standard. A classic example of this was Canary Wharf where once each tenant left the offices an automatic strip out took place.

44. Whilst this was the case, it could be argued that it supported the Respondent's case in that once the strip out occurred the office was no longer capable of beneficial occupation. I believed that in both appeals, given their condition when the tenants acquired them, some degree of fit out was required to make them fit for occupation. The question in both cases was how much and therefore what adjustment to the rent was required. Once that was decided I would be able to take a view on the rateable value based on the rent and comparable evidence.

Ascot House Fit Out

45. Once I had dismissed the Appellant's view that no fit out was required, which quite frankly didn't get out of the starting blocks, I needed to consider which elements would have 'rental appeal to the market'.

46. The particulars for Ascot House provided the following detail:

Ascot House is a 51,000 sq ft two-storey building forming part of the c. 260,000 sq ft Maidenhead Office Park campus located within established parkland on the western edge of Maidenhead.

The available accommodation is self contained and is approached via a private reception area. The ground floor accommodation and reception area have recently been comprehensively refurbished to a high-quality specification including the following:

- *New chiller/ overhauled four pipe fan coil air-conditioning;*
- *New metal ceilings with LG7 compliant lighting;*
- *Refurbished double – height reception area;*
- *New ground floor shower-room;*
- *New male and female WCs*
- *8 person passenger lift;*
- *Full access raised floors with 225mm void;*
- *Ceiling height 2.695m;*
- *3 tennis courts; and*
- *159 parking spaces*

47. It was interesting to note that a 'High-quality fit out on 1st floor available by arrangement' was offered within the particulars. The photographs of the first floor in the particulars showed a completely open plan office but with

raised floors which were carpeted, air conditioning vents and lighting within the ceiling. The photographs suggested to me good quality offices in a good location and, due to their size and location, either head office/regional office accommodation or a flagship office for a business within the area (the particulars stated that Avaya, Genband, Quest Software, Covance and ToysRUs had an office presence) . It's location was within the Maidenhead Office Park campus and just 4.5 miles of the M4 motorway, 3.9 miles west of Maidenhead Train Station and 32 miles west of Central London.

48. In the alternative the Appellant did propose some fit out costs and I have, therefore, accepted all of these as being required. Mr Emerick put forward a figure of £500,000 for fit out costs (rounded down due to valuer judgement as he stated that he had been generous with the figures) made up of the following:

Security	£63,471
Space planning	£9,414
Project Management	£4,173
Site preliminaries & supervision	£36,283
Health & Safety	£5,226
Strip out works	£1,047
Partitioning	£97,169
Doors, frames, skirtings	£51,555
Suspended Ceilings	£6,093
Raised Floors	£4,324
Tea point	£27,923
Storage, shelving & benching	£16,200
Air Conditioning	£103,529

Electrical works	£112,959
Lighting	£11,424
Fire detection	£1,522
Misc	£1,200
Total	£553,512

49. I do not make any valuer adjustments to that figure, as proposed by Mr Emerick, but the question was whether it included all those matters that would give rental value in the open market (and wouldn't be deducted to determine RV such as non-rateable plant and machinery).

50. After careful consideration of the comprehensive detail provided by the Respondent and the experts opinion I decided to increase the figure by the following:

Glazed partitions £16,157

Acoustic barrier £14,700

Kitchen/canteen £139,550 (£329,618 less £190,068 as I excluded design costs, kitchen equipment and floor coverings)

51. I have done this as I consider that partitioning that creates meeting rooms along the periphery of a floor would add general value and be needed by the vast majority of potential tenants and that a canteen would be required given the size of the offices, location (no close by alternative) and such facilities being provided within other offices within the park.

52. This increased the figure of fit out costs adding general value to £723,919.

53. The parties invited me not to examine the minutiae but look at what they called the 'big ticket' items. In particular I didn't include any costs for additional showers when some were provided on the ground floor and it

seemed to me a matter of choice. I didn't accept Mr Emerick's view that the addition of showers was unlikely due to legionella issues from the shower heads though (an example where I gave little weight to his evidence due to the conditional fee arrangement under which his company operated). The remaining costs I disregarded relied on the layout required by the occupier which I believed wouldn't have general appeal to the market.

54. I also didn't increase the costs that Mr Emerick provided by additional amounts proposed by Mr Jones stated that provided specific additional costs on the basis of the layout by the Appellant which I found far to prescribed for general market appeal.

Hollywood House

55. The Agent for the Appellant identified Hollywood House as a test case and then was unable to provide a breakdown of the total agreed costs of £330,000. Mr Emerick stated it was by common acceptance that the expenditure included monies to cover partitions, a kitchen and associated works of adaption to air conditioning. Mr Emerick then took 23% of the total, on the basis of his approach at Ascot House, plus 5% for unknowns. With the greatest respect to Mr Emerick this was no more than a 'guesstimate'.

56. The legal burden falls on the person who takes the consequence that an issue cannot be established or the person who seeks to disturb the status quo at the time of the case (the person making the appeal). The legal burden never changes. It only becomes a consideration if the Tribunal is unable to make findings of fact relevant to the issue before them on a 'balance of probabilities' basis.

57. The evidential burden determines who has to produce (further) evidence in order to succeed on a particular issue. It will often vary from party to party during the hearing, depending on the state of the evidence at any particular time. It tends to be referred to as the weight of evidence.

58. The standard of proof is the degree of likelihood with which an issue must be established. In practice, the law usually has to be applied to facts established on the basis of probability rather than certainty. This was the case here where the Appellant failed to provide detailed costings. Probability is the measure of confidence that a Tribunal has in its finding of facts. The civil standard of proof was addressed by Denning J in *Miller v Minister of Pensions* [1947] 2 All ER 372:

If the evidence is such that the tribunal can say 'We think it more probable than not', the burden is discharged...

59. In *Irving Brown and Daughter v Smith (VO)* RA/421/1993 the Lands Tribunal looked at this point. Mr P H Clarke FRICS said on the point in respect of an appeal on a former shop and mode and category of use:

Thus the onus is on Mr Brown to show me that the decision of the valuation tribunal is wrong and that his contention is well founded. The evidential burden is placed on both Mr Brown and the valuation officer in respect of the issues of fact on which each has put forward evidence. To succeed each must prove the facts he puts forward.

60. The evidential burden required me to agree on the point put forward by Mr Emerick on the percentage to take, that it is more probable than not to be an appropriate figure. I simply cannot say so or even that it was close to the figure to take. I have no doubt that fit out costs are very much personal to each occupier and vary greatly. In some cases tenants might spend a lot on equipment and little on fit out which would have little impact on general rental value (large open plan areas) but in others the opposite may occur. This was precisely why both parties considered I needed to identify those costs that had general appeal in rental terms from the actual figures provided. If I did anything else I would give the green light to a general percentage approach which I believe would be wrong in the vast majority of cases. The burden was on the Appellant to provide the actual breakdown if they wished to challenge the total figure of fit out and this they failed to do. The tenant in his Form of Return stated the £330,000 fit out costs excluded furniture. It may be that the tenant thought that all the costs quoted were

purely for the building and therefore could have added value. Therefore, I just took the total fit out cost.

Rental adjustment for fit out costs

61. The parties required me to adjust the total fit out costs to reflect an annual rental figure. There was much dispute over the approach to take. After careful consideration I decided to follow my decision in *Butterworth* and took the costs over the term of the lease (eleven years) at a rate of 7% for Ascot House. I have taken the same approach but reduced the term to ten years for Hollywood House.

62. I have not taken the prescribed decapitalisation rate for valuation as promoted by Mr Ormondroyd on behalf of the Appellants. That was the basis on which it was argued that the Upper/Lands Tribunal had previously approached such 'virtual rent' calculations: *Dorothy Perkins Retail Ltd v Casey (VO)* [1994] RA 391 at p415; *Berry (VO) v Iceland Foods Ltd* [2015] RA 201 at [100]-[101]. The reason for this was that at this juncture I was trying to adjust the rent not the RV to reflect the fit out costs. Furthermore, without the fit out costs being adopted into the rent no hereditament exists and that in these appeals there is open market rental evidence on which to determine the RV.

63. This then left the question as to whether any further adjustments were required to reflect the substantial rent free period given by the Landlord. In *Butterworth* I had concluded that I would continue with the previous method of adopting part of any rent-free period for fit out costs.

64. In respect of Ascot House the tenant received a rent free period of 15 months followed by eight months at half rent. The lease required any fit out works to remain in situ when the tenant vacated.. The fit out works were bound to take some considerable time to complete. The Respondent put to me that any rent free/half rent periods were used in fitting out the premises and the expenditure occurred and could not be said to be an incentive. In respect of Hollywood House the tenant stated on the Form of Return that

the 15 month rent free period was given because “full fit out was required costing £330k excluding furniture”.

65. Mr Ormondroyd in his skeleton argument stated the following:

“The parties have agreed the adjustment and analysis of these rents, excluding fit out, at £159/m² (Ascot House) and £147.95/m² (Hollywood House). They are each reasonably near to the AVD (1 Jan 2014 and 1 Jun 2015 respectively). As such, they form a solid starting point for the valuation. The only substantive issue is as to the adjustment required on account of tenant’s works.”

66. The Appellants had conceded in the expert witness statement of Mr Wagstaffe that no adjustment was required for the reduced rent/rent free period for either appeals. Similarly the Respondent argued that none was due so I didn’t need to address the point.

67. An alternative, and somewhat surprising, late view was provided by Mr Emerick on rent free periods which largely became his primary argument. Given the earlier concession by the first Altus expert and counsel’s argument I found it difficult to accept (another example of where I gave little weight to Mr Emerick’s evidence due to his firm’s conditional fee arrangement). I have addressed it in my decision though.

68. No adjustment was needed to remove the car parking spaces as they had already been stripped out in providing the base figures.

69. Therefore the rents I calculated were as follows:

Ascot House

YP 11 years 7%=7.4062 =£97,744 which equals £20.72 per m².

Added to £159 equates to £179.72 per m²

Annual Rent: £179.72 per m² x 4718.16 m² = £847,947

Hollywood House

YP 10 years 7%=7.0236 =£46,984 which equals £56.97 per m².

Added to £147.95 per m² equates to £204.92 per m²

Annual Rent: £204.92 per m² x 824.69 m² = £168,995

70. There were no further adjustments to make. However in accordance with *Lotus and Delta Ltd v. Culverwell (VO)* [1976] RA 141 the rents on the appeal hereditaments were only the starting point and they needed to be checked against other comparable property rents and then comparable assessments.

Comparable Rents

71. Both parties criticised the quality of each other's comparable evidence. Mr Bailey in his expert witness report commented on the lack of evidence of fitted out offices as the attraction for tenants was that they can fit out as required and therefore rarely let on that basis.

Ascot House comparable properties

Millennium House, Ludlow Road, Maidenhead SL6 2SL

72. A lease renewal took place in December 2015 and the rent analysis of a fitted space (as agreed with the Appellant) equated to £232.67 m² and a tone of £230 m².

73. This was probably the best of the rental evidence for Ascot House but was a rent renewal. According to the Appellant it was in a superior town centre location. Mr Emerick also believed it wasn't an arm's length transaction but provided no evidence to support that contention and I didn't accept his evidence (another example of where I gave little weight to his evidence due to the conditional fee arrangement under which his company operated).

Osprey House

74. This was let from January 2013 on a ten year lease with a 24 month rent free period which analysed, for a property which excluded fit out, to £125.24 m².

75. I found this lease too far removed from the AVD to be of assistance.

Hollywood House comparable properties

7th Floor Block C, Dukes Ct, Dukes Street, Woking GU21 5BH

76. This was a new let in November 2014 (disputed as the Appellant states it was a lease renewal) with an agreed rental analysis of £237.44 m². The key terms of the let (for the purpose of the appeal) were that the ingoing works amounted to the erection of one internal wall and no rent free period was given by the Landlord.

4th Floor Hollywood House, Church Street, East Woking GU21 6HA

77. A sublet in January 2016 for a period of two years and ten months with an agreed rental analysis (according to the Respondent) of £230.45 m² and a tone applied of £210 m².

78. The statutory definition of RV required the annual lease to have some expectation of continuance. Generally a premium will be paid for such a short term and therefore I didn't consider the rent was primary evidence. It was stated by the Appellant that an uplift of 50% on the rate for a hereditament in the vicinity (£150 m²) would seem excessive and indicated a premium was paid for the short term (although no evidence in support of this was provided).

4th & 5th Floors Hollywood House, Church Street, East Woking GU21 6HA

79. According to the Appellant the agreed tone (excluding fit out) was £148.69 m².

1st, 2nd & 3rd Flrs Cobham House, Woking GU21 6JD

80. This was a February 2014 lease which equated to £201.06 m² but had been placed in a different valuation scheme and therefore I'm not sure of the helpfulness of the rent. It was also put to me as being more modern.

1st Flr Left 4, Foundation Park, Roxborough Way SL6 2UD

81. This was a much smaller property of only 453.90 m² where the June 2016 lease equated to £179.77 m² for a property which excluded fit out. This property was of no assistance.

1st (& 2nd) Floor 7, Foundation Park, Roxborough Way, Maidenhead SL6 2UD

82. This was let from July 2015 on a ten year lease with a 16 month rent free period which analysed to £167.87 m². The rental analysis excluded any fit out.

Syngus Court, Market Street, Maidenhead SL6 8AD

83. There is no rental details for this property but details from an SDLT. On that basis where, reviews, break clauses and other such information is missing, the evidence had little value.

Agreed Assessments

84. The Ground Floor, 4 Maidenhead Office Park was agreed on the grade B scheme on the basis it had not been refurbished since being built in 1996 at a rate of £175 m².

85. The assessments at 1&2 and 3 Roxborough Way were agreed at a lower rate (£140.21 m² and £150.68 m²) as they were at the end of their life as offices (confirmed by the agent).

86. The assessment at Abbott House, Vanwall Business Park, Vanwall Road, Maidenhead, SL6 4UB was agreed at £175.00 m² for a property built in 2000 and graded type B (as not been updated since).

87. A challenge case in respect of the 12th Floor The Blade, Reading was settled, without appeal, on the basis of the approach taken by the Respondent to fit out costs.

The Decision

88. In accordance with *Lotus* the starting point was the rent on the appeal hereditament adjusted to terms of rateable value.

89. In respect of Ascot House the adjusted rent was £847,947 or £179.72 m².

The only useful comparable was Millennium House. However, it was not a new lease but a renewal and in a superior location. The £230 m² would suggest that Ascot House was on the low side but it could be argued that if the starting point was Ascot House (which in this case it was) that Millennium House was very much on the high side.

90. Does the rent on Millennium House displace the rent on Ascot House? I do not believe so. The agreed assessments assist to an extent in that 4 Maidenhead Office Park had been agreed at a rate of £175 m². How does that equate to Ascot House? It would seem obvious that the refurbished office block at Ascot House must be worth more and indeed would lay to bed any suggestion by Mr Emerick of further allowances on Ascot House for rent free periods. The question was how much more. The photographs from the outside of refurbished and original buildings don't really suggest much difference to the naked eye. However, they must have had some impact as otherwise the landlord wouldn't have undertaken the work prior to the letting. I would certainly move the rate up to £180 m² but was it sufficient? In conclusion the adjusted rent would suggest it was. This produced a rateable value of £ 875,500 made up as follows:

1st floor - 2384.47 m² @ £180 m² = £429,204

2nd floor - 2333.69 m² @ £180 m² = £420,064

105 car parking spaces @ £250 per space = £26,250

Total = £875,518

Say £875,500

91. This was significantly lower than the value in the List and I had no hesitation in deciding that the entry at 1 April 2017 was not reasonable, the Rating List should be altered and any fee paid refunded.

92. In respect of Hollywood House the annual adjusted rent equated to £168,995 or £204.92 per m². This was remarkably close to the value in the list at £210 m². The 2017 Rating List Regulations required me to consider whether or not the value in the List was unreasonable. I do not believe it was unless other rental or comparable evidence resulted in me coming to a different conclusion.

93. The rent on Dukes Court supported the Hollywood House entry in the List. The rent on 4th Floor Hollywood House was higher but in my opinion not necessarily under the terms of RV. However, the higher rate achieved would not displace the lower tone sent (although not one on its own I would rely on).

94. This just left the rents at 4th & 5th Floors Hollywood House and 1st (& 2nd) Floor 7, Foundation Park. The agreed tones were significantly below that for the appeal hereditament but both figures excluded fit out and not directly comparable. Both were significantly lower but I didn't believe displaced the earlier rental evidence for properties with a fit out. I reached the same conclusion in respect of the comparable assessments.

95. In conclusion the entry in the Rating List for Hollywood House was not unreasonable and therefore the appeal was dismissed.

Order of the Tribunal

The Valuation Officer is ordered to amend the Rating List within two weeks to:

Ascot House, Maidenhead Office Park, Westacott Way, Maidenhead, Berks, SL6 3QH RV £875,500 from 1 April 2017.

Date: 4 August 2021

Appeal numbers: CHG100018760, CHG100066431



Vice - President



Registrar