UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2022] UKUT 129 (LC) UTLC Case Number: LC-2021-102

Royal Courts of Justice

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – valuation – alteration of rating list – car park forming part of shopping centre – mode or category of occupation – valuation method – receipts and expenditure – shortened method – appropriate divisible balance – effect of material change of circumstances – appeal allowed – assessment determined at rateable value £211,500

AN APPEAL AGAINST A DECISION OF THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

BNPPDS LIMITED & BNPPDS LIMITED (JERSEY)AS TRUSTEES FOR BLACKROCK UK PROPERTY FUND

Appellants

-and-

ANDREW RICKETTS
(VALUATION OFFICER)

Respondent

Re: Car Park,
Putney Exchange Shopping Centre,
Putney High Street,
London,
SW15 1BW

Mark Higgin FRICS FIRRV and Diane Martin MRICS FAAV

Heard on: 3 March 20222

Decision Date: 18 May 2022

Luke Wilcox, instructed by Altus Group, for the appellants
Mark Westmoreland Smith, instructed by HMRC, for the respondent

The following cases are referred to in this decision:

Fir Mill Ltd v Royston Urban District Council and Jones (VO) (1960) 53 R & IT 389

Hughes (VO) v Exeter City Council [2020] UKUT 7 (LC)

Robinson Bros (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee [1937] KB 445

Williams (VO) v Scottish and Newcastle Retail Limited and Another [2001] EWCA Civ 18

Wetherspoon plc v Day (VO) (2008) RA/11/2005

Introduction

1. This is an appeal by the ratepayer against a decision of the Valuation Tribunal for England ("the VTE"), dated 1 February 2021, in which it dismissed an appeal against the rateable value of £229,000 entered in the 2017 list for the Car Park at Putney Exchange Shopping Centre, Putney High Street, London SW15 1TW ("the property").

2. Mr Luke Wilcox appeared for the appellants and called Mr Philip Emerick of Altus Group to give expert evidence. Mr Mark Westmoreland Smith appeared for the respondent and called Ms Nicola Johnson MRICS of the Valuation Office Agency ("VOA") to give expert evidence.

3. The appellant seeks a rateable value of £122,000, assessed using the receipts and expenditure ("R&E") method with a 50% split of the divisible balance. A material change of circumstances ("MCC") is said to have been caused by improvements to the nearby Southside Shopping Centre in Wandsworth ("Southside") and the effect is accounted for by falling gross receipts.

4. The respondent Valuation Officer ("VO") initially sought a rateable value of £259,000, using a percentage of fair maintainable trade ("FMT") (also known as "the shortened method"); the percentage originally adopted was based on a proposed valuation scheme for all types of multi storey car parks. The final figure sought is rateable value £290,000, based on a revised estimate of FMT and a revised percentage. The VO takes a different approach to the MCC by including the effects of building operations at Putney Exchange as well the improvements at Southside. Her adjustment is made as a 5% diminution in FMT, whereas the appellant utilises the 2017 receipts as the starting point for his approach.

5. At the hearing we were asked to consider four valuation issues, some of which are of wider relevance than to the property alone. First, whether shopping centre car parks are in the same mode or category as stand-alone multi storey car parks. Second, whether the R&E method is to be preferred over the shortened method when valuing shopping centre car parks. Third, the appropriate split of the divisible balance using the R&E method in this case. Fourth, the impact of the MCC.

6. The appellants asked us also to consider a procedural issue, namely whether the VO was entitled to seek a rateable value higher than the figure determined by the VTE, when she had not brought a cross-appeal of his own to challenge the VTE decision.

The Facts

7. Putney Exchange Shopping Centre was built in 1990 with a car park over two levels at rooftop and first floor. Under section 52 of the Town and Country Planning Act 1971 an agreement was entered into with the local planning authority, the London Borough of Wandsworth, placing conditions on implementation of the planning consent and subsequent use of the development. Schedule 4 of the section 52 agreement placed conditions on management of the car park as a short-term shoppers' car park, with controlled hours of

opening and charges no lower than the local parking meter rates. 12 parking spaces are allocated for residential use by flats included in the development.

8. The car park provides 296 spaces, of which 284 are available to members of the public during the opening hours of the shopping centre (currently 6.00 am to 10.00 pm weekdays and 8.00 am to 8.00 pm weekends). Access to the car park is from Lacey Road which formerly ran on an east/west axis from Putney High Street in the direction of Barnes. These days, it is truncated and just serves the shopping centre, neighbouring shops and the Coat & Badge public house.

9. The accessway into the car park is rather narrow and twisty with the roadways demarked by high kerbs. Payment is by means of a 'pay on foot' system with barriers at the entrance and exit. Once inside the car park access to the shops is by means of lifts and stairs located at either end of the parking area. The northern lifts are next to Waitrose, the southern ones are adjacent to the mall entrance to H&M.

10. The appellants own the freehold interest in Putney Exchange Shopping Centre and retain occupation of the car park, which is managed in house. Improvement works were carried out between February 2013 and April 2014 to extend the shopping centre and reconstruct the Putney High Street entrance. Further works took place between August 2016 and May 2017 to reconfigure the central concourse, including repositioning passenger lifts, stairways and walkways. During both sets of works the car park remained open, with access to the retail areas during the later works gained by a temporary pedestrian route or the lifts to Waitrose and H&M.

11. In October 2015 Southside, just over a mile from the property, reopened after extensive improvement works as an extended large, modern shopping and entertainment complex. It is agreed by the parties that this event was a material change of circumstances for the purpose of assessing the rateable value of other shopping centres in the locality.

12. We were provided with trading information by the parties and we will examine it in detail in the decision that follows. At this juncture it is sufficient to say that between 2013 and 2017 the fortunes of the property had been in decline, with the revenue in 2017 financial year being 33.9% lower than in 2013.

The Statutory Framework

13. Rateable value is determined in accordance with the provisions of section 56 and Schedule 6 of the Local Government Finance Act 1988.

14. In summary, the rateable value of the property is represented by its rental value at an antecedent valuation date ("AVD"), which in this case is 1 April 2015, in the context of the physical state of the property and the locality at 1 April 2017 (referred to as "the material day").

Professional Guidance

15. The Joint Professional Institutions' Rating Valuation Forum ("the Rating Forum") published guidance in 1997 titled "The Receipts and Expenditure Method of Valuation for Non-Domestic Rating: A Guidance Note". Although dated, the guidance remains current in respect of methodology and was referred to by both experts.

16. The Valuation Office Agency ("VOA") publishes a technical manual for non-domestic rating ("the Rating Manual"), intended as guidance for valuation officers but freely available on the government website. Section 6, Part 3 provides guidance on the valuation of car parks using the shortened method. As part of Group Pre-Challenge Review ("GPCR") discussions with car park advisors the VOA produced a proposed scheme of valuation ("the proposed scheme") which sought to ascertain the rateable value of car parks by reference to a proportion of their actual gross receipts which would vary by reference to the age, quality and location of the site. Where actual receipts were not available a notional figure would be used. The percentage of gross receipts proposed to be adopted ranged from 30-35%, for older car parks in non-prime locations with inferior access, through to 50% for highly modern car parks in thriving locations. We understand that the GPCR discussions were inconclusive and that the scale was not agreed.

Issue 1: Mode or Category of Occupation: Are integrated shopping centre car parks comparable with standalone multi-storey car parks?

17. In *Hughes (VO) v Exeter City Council* [2020] UKUT 7 (LC) at [45]-[48], the Tribunal (Sir David Holgate, President, and A J Trott FRICS) considered the significance in rating valuation of the particular mode and category of occupation of the property to be valued. It explained, at [18], that one aspect of the reality principle (the principle that the subject property should be valued as it was on the material day) is that the property must be assumed to have been offered to the market for occupation for a purpose within the same mode or category of occupation as that for which it was actually being used on the material day. The relevant mode or category of occupation under consideration in *Hughes* was that of "museum and premises", and one issue between the parties was whether historic visitor or tourist attractions (such as Stonehenge or the Cutty Sark) were relevant comparables (see [45]-[48]). The Tribunal resolved that issue at [202]-[205]; it rejected the view that there was "a clear and material distinction between the two" rendering one ineligible to inform the type of broad analysis that was appropriate to rating valuation, and preferred to view museums as part of a "broader, single mode or category containing a range of properties rather than that there are narrower categories which are self-contained".

18. The appellants' case is that the business model of integrated shopping centre car parks, when taken together with their physical and occupational characteristics, is sufficiently different from standalone multi-storey car parks that, for the purpose of valuation, they constitute a separate mode or category of occupation. Even if that contention is wrong, the physical and occupational differences between them makes reliance on the rents payable for standalone multi-storey car parks a risky and unsuitable guide when valuing integrated shopping centre car parks.

19. Mr Wilcox drew an analogy with the treatment of large shops and department stores, both of which can be referred to generically as "shops", but whose business model and physical attributes are sufficiently dissimilar to place them in different modes or categories of occupation for the purpose of valuation. The same rationale he said, could be applied to car parks if the general purposes, characteristics and uses were sufficiently different.

20. He drew support for his approach from the judgment of Scott LJ in *Robinson Bros (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee* [1937] KB 445, 469:

> "In weighing up the evidence bearing upon value, it is the duty of the valuer to take into consideration every intrinsic quality and every intrinsic circumstance which tends to push the rental value either up or down, just because it is relevant to the valuation and ought therefore to be cast into the scales of the balance before he looks to see the resultant figure on the dial at which the pointer finally rests."

21. Mr Westmoreland Smith described the appellant's stance as misconceived. He noted the Court of Appeal's endorsement in *Williams (VO) v Scottish and Newcastle Retail Limited and Another* [2001] EWCA Civ 18 of the decision in *Fir Mill Ltd v Royston Urban District Council and Jones (VO)* (1960) 53 R & IT 389 that:

> "A dwelling must be assessed as a dwellinghouse; a shop as a shop, but not as any particular kind of shop; a factory as a factory, but not as any particular kind of factory."

22. He also drew support for his position from the Tribunal's decision in *Hughes* where, at [204]-[205], it warned against the risk of identifying the relevant mode or category of occupation by reference to:

> "highly specialised, relatively small groupings of property" and "narrower categories which are self-contained."

Mr Westmoreland Smith also noted that the appellant's approach, which he characterised as unprincipled, departed from the methodology espoused by the VOA Rating Manual. As he acknowledged, the Rating Manual has no statutory authority and is not binding on the Tribunal. It comprises instructions for VOA staff on how to value particular kinds of hereditaments and on the administration of the VOA's statutory functions. It sometimes records agreement between the VOA and particular groups of occupiers or their representatives. The Tribunal has said that such an informed consensus formed between those concerned with rating in a particular sector, "should be followed unless there are good reasons for departing from it" (*Wetherspoon plc v Day (VO)* (2008*)* RA/11/2005). But Mr Westmoreland Smith's assertion that the Rating Manual is "agreed by the VOA and on behalf of a particular category of ratepayers" was not correct and took the Tribunal's comment in *Wetherspoon* out of context (it related to the use of an agreed scheme of valuation between the VOA and the Brewers and Licensed Retailers Association). No such agreement exists between the VOA and car park operators, and the VOA's proposed valuation scheme cannot be said to reflect an informed consensus.

23. We now turn to the expert evidence. On behalf of the appellants, Mr Emerick considered that shopping centre car parks should be distinguished from standalone multi-storeys as the occupier's motive is very different for each type, and the car park served a different market and users. He identified a number of what he termed 'key differences' the first of which was that, in the case of a car park that is integral to a shopping centre, its primary purpose is to serve the shopping centre and its customers, with its use by the general public being a secondary consideration.

24. Secondly, there was a paucity of rental evidence as the majority of shopping centre car parks are owned freehold as part of the wider shopping centre development. However, in his report he identified eight leased shopping centre car parks, two of which (Place Gardens, Enfield and The Spires at Barnet) form part of centres in suburban London locations. He also referred to a survey carried out by Jones Lang LaSalle which identified more than 100 shopping centres with multi-storey car parks, for 11 of which there is reliable, arm's length rental evidence. Ms Johnson had produced in evidence a schedule containing eighteen more. It was not clear whether there was any overlap between these lists.

25. Mr Emerick thought that the facilities offered in integrated sites were of better quality in order to serve shopping centre visitors who anticipated higher standards. He conflated customer expectations for the subject property with those of Waitrose, the anchor occupier of the shopping centre, who he said would demand standards commensurate with their own brand. In a related point Mr Emerick believed that consumer experience assisted in maintaining footfall within the shopping centre which, according to him, was not so critical with a standalone car park. This resulted in higher costs of operation due to higher expectations of both customers and tenants, in relation to security, cleanliness, lighting, facilities, bay size, and technology for payment processing.

26. He considered that discounts in tariffs made available to Waitrose customers lead to a more consistent level of income. Again, support for this contention was lacking, as was his view on the effect this would have on the hypothetical bid. It appears to us that greater certainty of income would have a positive effect on rental value, an outcome that runs counter to Mr Emerick's proposition that the greater costs of running an integrated car park would weigh heavily on the rental bid.

27. Mr Emerick said that the hypothetical tenant (who he identified as not necessarily the landlord of the wider shopping centre and who would not be bound by the actual occupier's covenants, in this case with Waitrose), would have an expectation that the shopping centre would have an anchor tenant acting as the primary draw to the shopping centre. This, he said, helped in cementing the value of the investment, assisted in any financing of the development, and in his opinion was an essential component of development viability. He concluded his assessment by stating that 'it is a fair assumption that the subject property will have an anchor tenant of national status.' It was unclear to us why the actual occupation of Waitrose would be ignored. The reference to the 'subject property' was misconceived as the subject property is the car park, not the adjacent shopping centre.

28. His final key difference was that integrated shopping centre car parks had sensible provision for disabled parking, electric vehicle charging bays, car valeting and larger bays for SUVs. In comparison, standalone car parks were customarily not in such close proximity to the shopping centre, were designed to maximise income from parking and generally were of a more basic and utilitarian standard. This seems to us to be an unsubstantiated generalisation.

29. For the VOA, Ms Johnson strongly rejected the proposition that multi-storey car parks adjoining shopping centres should be valued any differently from multi-storey car parks in general. The property itself had been valued in the same way on preceding Rating Lists and

there was no reason why a previous approach that had been agreed with the main rating advisors acting on behalf of car park operators should be dispensed with.

30. She asserted that both are in the same mode or category of occupation, they serve the same purpose, and most multi-storey car parks are located near to shopping outlets or in commercial centres. She cited the Bentalls car park in Kingston upon Thames as an example as it not only served Bentalls shopping centre but also the town centre shops, offices, and leisure attractions.

31. Ms Johnson explained that multi-storey car parks are all separately assessed hereditaments. Car parks adjoining shopping centres are not assessed with the shopping centre but are rated as separate hereditaments. They have a distinct purpose, are capable of being separately let and form a single geographical unit.

32. In summary, the appellants' case is that integrated multi-storey, shopping centre car parks should be distinguished from standalone multi-storey car parks because the motive for occupation is different, they serve a different market and offer superior facilities. Because they are in a different mode or category of occupation, rental evidence relating to the generality of multi-storey car parks should not be relied on and a full R&E based valuation approach should be preferred. For her part, the VO relies on the instructions in the Rating Manual and does not wish to upset the established methodology.

33. Having heard the evidence we have concluded that neither side's case is particularly persuasive. Mr Emerick dismissed the available rental evidence because it was incompatible with his argument that the shortened method was flawed and should be avoided. He failed to explain how physical or operational differences made standalone car parks an inappropriate comparable. In relation to the operating costs we would have been assisted by a comparison between the property and a standalone comparator in a similar location, but Mr Emerick adduced nothing in evidence to corroborate this point. There was a similar lack of examples in support of the other points he relied on. Ms Johnson provided the Tribunal with a summation of the current practice but no justification as to why it should be continued.

34. This car park would be better described as a roof top car park, most of the spaces being at roof level and open to the elements. However, it exhibits many features common to multi-storey car parks such as ramps for access and egress, barrier systems and passenger lifts. It is obvious, having inspected a significant number of the comparables, that multi-storey car parks come in many forms, often dictated by the physical constraints of the site they occupy.

35. Accordingly, we see no reason to distinguish this car park from any other. We prefer to avoid too narrow a focus on the evidence, as the Tribunal did in *Hughes*. There is no justification for complicating the valuation process unnecessarily by creating ever narrower categories with attendant issues around evidence. Adjustments are likely to be required in the application of the evidence, but it should be well within the capabilities of the expert rating surveyor to make the necessary judgement. It follows that we regard the property as being in the same mode or category as all multi-storey car parks. We now turn to the question of the choice of valuation method, beginning with the available rental evidence.

Issue 2: Valuation methodology: Full R&E or shortened method?

36. The choice of valuation method is between one based on a comparison of rental value with gross receipts or one founded on the deduction of costs from gross receipts to arrive at a balance to be split between the landlord in the form of rent, and a return for the tenant.

37. Mr Wilcox disputed that the shortened method and proposed scheme as adopted by the VOA had been agreed with industry representatives. He noted from the evidence of Ms Johnson that only NCP, who he said occupied 12% of multi-storey car parks nationally, were in agreement about the use of the shortened method but their acceptance could not bind the remaining 88%. The lack of a conclusion to the Group Pre-Challenge Review discussions was, he said, incompatible with the notion that there is an agreed scheme.

38. The choice of valuation method was for Mr Wilcox an issue of principle. There was, he said, insufficient rental evidence to use the shortened method, and this position was exacerbated by the wide geographical spread of the available comparables. We agree with this proposition, but not with his assertion that grouping all multi-storey car parks together obscures nuance pertinent to each once. We also agree that the shortened method necessarily diminishes the role of costs in operating the car park, or as Mr Wilcox puts it: "no reasonable commercial operator determines the true income potential of a site without reference to expenditure". Mr Wilcox notes that the full receipts and expenditure valuation relies on the accounts of the actual occupier, but we agree that this does not diminish its utility. In fact, the shortened method is also reliant on the accounts.

39. Mr Westmoreland Smith asserted that the shortened method is the correct approach but other than stating that it was consistent with the Rating Manual and had been the VOA's settled practice since the 1990 list, did not explain why.

40. We have already referred to guidance from the Rating Manual and the Rating Forum. It is instructive to examine what each says about the choice of evidence and valuation methodology in the valuation of car parks. The Rating Manual explains that the rental method of valuation is the starting point, and that even a shortened R&E approach should be informed by rental evidence:

> "Whilst the primary method of valuation is based on rental comparison. It is acknowledged that rental evidence may be limited for this class. For the majority of car parks, valuation using a percentage of Fair Maintainable Receipts will therefore be necessary. However, it must be emphasised that this approach should only be adopted in the light of rental evidence in support of the percentages adopted.
>
> Considering a relevant percentage of Fair Maintainable Receipts is not a shortened profits valuation; it is a method of comparison and the valuation must be derived from rental evidence. Where local evidence is sparse, it may be necessary to consider rents across a wider area …."

The Rating Forum guidance is also explicit:

> "Where open market rental evidence exists for the subject property or similar properties, and that evidence conforms to the statutory definition of rateable value, or can be made to do so without adjustments of such a nature that its reliability is affected, a valuation based upon such evidence will provide the preferred method of valuation."

41. We have already alluded to the rental evidence adduced by the parties. This was contained in a small schedule provided by Mr Emerick and a larger, more comprehensive document compiled by Ms Johnson. It would have been helpful to the Tribunal if the two experts could have agreed a schedule of relevant comparables, including such information as is available about them, and identifying those to which they attached particular weight; that would have enabled them both to focus on the best evidence. Mr Emerick's schedule lacked any details of the leases concerned except for the rent and its effective date. As none of the properties were in the locality of Putney, he attached little weight to them. This was a disappointing approach as two were in the London area and formed part of shopping centres of similar size to Putney Exchange. Ms Johnson's schedule was not particularly useful either. Although it was similarly populated with properties drawn from all over England and Wales, the lease details were equally sparse. The schedule did however contain details of three car parks which we found helpful to our deliberations.

42. Two of these were located at Southside, a shopping and leisure centre situated just over a mile to the south east of the property. It was apparent from our inspection that Southside is a very much larger centre than Putney Exchange. At the material day it had a far greater number of units, including a Debenhams department store and a better leisure offer with a Cineworld cinema and a selection of restaurants. There were two car parks serving the scheme, both operated by NCP. The smaller of the two was concrete framed and clearly older. The schedule indicated that the smaller property was constructed in 1975 and this was commensurate with what we found on the ground. The information provided by Ms Johnson was derived from a rent return form completed by NCP and showed that the rent was reviewed to £240,000 per annum in July 2014, equivalent to £723 per space. However, that was as far as the information went. There was nothing in relation to the frequency or basis of the reviews, or any of the other terms.

43. The same limited information was provided in relation to the larger car park which had a steel frame. Curiously the build date was stated as being the same, but the property appeared much newer than the smaller one which cast doubt over the veracity of the information. The rent review date was the day before the smaller car park and the rent of £620,000 per annum analysed to £729 per space, compared to £723 per space for the smaller one, despite significant differences in size, age and quality. Interestingly, neither rent, despite being effective only eight months prior to the antecedent valuation date, appeared to have been relied upon by the VOA as a suitable basis for the rating assessments. Expressed as a percentage of FMT the rents equated to 49.8% and 55.6% whereas the assessments were based on 37.75% and 42% respectively.

44. The third property that assisted us was located at Baddow Road, Chelmsford and served the Meadows Shopping Centre. Originally built in 1993, it was the subject of a 35 year lease to Q Park Ltd with effect from 1 December 2014. The rent comprised a base figure of £332,700 per annum with a top up of 30% of any turnover in excess of £800,000 per annum. Having

had access to the receipts the VOA adopted an FMT of £950,000 and a rent in terms of rateable value of £377,700 per annum, sums which equate to a rent as a proportion of FMT of 39.7%. The rating assessment is based on 37.9% and Ms Johnson did not provide any reason for the relatively small difference. We note that the assessment equates to a rate per space of £770.

45. This transaction is one of few lettings of multi-storey car parks associated with shopping centres that appear to have taken place in the months preceding the valuation date and it is the one to which we attached most weight. Ms Johnson's schedule contained a total of eighteen transactions and the rent to FMT ratios varied from 38.9% to 76.4%. The VOA in arriving at the respective assessments adopted various proportions of FMT which mostly bore no relation to the rental to FMT ratios, leading us to the conclusion that very few of these rents could be relied on. At the hearing we asked Ms Johnson to account for the differences, but she was unable to shed any light on them. In the circumstances, we simply do not have enough information to utilise a purely rentals based approach.

46. Both parties referred the Tribunal to agreed assessments. Mr Emerick had a list of 17 in diverse locations that exhibited ratios of rateable value to gross receipts of between 40% and 48%. Ms Johnson produced a list of 59, which included all but two of Mr Emerick's but ranged from 32.5% to 50% in terms of rateable value to FMT. Neither expert provided a commentary on which of these sites they considered most relevant to a valuation of the property. Mr Emerick thought that the property fell into the bracket 30-40%, which in the VOA's proposed scheme reflects older generation car parks; the shopping centre it served had some empty shop units and is located in Putney High Street, but is more akin to a 1970's/80's shopping centre. He noted the vehicular access was in a side street, up a winding ramp, and as far as he could tell, it had not benefitted from an upgrade other than the installation of more modern barriers and payment technology.

47. Mr Emerick thought it was a matter of subjective judgement as to what percentage should be used, there appeared to be no comparables in the locality, with the exception of other assessments, and this in his view, made the shortened approach a coarse and unreliable method of assessment. Having taken into account the diminishing trade between the AVD and the material day, which he said resulted from the MCC at Southside, he chose 30% of the 2017 FMT resulting in an assessment of rateable value £145,500 or £491.55 per space. He then considered it necessary to apply an end allowance as this approach was based on percentages derived from all types of car park. The property was a shopping centre car park which had increased costs of operation. Taking a 'stand back and look' stance and adjusting the result by -10% to reflect the extra costs, he arrived at an assessment of rateable value £130,950 or £442 per space. We will consider Mr Emerick's use of the 2017 FMT below when we examine the evidence in relation to the use of the full R&E method of valuation. His quantification of costs at 10% of the whole assessment was not substantiated by reference to comparative costs.

48. Despite having provided a comprehensive schedule of agreed assessments, Ms Johnson limited her comments in her report to a general conclusion that 40% of gross receipts (as distinct from FMT) in 2014-2015 was 'representative of the market's likely bid for this hereditament'; She did not explain how she deduced this percentage from her comparables. In her rebuttal report she altered her adopted FMT marginally but retained the same

percentage for her valuation. Two weeks prior to the hearing Ms Johnson produced an addendum report in which she increased the percentage adopted from 40% to 45%. This resulted in a revised assessment of rateable value £292,050 which she rounded to £290,000. She based the increase on a comparison with the two car parks at Southside, which were assessed 'on average' at 40%. She considered the property to be in 'superior condition' and that its modernity should be reflected. To support this approach Ms Johnson carried out an analysis of the income per space generated at the property in comparison with the two car parks at Southside. For the purposes of this exercise, she aggregated the two Southside car parks which resulted in a gross income figure of £1,350 per space. The comparative figure for the property was £2,285 per space. Ms Johnson garnered further support from a similar comparison with car parks attached to the Bentall's Centre at Kingston Upon Thames. This property comprises two car parks connected at ground and eighth floor levels. An enclosed bridge at the eighth floor connects to the shopping centre. The car parks are similar in specification but were constructed 11 years apart. The older of the two is agreed at 44% of FMT and the newer one is agreed at 48% of FMT. The Bentall's Centre is substantially larger than Putney Exchange and the town is classified by the VOA as 'vibrant'. Notwithstanding these differences Ms Johnson noted that the combined FMT per space at the Bentalls Centre was £2,183, just 4.5% lower than at the property. The conclusion she drew from these comparisons was that she had initially under valued the property and that an assessment based on 45% of FMT was appropriate.

49. 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. It is obvious, as Mr Wilcox pointed out, that the shortened method by its nature cannot fully take account of the different operational costs of different hereditaments. Although we appreciate the convenience of the shortened method it seems to us that distilling all of the attributes, trading prospects and locational aspects of a property into a single numeric factor requires a great deal of insight and could be prone to errors of judgement. Valuation of car parks by means of a percentage of receipts is, in our view, only appropriate after a rigorous analysis of a proper sample of rental transactions or in situations where there is already a settled tone derived from a comparison of rents and FMT. It was confirmed at the hearing that approximately 60 out of a total of 1,300 multi-storey car parks have been agreed or not appealed following a decision notice in connection with a 'challenge' on the 2017 Rating List. We were not provided with information regarding cases resolved purely at the 'check' stage. We are not inclined to regard the tone as being established when only 4% of properties have been agreed.

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.

51. Receipts from the property comprised direct car park receipts and income received from Waitrose relating to tickets that they had validated during the year. From 2015 onwards a modest sum of £6,000 per annum was also received from a hand car wash operator. Over the period from 2013 to 2017 gross receipts fell steadily from £743,725 to £491,797 as shown in the table below:

Gross Receipts	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Car park income	£610,182	£579,008	£551,289	£462,739	£372,489	£353,493
Waitrose income	£133,543	£113,301	£105,421	£113,836	£113,308	£160,124
Pit Stop income			£6,000	£6,000	£6,000	£6,000
Total Income	£743,725	£692,309	£662,710	£582,575	£491,797	£519,617

52. Mr Emerick argued that since the MCC arising from completion of redevelopment at Southside in October 2015 happened after the AVD, it was best accounted for by evidence of its impact in the accounts for subsequent years. For this reason, he adopted the gross receipts for 2017, rounded to a figure of £485,000 (excluding the Pit Stop income). We have a concern that this reasoning fails to take any account of the major works at Putney Exchange between August 2016 and May 2017. Whilst no works were undertaken at that time to the car park, access down to the first floor retail area and to Waitrose was re-routed through a temporary provision and reconfiguration of the central concourse probably had an impact on the number of shoppers using the centre. The accounts show that Waitrose income in 2016 and 2017 was consistent with 2014, after a drop in 2015, whilst the main car park income fell by 5%, 16% and 20% from 2014 to 2017. We agree with Ms Johnson's counter-argument that the significant falls in receipts for the 2016 and 2017 years cannot reliably be attributed to the Southside MCC and may result from general economic decline as well as the works to Putney Exchange.

53. In her final analysis, Ms Johnson adopted a figure of £684,000 for gross receipts at the AVD, assessed from the 2014 receipts adjusted by a proportion of the decline in 2015 to account for the three months to the AVD. She accounted for the MCC by deducting £35,000 (5% before rounding) to reach a figure of £649,000. Ms Johnson had compared the annual growth in car park receipts at Southside between 2013 and 2016 with the annual fall in receipts at the property and concluded that receipts at the property were already in decline before any impact of the Southside extension. In order to demonstrate a 'reasonable and pragmatic approach' and acknowledge that the hypothetical tenant would be aware at the AVD of the likely impact of improvement and extension works at Southside, she adopted a figure of 5% to reflect the MCC.

54. We prefer Ms Johnson's analysis of gross receipts and adopt her figure of £684,000 in our own assessment. We will consider the allowance for the MCC of Southside later in our decision.

55. Turning to itemised expenditure, there are only relatively small differences between the experts in the figures they have adopted for all items other than rates, and their totals were not far apart, with Mr Emerick assessing expenses before management at £190,452 and Ms Johnson at £180,590. There was a large difference of £16,000 between the figures adopted for rates, because Mr Emerick took an average from 2014 to 2018 at £75,000 while Ms Johnson took a figure (for 2015) of £59,000. We prefer the approach that Ms Johnson has used and therefore adopt her total for expenses at £180,600. Both experts added 10% to total expenses for a share of the managing agent's commission, but we do not do this because the hypothetical tenant would not incur this expense.

56. Using gross receipts of £684,000 and expenses of £180,600 we have therefore assessed a net profit before rent of £503,400 before depreciation of non-rateable chattels and interest on working capital. Interest on working capital was agreed at £1,696. There was no evidence to support a figure for depreciation, so Ms Johnson used a round figure of £10,000 and deducted a total of £11,696 from her net profit figure. Mr Emerick added the interest on working capital to the tenant's share of divisible surplus and deducted an end allowance for depreciation of 10% from the amount available for rent. We prefer to make deductions from net profit and adopt Ms Johnson's total of £11,696 to get a divisible balance of £491,704. This compares with Mr Emerick's figure of £275,000 and Ms Johnson's of £438,664, both of which had adjusted for the MCC and made a deduction for management.

57. Notwithstanding her reluctance to adopt an R&E approach in valuing the property, once provided with full information on the accounts for the three years up to the AVD, Ms Johnson was able to assess figures for gross receipts and expenditure which we have found it appropriate to adopt. Her differences with Mr Emerick stemmed mainly from his unconventional approach of using accounts from after the AVD.

Issue 3: The divisible balance under the R&E Approach

It is in their divergent approaches to the proportion of divisible balance to be adopted as the tenant's share that the two experts are most obviously apart. Mr Emerick took a 50% split, which he said achieved a fair result for both parties and had long been used in the practice of R&E valuations. Ms Johnson allocated 20% to the tenant and 80% to the landlord, thereby increasing significantly the amount available for rent and thus her assessment of the rateable value.

The Rating Forum guidance says at 5.46 and 5.47:

> "The tenant's share may be regarded as the first call upon the divisible balance. This share has to be sufficient to induce the tenant to take a tenancy of the property and to provide a proper reward to achieve profit, an allowance for risk and a return upon the tenant's capital. The amount of the deduction is a matter of judgement in the circumstances relating to the enterprise carried on at the property.
>
> …
>
> Although the tenant's share may be regarded as a first charge of the divisible balance, the valuation must properly reflect the strengths and weaknesses of the

hypothetical landlord and tenant, given their assumed willingness to reach agreement."

58. The only evidence before us on this issue was provided by Ms Johnson in support of her assertion that due to the low skill and low investment required to operate a car park the divisible balance should be weighted towards the landlord in an 80% to 20% split. Her evidence related to detailed accounts (supplied during a Challenge on another property) for a multi storey car park at New Quay Liverpool. The accounts (which were not shown to us) apparently revealed that a new rent agreed in 2015 was at 79.5% of the divisible balance. The rental bid by another prospective tenant was said to be at 78.8% of divisible balance. Some reliance was also placed on information supplied during Challenge by an agent for a specialist car park in Birmingham which referred to a 20% share for the tenant. The source document was heavily redacted, and the agent had subsequently written to say that as costs exceed the income for that car park the percentage adopted had no significance. We find that both these sources are incomplete and unreliable as evidence of a weighted split and place no weight on them.

59. In conclusion, neither expert can supply evidence to support their respective adopted percentages of divisible balance. In exercising our own judgment, we have regard to the matters identified by the Rating Forum's guidance as relevant to the division the parties would be likely to agree in the open market: profit, risk and return on the tenant's capital. We must assess the rental bid of the hypothetical tenant for the property at the AVD, assuming at this stage no allowance for the Southside or Putney Exchange MCCs. There would be an awareness that receipts at the property had been in decline since 2013 and that the planning constraints on opening hours and price tariffs placed limitations on increasing future receipts. 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. This is, in our view, particularly true of a situation where the pricing model is constricted.

Issue 4: Material Changes of Circumstance

60. Regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations") defines the circumstances in which an interested person may make a proposal to alter the rating list. One such circumstance (regulation 4(1)(b)) is where "the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled." A material change of circumstances is defined under Regulation 3 of the 2009 Regulations as "a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988." Those matters, which are assumed to be as they are on the material day, include:

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

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

….

(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.

61. During the life of the 2010 Rating List Putney Exchange experienced two periods of building works. The first commenced in February 2013 and involved an extension and changes to the Putney High Street entrance. The works continued until April 2014. The second phase began in June 2016 and was completed in May 2017. As we mentioned in paragraph 10 it was centred around improvements to the central concourse and although none of the works took place in the car park itself, the means by which car park customers accessed the shops was disrupted. In October 2015 the extension and reconfiguration of Southside was completed. The property was therefore potentially affected by two separate MCCs which are relevant to the Compiled List assessment of the 2017 Rating List. They are relevant because neither had taken place at the AVD but they had occurred by the Compiled List date, which in this case is also the material day.

62. Mr Emerick said that these changes had taken place against a backdrop of ongoing changes in the retail environment, and he thought that 'Putney Exchange has been no different in seeing falling footfall, rising vacancy levels and falling rents over the last ten years'. He adopted the 2017 FMT as the basis for his assessment, implying that the whole of the decline since 2015 was attributable to the changes at Southside.

63. Both experts had relied upon the use of receipts to justify an adjustment to the assessment, but this can be problematic where there is no unaffected baseline comparator. The only properties where we have details of trading performance for use as a comparison are the two car parks at Southside, properties which themselves were the subject of an MCC, in fact, the same MCC which Ms Johnson said affected the property itself. Additionally, the trading data with which we have been provided relates to the whole financial year rather than to monthly takings, making the task of identifying the effect of the changes more difficult.

64. The experts postulated that to some degree the decline in receipts might have its origins in the 'general demise in the British High Street'. As far as this affected Putney we were told that the assessments of the shops in Putney Exchange had declined between the 2010 and

2017 Rating Lists by 20%. Taking in to account the respective AVDs this means that the decline took place between April 2008 and April 2015. We had no evidence before us for the period between April 2015 and April 2017 which would allow us to quantify this factor.

65. Mr Emerick denied that the works in Putney Exchange that commenced in June 2016 had any effect on the car park and Ms Johnson confirmed at the hearing that the VOA had not conceded any reductions in assessment for any of the shops in the scheme. We note that the income from Waitrose in the 2015, 2016 and 2017 financial years was resilient and the in the 2017 year the receipts started to rise again albeit on a gentle trajectory. It seems likely therefore that the works had an effect on the car park but that it was not pronounced.

66. That leaves the effect of the changes at Southside. Ms Johnson provided data showing that the growth in receipts, averaged across both Southside car parks was 6% in 2013-14 compared with 3% in the following year and 6% in 2015-16. We have assumed these figures to be 'year on year' rather than by reference to a base year. Ms Johnson concluded from this rather truncated selection that there was no observable impact attributable to the extension on the receipts of the car parks at Southside. We note that in comparison with 2012-13 the 2013-14 income in the financial year was 31% higher which cast her conclusion in a different light.

67. She then compared the Southside situation to the circumstances at the property, noting a difference in the start date for the respective financial years. Over a similar timeframe receipts at the property had declined by -7%, -4% and -12%. While she could not see any observable impact attributable directly to the Southside extension on the receipts at the property, she thought that the hypothetical tenant would be mindful of the works in Putney Exchange and at Southside and adopted an adjustment of 5% to the FMT.

68. It seems to us that Mr Emerick's approach is flawed. He did not attempt to disassociate Putney from the changes in the general retail climate and attributed the whole of the decline to the changes at Southside. We have already observed that rating assessments in Putney Exchange fell by 20% in value between 2008 and 2015. It is possible that some of the decline seen in the receipts at the property in the period 2015 and 2017 had its origin in worsening market conditions. Unfortunately, neither party adduced any evidence from which we can deduce anything conclusive. Ms Johnson's approach of comparing the trajectories of receipts at the property and Southside would ordinarily have produced a reliable result but with both properties subject to MCC activity there is no benchmark upon which to base a finding.

69. We must therefore do our best with the information at hand for the property. We know that the receipts for the years 2012 to 2015 were in decline. The financial year for the property is based on the calendar year rather than the rating year. Receipts at the property recorded a decline of 15.6% for the 12 months from 1 January 2017 in comparison to the year before.

70. The 2016 financial year was the first full year of trading for the extended Southside and the works in Putney Exchange had started in August. It seems to us to be unlikely that the entirety of the reduction in receipts can be pinned on Southside or the works, or both. In our

judgement it is reasonable to adopt a reduction of 10% for the two factors. We share Ms Johnson's view that the adjustment should be made to the FMT.

Determination

71. In summary, we determine the assessment at rateable value £211,652 which we round to £211,500. Our detailed valuation on the full R&E approach is set out below:

Gross Receipts	£684,000	
Adjustment for MCC @ 10%	£68,400	
Adjusted Gross Receipts		**£615,600**
Working Expenses		
Audit fees	£900	
L/L risk assessment	£250	
Staff wages	£20,700	
Rates (site accommodation)	£59,000	
Office expenses	£1,150	
Marketing	£3,590	
Electricity	£7,500	
Water	£1,000	
Internal repair and maintenance	£530	
External repair and maintenance	£3,000	
Lift maintenance contract	£3,180	
Lift safety maintenance	£5,000	
M&E maintenance contract	£6,500	
M&E repairs	£6,000	
Security guarding	£36,110	
Security systems	£1,440	
Internal cleaning	£16,100	
External cleaning	£240	
Waste management	£800	
Insurance	£800	
Loomis/Six card	£6,800	
Expenses before management	**£180,600**	
Management fees	£0	
Total Expenses		**£180,600**
Net Profit before depreciation and interest on working capital		**£435,000**
Interest on working capital	£1,696	
Depreciation of non-rateable chattels	£10,000	
		£11,696
Net Profit = Divisible Balance		**£423,304**
Tenant's Share @ 50%		£211,652
Available for Rent = Rateable Value		**£211,652**
%FMT		34%
£ per space		£745

72. We observe, in reaching this figure, that the percentage of FMT compares reasonably to the 37.9% used at The Meadows, Chelmsford, and is appropriately lower than the Bentalls Centre (46%). The rate per space also bears comparison with Chelmsford (£770) and Centre Court at Wimbledon (£700).

73. Ms Johnson sought, in her Addendum Report, an assessment higher than the Rating List entry. We heard argument from counsel concerning the ability or otherwise of the Tribunal to determine an increased assessment in circumstances where there was not a cross appeal from the respondent. In the event our determination is at a level lower than the prevailing assessment and there is therefore no need for us to consider those arguments.

Mark Higgin FRICS FIRRV

Member

Diane Martin MRICS FAAV
Member

** ******* 2022

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.