

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



Neutral Citation Number: [2016] UKUT 127 (LC)  
Case No: RA/28/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*RATING – Valuation – 2010 Rating List – office and premises – comparables – settlements – assessments - market conditions – guidance per Lotus & Delta Ltd v Culverwell (VO) – appeal dismissed*

IN THE MATTER OF AN APPEAL FROM THE  
VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

**EDMOND PREKOPP  
(VALUATION OFFICER)**

**Appellant**

and

**GPS (GREAT BRITAIN) LIMITED  
T/A GAP**

**Respondent**

**Re: Wing 6-7 (South), 1<sup>st</sup> floor, Berkeley Square House, Berkeley Square,  
London W1J 6BS**

-----  
-----

**Hearing date: 23 February 2016**

**Paul Francis FRICS**

**Royal Courts of Justice, London WC2A 2LL**

-----

David Jackson for the Appellant VO  
John Blake Penfold for the Respondent

**© CROWN COPYRIGHT 2016**

The following cases are referred to in this Decision:

*Lotus & Delta v Culverwell (VO)* [1976] RA 141

*Special Eyes v Felgate (VO)* [1992] RA 387

*Edma Jewellers v Moore (VO)* [1975] RVR 343

## DECISION

### Introduction

1. This decision concerns an appeal by the Valuation Officer (“VO”) from a determination of the Valuation Tribunal for England (“VTE”) dated 29 April 2015 relating to offices and premises located on the first floor, Wing 6-7, Berkeley Square House, Berkeley Square, London W1J 6BS (“the appeal hereditament”). On the evidence before it, the VTE allowed an appeal from the appellant ratepayer and determined the rateable value at £700,000 pa with effect from 1 April 2010, reducing the assessment from £800,000.

2. The VO contends that the VTE was wrong and that whilst his (the VO’s) valuation of the hereditament amounted to £925,000 RV, due to it not being possible to backdate an increased valuation, the RV should be re-instated at the originally assessed figure of £800,000. The respondent says that the VTE’s determination was correct.

3. The matter was heard on 23 February 2016 in accordance with the provisions of the Tribunal’s Simplified Procedure. Mr David Jackson of the VOA appeared for the appellant VO, Mr Edmond Prekopp FRICS, who he called to give expert valuation evidence. Mr John Blake Penfold BSc FRICS MCI Arb, a consultant to GL Hearn, appeared for the respondent and gave expert evidence. He also called Mr Andrew Russell Tyler BSc (Hons) MRICS a partner with Cushman and Wakefield, who gave expert valuation evidence. I carried out an inspection of the appeal hereditament on 25 February 2016, together with some of the other units in Berkeley Square House that were referred to in evidence along. I also noted the environs generally and made an external inspection of 20 Berkeley Square (formerly known and referred to as Airways House).

### Facts

4. The parties produced an agreed statement of facts and issues, from which, together with the evidence, I find the following. Berkeley Square House is a large and imposing concrete framed and brick clad 10 storey building, originally constructed in the 1930s as a hotel and subsequently converted and refurbished in the 1980s to offices with retail at ground floor and an on-site fitness centre. The building, being one of the largest office blocks in Mayfair, is in multiple occupation and as at 2015 had 47 separate rating assessments. The design consists of a central spine with seven wings emanating from it. Access to the various floors is by stairs and lifts from the centrally located double-height communal entrance foyer, and there is also a double escalator to the first floor.

5. The appeal hereditament comprises a 10,093 sq ft (937.62 sq m) self-contained suite of offices located on the first floor and occupying the south-west corner of wing 7. It is thus on the front right hand corner of the building (viewing from Berkeley Square), and has windows

on two elevations overlooking both Berkeley Square and Bruton Lane to the side. Access is along a long corridor from either the passenger lifts or the escalator. There is also a secondary entrance into the suite from a further lift lobby which serves all floors other than the fourth. However, it is little used by tenants and there is no external access to it other than by an alarmed fire exit at ground floor. At the material day (1 April 2010), the suite had suspended fibreboard ceilings with recessed Cat 2 fluorescent lighting and a number of skylights providing some additional natural light. There were solid floors, raised floors not having been provided or installed, and there was a 4-pipe fan-coil air conditioning system with units above the suspended ceiling, supplemented by perimeter based fan coil units.

6. The respondent ratepayer occupied the suite under the terms of a lease for a term of years from 1 November 1999 expiring on 16 November 2011. After the first year, which was rent free, rents were thence stepped in annual increments to a review to open market rent on 20 September 2004 and five yearly thereafter. The lease was effectively on full repairing and insuring terms, the landlord recovering the costs of insurance and repairs by way of service charge. The 2004 rent review was agreed, following negotiation, on the basis of further stepped rents and the rent review memorandum dated 2 March 2006 recorded the revised rents at £397,686 pa from 20 September 2004 to 15 November 2008 and thereafter at £453,000 pa until the next scheduled review date of 20 September 2009. There was, in addition to the rent review memorandum, a side letter of the same date by which, in return for agreement as to the 2004 review terms, the landlord waived the right to implement the review in 2009.

7. The lease was subsequently re-gearred in February 2011 some 8 months before the date of expiry. The original lease was surrendered and a new 5 year lease was agreed from 17 November 2011 at a rent of £226,500 pa until 16 May 2013, thence at £453,000 pa until the lease expiry date of 16 November 2016. The respondent vacated the offices on 12 November 2013 since when they have been extensively refurbished and are now let to Raytheon Ltd.

8. The appeal hereditament was entered into the 2010 rating list as “offices and premises” with a rateable value of £800,000. Following a subsequent review undertaken by the valuation officer the assessment was increased to RV £970,000 with effect from 22 July 2014 by a Notice of Alteration of the same date. On 1 June 2012, GL Hearn on behalf of the ratepayer (the appellant in that case and the respondent in this one), submitted a proposal against the original (£800,000) assessment seeking a “*Reduction in assessment to Rateable Value £1 with effect from 1 April 2010*” on the grounds that “*The present assessment is incorrect, excessive and bad in law*”.

9. As no agreement could be reached, the matter was remitted to the VTE on 23 August 2012. Following a hearing on 1 April 2015 the VTE found for the ratepayer and reduced the assessment to RV £700,000. The VO, being aggrieved by the decision, lodged notice of appeal to this Tribunal on 22 May 2015.

## **The VTE decision**

10. In reliance upon the principles and guidance set out in *Lotus & Delta v Culverwell (VO)* [1976] RA 141, the VTE opted to accept Mr Tyler's evidence, he being the "only person attending the hearing with a detailed knowledge of the character and facilities available at the subject property at the material date". Evidence that had been supplied in accordance with Regulation 17(3) relating to new lettings and rent reviews within the building was considered to be of little assistance due to there being "no detailed information regarding the corresponding floor areas". The evidence relating to other offices located on the first floor was considered to support the appellant's expert witness analysis, and at paragraph 31 of its decision, the VTE said:

"The panel found it significant that the evidence from the other first floor offices occupied by Regis (*sic*) Property and Byblos Bank had not been rebutted by the Valuation Officer. This comparable evidence supported the appellant's expert witness analysis and therefore this proved decisive in determining the basis of assessment. Consequently, the appellant's argument for a basis of £753/m<sup>2</sup> was upheld and a revised rateable value of £700,000 with effect from 1 April 2010."

## **The statutory provisions**

11. The rateable value of a non-domestic hereditament is defined in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 ("the 1988 Act"):

"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."

12. Pursuant to the Rating Lists (Valuation Date) (England) Order 2008 [SI No 2008 No 216] 1 April 2008 is specified as the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of local and central non-domestic

rating lists which are to be compiled for England on 1 April 2010. This is the antecedent valuation date (“AVD”).

13. The procedure for determining the material day is defined in the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (as amended). It is the day by reference to which the physical matters to be assumed in the valuation are established. These are set out in Schedule 6, paragraph 2(7) (a) to (e) of the LGFA 1988.

- “(a) matters affecting the physical state or physical enjoyment of the hereditament;
- (b) the mode or category of occupation of the hereditament;
- (c) the quantity of minerals in or extracted from the hereditament;
- (cc) the quantity of refuse or waste material which is brought onto and permanently deposited onto 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;
- (e) the user or occupation of other premises situated in the locality of the hereditament.”

In this appeal the material day is agreed to be 1 April 2010.

### **The case for the appellant VO**

14. Mr Jackson, Complex Case and Appeals Manager of the VOA, acted as advocate for the appellant VO and explained that the appeal from the VTE decision was being pursued despite the respondent having long since vacated the premises and thus having no ongoing interest in them because there were a number of other assessments outstanding in Berkeley Square House. It was important therefore that the allegedly erroneous decision of the VTE should be corrected. The salient and relevant facts relating to the matter had been agreed by the experts, he said, including the analyses of the rents upon which the parties were respectively relying in support of their arguments. Mr Jackson said that it was agreed that the rent passing on the appeal hereditament during the respondent’s occupation could not be considered to be a reliable reflection of open market rental value and was thus not relied upon by any of the experts. It was also agreed that this was purely a valuation matter and there were no issues of law to be determined, any references to cases therefore being solely in connection with valuation methodology and established practice.

15. Mr Prekopp is a chartered surveyor and is employed by the Valuation Office Agency (“VOA”) as a complex case worker in the London Non Domestic Rating Unit dealing primarily with offices in central London. His report was produced to demonstrate that the VTE’s decision to reduce the assessment to £700,000 RV was wrong and that a correct analysis of the comparable rents and settlements in Berkeley Square House clearly pointed to a correct assessment of the rateable value in the sum of £925,000 (£986.54 psm). The VTE, he said, had placed insufficient weight on the VO’s rental evidence and had placed too much weight

upon the two principal comparables relied upon by the respondent: the Regus offices and those occupied by Byblos Bank, both on the first floor of Berkeley Square House.

16. The original assessment of £800,000 RV had been calculated upon the basis of a unit rate of £855 psm including full air conditioning. The VTE's determination was based upon £753 psm but the incontrovertible evidence from within the building demonstrated, he said, a rental value of £900 psm (to which should be added 10% for air conditioning) as being appropriate. It was accepted that the increase to a figure above the assessment that was originally appealed could not be made, so it was the VO's case that the RV should revert to the £800,000 as entered in the 2010 rating list.

17. In support of his assessment of a value of £925,000, Mr Prekopp produced a summary of what he considered to be the relevant rents in Berkeley Square House (as had been submitted to the VTE). These were new lettings, lease renewals and rent reviews that had taken place in respect of units on the third, fifth, eighth and ninth floors of the building within a time span 6 months either side of the material day, i.e. between September 2007 and September 2008, immediately before the collapse of Lehman Bros and the subsequent property market crash. The rents, which related to a period when values were relatively stable, were adjusted and analysed to allow a 5% discount for offices at the rear and to disregard fit-out costs and ranged from £908.20 to £998.09 psm, producing an average of £941.05 psm. He said that it was then necessary to apply a 10% uplift for air conditioning as, although the air conditioning in the appeal hereditament was a mixed system, it was understood that it did incorporate a fresh air system and was not, therefore, 'just' comfort cooling (for which a 5% uplift would apply). In cross-examination, he accepted that his analyses of the upper floor rents were, where there was a paucity of detail available such as costs of fit-out, or other confirmatory evidence, his own opinion. However, that opinion was, he said, based upon his own experience and knowledge of rating matters.

18. Before setting out his valuation, Mr Prekopp commented that the VO had increased all the assessments in the building in the July 2013 Notices to £900 psm plus air conditioning and raised floors. This, he said, was at the lower end of the range of values derived from the evidence and less than 5% below the derived average of £941.05 psm. As that was considered to be a reasonable assessment, £900 psm was the figure he adopted and the calculation became:

937.62 sq m @ £900 psm	£843,858
Add for aircon 10%	<u>          x 1.10</u>
	£928,243

RV say £925,000.

19. The problem with the two rents upon which the respondent's experts relied was that they were so out of line with the freely negotiated rents that had been agreed elsewhere in the building that they could not possibly be representative of the rental market which applied at the material day. For instance, the Regus rent equated to £468 psm after deducting 5% for the lack of raised floors and 10% for air conditioning from the £538.20 (which reflected the

‘concessionary’ rent for the first 5 years of £50 psf) set out in the agreement for lease for the first floor part of their demise dated 14 January 2008. This analysis was less than half the averages his own comparables had produced for the reviews and lettings on the higher floors. Even if there were to be some allowance for higher rental values on all the floors above first floor (which he did not believe there should be), a rental analysis of less than half those averages could not possibly be justified.

20. In Mr Prekopp’s view, there were in any event so many adjustments that had to be made in respect of the Regus letting that they just could not be considered reliable. There were extensive enabling works that the landlord had to carry out before the accommodation could be occupied by Regus. Regus was also paid a sum of money to upgrade the accommodation to Grade A standard. Then there was the fact that access to the Regus accommodation (and the address of the offices) was in Bruton Street (the street to the left hand side of the building), with access being therefrom rather than the much more prestigious Berkeley Square entrance. There were probably, Mr Prekopp thought, other factors that may have resulted in such a low rent being agreed, one of which might have been that Regus already occupied offices on the second floor of the building, and they may have achieved some concessions to reflect that.

21. Mr Prekopp had also said in the appellant VO’s statement of case that:

“It is proposed to apply a 5% allowance [reduction] for the office suites on the first floor of the building to reflect the inferior quality accommodation at first floor level compared with the floors above. The first floor was built originally as ancillary space to the ground floor retail premises and the space is of slightly inferior quality for which a small reduction is now considered appropriate.”

However, in his expert witness report he made clear that that view no longer prevailed. He said, at paragraph 116, that having inspected the building internally he no longer believed such a discount was appropriate.

22. Mr Prekopp said that the information being given by Mr Tyler regarding the Regus lease appeared to contradict the solely oral evidence that he had given before the VTE. Despite having asked for documentary confirmation of the deal, this had not been provided. The evidence was therefore only hearsay. Whilst it is understood that the agreement for lease entered into by Regus was initially negotiated and concluded in January 2008, the lease commencement date was April 2009 and it is not clear whether the actual final terms of the lease reflected precisely what was in the agreement or whether any adjustments were made.

23. In view of the conflicting information, and indeed the lack of corroborative details, the low rent that had been agreed despite the pattern of values elsewhere in the building and following also the principles regarding the reliability or otherwise of passing rent on the appeal hereditament as set out in *Lotus & Delta v Culverwell (VO)* [1976] RA 141, Mr Prekopp said he placed little weight on this evidence.

24. The rent review on the Byblos offices, which were also on the first floor, of similar size and immediately adjacent to the appeal hereditament, took effect in December 2008 by which



time the effects of the recession were already being felt. Rents following the September “crash” fell rapidly by up to 30% and rent reviews after September 2008 could therefore be extremely unreliable. Mr Prekopp did not accept the suggestion that the rent review would have been settled upon the basis of historic (pre September 2008) rental evidence, and was of the view that the tenant’s professional advisers would have had very strong grounds to negotiate a much more favourable deal. Byblos also had two entrances – one from the main entrance and a further independent one, but whilst this might have been seen as an advantage to some occupiers, it may have been considered detrimental in terms of security aspects.

25. It was pointed out that the respondent does not have details of how the rent was negotiated and what it did and did not include. The area of Byblos offices was 465.20 sq m (agreed) and the review rent of £344,250 thus equates to £740 psm, again substantially below that pertaining elsewhere. The change in market conditions was such that following *Special Eyes v Felgate (VO)* [1992] RA 387 little weight could be given to this evidence.

26. As to Mr Penfold’s reliance upon assessment evidence relating to 33 Cavendish House, Cavendish Square, Mr Prekopp said that this building was in a very different area in terms of prestige (north of Oxford Street and not in Mayfair), was not as impressive and due to its standard of refurbishment and appearance was not considered to be comparable in terms of rental values.

27. Regarding Airways House, 20 Berkeley Square, also to some extent relied upon by the respondent, Mr Prekopp said that whilst similar in terms of location, it was very much smaller and had not been refurbished to anywhere near the same standard as Berkeley Square House. The assessments there are based upon £800 psm including air conditioning and with no raised floors. Several assessments are subject to appeal, and several appeals have been withdrawn. There was one rent assessment at £840 but this incorporated a 5% uplift to reflect the fact that it was a very small unit. All in all, he said that Airways House could not be considered to be a reliable comparable.

### **The case for the respondent ratepayer**

28. Mr Blake Penfold appeared for the respondents and produced an opening statement together with his own report as an expert in rating matters. He also called Mr Andrew Tyler, who produced an expert witness report dealing particularly with the lettings market and prevailing rental values in 2008.

29. In assessing the rental value, Mr Tyler said that in the vast majority of open market lettings, the incoming tenant benefits from a rent-free package, the constituent parts of which are an allowance for a suitable fit-out period and a rent free leasing incentive. This rent free package, of course, varies subject to prevailing market conditions but the extent of it needs to be factored into the calculations which determine the net initial rent applicable to the premises. The net initial rent is also derived in this way in rent reviews and other transactions such as sub-lettings and assignments.

30. The rate per sq ft or psm will reflect all those factors that the market considers significant such as location (prime, semi-prime or secondary/tertiary), property specific issues including age, appearance, specification and standard of fit-out (air-conditioning, lighting, ceilings and floor to ceiling heights, raised floors/trunking, heating and the like together with the standard of the main entrance and communal parts and security), or suite specific issues including, for instance, discount for 'dark corners' where the source of natural light is limited or otherwise impeded, access to lifts etc.

31. Mr Tyler said that in Berkeley Square House he was aware that when gaining possession of and subsequently refurbishing suites, the landlord has introduced a rolling programme to install ceiling mounted 4-pipe fan coil air conditioning and circulation solutions, gradually replacing the ageing and more inflexible perimeter mounted trunking systems. Raised floors have also been installed to replace perimeter trunking and suspended ceilings have been replaced with new metal tile arrangements incorporating the latest Cat 3 lighting. Mr Tyler said that natural light levels were an important factor, and in his experience the market tended to value accommodation more highly the higher up the building that it was especially where there are other high rise buildings immediately adjacent, this possibly significantly affecting natural light at lower levels.

32. Rental values, Mr Tyler said, are affected by prevailing market conditions, and he produced a copy of his firm's "Marketwatch" research publication for Q1 2008 which indicated that the office market was just beginning to cool partly as the result of an influx of new office completions and partly due to the increasing economic uncertainty.

33. Mr Tyler said that Berkeley House was, from a locational perspective, one of the premier office addresses in Central London. That said, and despite the fact that the building benefits from an impressive and imposing double-height entrance, it is clear that the internal office specifications vary to a considerable degree. Those floors and suites that have benefitted from the landlord's rolling improvement programme are impressive and will attract the highest demand from the market. Those areas that have not (and that includes the appeal hereditament) are poor in comparison, and that will be reflected in the rental value. The subject offices do not have raised floors, have mineral fibre ceilings incorporating the now dated Cat 2 lighting and have a mixed air-conditioning system. Furthermore, these offices are on the lowest office floor and being at one end of the building, are approached over a long corridor from the main central core. Taken with the declining state of the market, all these factors specific to the suite will have a detrimental effect upon the applicable rental value.

34. Turning to the VO's evidence, Mr Tyler said that he understood that when applying the original figure of £800,000 RV, the VO had adopted an un-adjusted figure of £900 psm and applied an end allowance of 5% to arrive at the £855 psm that was applied. Most of the evidence upon which that analysis was based was derived from the upper floors. This was a material consideration bearing in mind the differences in specification, and any detailed analysis was also hampered by the fact that no floor areas of the comparables were provided in the appellant VO's statement of case. It would appear, Mr Tyler said, that the VO thought the open market rental value of the appeal hereditament, assuming a new letting in the condition it

was in at the relevant date, was £855 psm assuming no incentives were to be granted. By implication, this meant that the VO had adopted a higher headline open market rental value and had deducted incentives over the assumed period of the lease in order to produce an effective day 1 rent equivalent of £855 psm. On the basis of the relevant comparable evidence, this figure was simply too high.

35. The agreement for lease entered into by Regus in January 2008 was for 31,325 sq ft (2,910 sq m) on part lower ground, ground and first floor of Berkeley Square House. Taking into account the value of the landlord's capital contribution to refurbishment works and all other relevant factors relating to the deal of which he was initially aware, Mr Tyler originally calculated the headline rent at £62.50 per sq ft (£672.50 psm) and a net effective rent of £59.38 psf (£638.92 psm). However, following the VTE hearing, he said he was able to verbally obtain full chapter and verse relating to the deal from the landlord, Lancer Asset Management. This resulted in a lower assessment of the rent. As to the first floor, the terms agreed amounted to the £62.50 psf originally agreed, but there was a concessionary rent for the first 5 years of £50 psf (£538 psm). That concession was, in fact, equivalent to one year's rent free and in his view should be seen as an additional incentive to the 9 months Regus were given in which to undertake the refurbishment works before rental payments under the lease commenced. Whilst the landlord undertook some of the works (including the installation of some skylights to the first floor area) and Regus undertook most of the other refurbishment to create Grade A office space, all of the costs were borne by the landlord (£107.50 psf including professional fees), those being on top of the rent concession already referred to. Using the appropriate basis of calculation (amortising costs and concessions over 10 years) the net effective rent became £56.25 per sq ft (£605 psm).

36. Mr Tyler said that if that was the rent freely negotiated at the beginning of 2008 for fully refurbished Grade A office space, then that just proved how far out of line the VO's assessment for the un-refurbished appeal hereditament (at £855 psm) was.

37. As to non-refurbished space, the Byblos rent review provided the best comparative evidence. This was not dissimilar in size to the appeal hereditament and was right next door to it on the first floor. It was also un-refurbished and whilst it had better air conditioning, did not have the benefit of the skylights that had been installed within the appeal hereditament and was thus noticeably darker. At the rent review in December 2008, the agreed figure equated to £68.74 psf (£740 psm).

38. Mr Tyler then went on to analyse five transactions that had taken place on the upper floors in the period September 2007 to August 2008. For example, on 28 May 2008 a new letting was arranged of a 5,040 sq ft (468.41 sq m) fully refurbished and high specification suite on the front of the fourth floor to Essex Woodlands for 10 years at £554,620 pa. This produced, when taking account of a 3 month fit-out period, a net effective rent of £105.42 psf (£1,134 psm) which reflected its position and condition. On 28 August 2008, a similar sized unit on the sixth floor was let to Arcelor Mittal (an existing tenant in the building) at a net effective rent of £101.39 per sq ft (£1,090 psm). This was again fully refurbished and finished to a high standard. A new letting was arranged to LK Advisers on 5 June 2008 of fully

refurbished, high specification third floor offices of £5,412 sq ft (503.4 sq m) at a net equivalent rent of £102.38 psf (£1,101 psm). All these lettings were freely negotiated in the market by parties who were all professionally represented and occurred close to the AVD.

39. In the light of the prevailing levels for the very best, higher level, accommodation, it was just not realistic to value the appeal hereditament at a figure that was not significantly lower and which was much higher than the two comparables that he thought to be the most appropriate. In all the circumstances, Mr Tyler said that he thought a fair net equivalent rental value for the appeal premises was £70 per sq ft (£753 psm) creating a rateable value of £700,000.

40. Mr Penfold submitted that whilst the facts relating to the various transactions in Berkeley Square House were largely agreed, it was the relevance or the amount of weight to be attached to them that was in dispute. The fact that Mr Prekopp relies solely upon the upper floor rents, and wholly ignores or applies no weight to the evidence from the first floor, is what has caused him to arrive at an assessment that is excessive and unjustified.

41. It was also submitted that the VO's approach to the adjustment to "virtual rents" appears to be derived from *Edma Jewellers v Moore (VO)* [1975] RVR 343 and is misconceived and misapplied because the circumstances leading to the valuers' adjustments for decapitalisation of fit out works in that case were wholly different – for example it was a new property and some of the costs related to matters essential for occupation such as installation of shopfront and toilets. Here, we are looking at adjustments for matters specific to the occupiers' own requirements. In any event, and of considerable relevance, is the fact that the passing rent of the appeal hereditament is unreliable as a basis for making adjustments. Mr Prekopp's adjustments to the upper floor rents were also entirely arbitrary and not supported by evidence. However, this basic error of approach is not the key to the errors of the VO's ways, Mr Penfold said. The key error was the decision to totally ignore the evidence from the two units on the first floor. Mr Tyler does not profess to be a rating specialist, but as head of Cushman and Wakefield's West End office has over 25 years' experience as a chartered surveyor, the last 14 of which he has specialised in and focused solely upon the West End office market. He said he had been involved with Berkeley Square House throughout the whole of that latter period including negotiation for the acquisition of 20,000 sq ft offices on the sixth 6<sup>th</sup> floor, over 5,000 sq ft on the fifth and is also involved in lease renewals. He said he had been asked to consider what the appropriate rental value of the appeal hereditament was at the AVD of 1 April 2008, reflecting the physical circumstances that existed on the material day of 1 April 2010. The £800,000 RV assessment was based, he was told, on £855 psm (£79.43 psf). Mr Tyler said that he was aware that the value required on the statutory basis assumes a new letting.

42. In his expert report, Mr Penfold referred to these two comparables and said that he agreed with Mr Tyler's analysis of the rent set out in the Agreement for Lease of January 2008 of the new letting to Regus of part of the first floor together with parts of the ground and lower ground floors (with access to the side off Bruton Street). These areas would supplement accommodation on the second floor which Regus already occupied. The rent for the first floor area devalued to a net effective rent over 10 years of £56.25 per sq ft (£605.48 psm) for the

newly refurbished space. This was significantly less than the figures which the VO had arrived at in respect of the upper floors. In Mr Penfold's view, the Regus first floor accommodation was superior to that at the subject hereditament as there was access directly off the main lift lobby at the top of the double escalator off the main Berkeley Square entrance, as well as access off the newly opened up double height main entrance lobby to the Regus suites off Bruton Street. The specification, including part raised floors was also better than the appeal suite. Although, as Mr Tyler had established, the letting to Regus was not completed until April 2009, due to the length of time it took to undertake the substantial fit-out works, the rental terms were negotiated and finalised in early 2008 meaning that that was very close to the relevant antecedent Valuation Date of 1 April 2008. The tenant received a substantial capital contribution to refurbish the newly taken suites to grade A standard.

43. As to the rent review on the Byblos suite that was immediately adjacent to the appeal hereditament, Mr Penfold agreed with Mr Tyler's analysis which equated to £740.00 psm. Whilst he acknowledged that December 2008 was further away from the AVD, it was his view that the agreed review will have been based upon historic evidence which would have applied before the market crash that commenced in September 2008. The principal reason for the fact that these two rents were so significantly lower than what the upper floor rents might be analysed to was because in his view the first floor accommodation was inferior to that on the upper floors. Natural light at this level of the building was less than that achieved on the higher floors, and most of the first floor suites are of a lesser specification than those on the higher floors.

44. In Mr Penfold's opinion, the assessment evidence produced by the VO in respect of Airways House, 20 Berkeley Square is of no great assistance. It demonstrates a variation in assessed values between £652 and £800 psm (although the vast majority are at the latter figure). The building is older, the suites are generally smaller and the whole would be regarded by the market as inferior to Berkeley Square House. There are also a number of outstanding appeals against the assessments, so they cannot be relied upon as agreed figures. 33 Cavendish Square is an imposing block but not in Mayfair being located to the north of Oxford Street – an area where different rental levels apply. However, what the Cavendish Square assessments did reveal is that there can be a very substantial difference in rental values in the same building for un-refurbished and refurbished (£575 to £750 psm) accommodation – some 30%, that fact adding weight to the differences that are apparent in Berkeley Square House.

45. Finally, Mr Penfold said that he agreed with Mr Tyler's analysis of the un-refurbished first floor accommodation forming the appeal hereditament in the sum of £753 psm (£70 psf) equating to a rounded figure of £700,000 RV. In cross-examination, asked why he was promulgating a rental value of £70 psf for the appeal hereditament whilst the analysis of the Regus letting of its part of the first floor devalued to £56, Mr Penfold said this could have been because the investment owner of Berkeley Square House was probably income driven and would not necessarily be driven by the highest possible assessments; with the Regus existing occupation and the additional parts of three further floors to be taken by them, they would see that as a sound deal.

## Discussion and conclusions

46. The matter, in my view, mainly comes down to the weight to be attached to the two comparables cited on the first floor. The VTE said that the VO had failed to rebut the evidence, but Mr Prekopp has now made his views abundantly clear. However, I really do not think that the first floor Regus and Byblos evidence can be dismissed as readily as Mr Prekopp suggests. Mr Tyler has now provided more background detail to the Regus letting and I am satisfied that the rental analysis he has produced fairly reflects the deal. I do not accept Mr Prekopp's criticism that "his [Mr Tyler's] evidence is only hearsay". It is true that the evidence is hearsay, and I take that fact into account, but it was provided to Mr Tyler from a knowledgeable source (the landlord) and it was not suggested to him in cross-examination that he was not accurately reporting upon what he had been told. Whilst I acknowledge that he could have sought written confirmation of the discussions he had, I do not think the fact that Mr Tyler did not do so means his evidence should be dismissed. The Regus letting, in terms of the rental of the first floor, amounted to around £605 psm (see Mr Tyler, para 35 above).

47. On the basis of the Byblos rent review in December 2008 (£740 psm), after the market had begun to cool, but not long enough after the crash for there to have been, in my view, much evidence of falling rental values filtering into the market, I have to agree that £605 psm for Regus' letting does appear low but, as Mr Prekopp said, there could have been any number of reasons why such a favourable deal was struck. In my judgement the Byblos figure will have reflected prevailing rental levels for accommodation on the first floor as at December 2008. The respondent's valuation of the appeal hereditament is higher than Byblos at £753 psm. The appeal suite is, in my opinion, marginally better than the Byblos area in that it is on the corner of the building with more natural light on two sides rather than one and this may explain the difference in figures.

48. No evidence was produced by Mr Prekopp to prove if and by how much rental values might have fallen between August and December 2008, the review date for Byblos and I therefore consider that £753 psm for the un-refurbished appeal hereditament fairly represents the rental value at the relevant date. This view is supported to some extent by the evidence from 33 Cavendish Square which, whilst I accept it is in a very different location, does bring home the not insignificant difference in rental values between refurbished and non-refurbished suites.

49. It does seem to me that there is a slight difference between first floor accommodation and that on the higher floors and I note that Mr Prekopp also initially thought that to be the case. Although no specific measurements were provided, the floor to ceiling heights at first floor certainly appeared to be less than on the higher levels, this giving a somewhat oppressive feel to the space. It is clear from an inspection that the first floor office accommodation would have originally been affiliated to the ground floor units, and is markedly different in external appearance. Also, the fact remains that all the evidence and analyses relating to the upper floors was based upon fully refurbished suites, and I am satisfied that this explains the difference between rental values on these and the first floor.

50. I conclude that Mr Tyler's calculations of the comparable evidence are altogether more scientific and less speculative than the figures produced for the upper floor comparables by Mr Prekopp. The VTE did not, in my judgement, err in its decision and I therefore determine, on dismissing this appeal, that the rateable value of the appeal hereditament shall remain as determined at £700,000 with effect from 1 April 2010.

51. This matter having been heard under the Simplified Procedure the question of costs does not arise except in exceptional circumstances. No such circumstances having been identified, I make no order as to costs.

Dated: 14 March 2016

A handwritten signature in black ink that reads "Paul Francis". The signature is written in a cursive style with a large initial "P" and "F".

Paul Francis FRICS