



Neutral Citation Number: [2025] UKUT 224 (LC)

Case No: LC-2024-718

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE VALUATION TRIBUNAL
FOR ENGLAND**

**Manchester Civil Justice Centre
9 July 2025**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING - VALUATION - modern office floors let in shell and “Category A” condition before fitting out by tenants to “Category B” - whether rateable value increased by tenant’s fitting out works from Category A to Category B – appropriate method of calculating uplift - appeals allowed

BETWEEN:

**AMANDA HITCHINGS
(VALUATION OFFICER)**

Appellant

-and-

**SHOOSMITHS LLP (1)
MANDO GROUP LTD (2)**

Respondents

**PT 5th (East) and 6th Flrs, XYZ Building
2 Hardman Boulevard,
Manchester M3 3AQ**

-and-

**4th Floor, 5 St Pauls Square,
Liverpool L3 9SJ**

**Mr Mark Higgin FRICS FIRR and Upper Tribunal Judge Elizabeth Cooke
1-2 May 2025**

Ms Jenny Wigley KC and Mr Aaron Walder, instructed by HMRC Legal Group for the appellant

The following cases were referred to in this decision:

Dawn Bunyan (VO) v Acenden Limited [2023] UKUT 17 (LC)

FR Evans (Leeds) Ltd v English Electric Co Ltd (1977) 36 P & CR 185

Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 200 (LC)

London County Council v Erith and West Ham (Churchwardens and Overseers) [1893] AC 562

Introduction

1. This decision relates to two appeals by the Valuation Officer (“the VO”) against decisions of the Valuation Tribunal for England (“the VTE”) and concerns the rating assessments of Grade A (high quality) offices, in Manchester (“the Shoosmiths Property”) and Liverpool (“the Mando Property”). The issue is the value to be attributed, for rating purposes, to the “Category B” fitting out in each of the buildings.
2. In *Dawn Bunyan (VO) v Acenden Limited* [2023] UKUT 17 (LC) the Tribunal (Martin Rodger KC, Deputy Chamber President and Mr Peter D McCrea OBE FRICS FCI Arb) described the practical context as follows:

“1. Modern high quality office buildings are usually offered to the letting market in a “Category A” condition. If the building has been newly constructed or recently refurbished, its owner will typically have installed raised floors and suspended ceilings, basic mechanical and electrical services including lighting and air-conditioning, a fire detection system and basic internal finishes. By marketing the building in this condition, the owner will hope to generate interest from the widest range of potential occupiers. Once a letting has been achieved, the new tenant will be free to fit the building out to meet its own requirements. The tenant’s fitting out work will bring the building into a “Category B” condition and is likely to include the installation of kitchens and tea points, partitioning, the re-routing of air-conditioning and power points to accommodate its preferred layout, and the addition of IT infrastructure.”
3. In *Acenden* the Tribunal rejected the proposition that the tenant’s fitting out work would add nothing to the value of the building in comparison to the value derived from the letting in a Category A state; in that particular case the Category B fit-out added £46 per m² to the valuation.
4. That principle was accepted by the VTE in both the present cases, and it is not in issue before us. As to both properties the VO appeals on the ground that the VTE’s valuation was too low, because the VTE adopted an inappropriate method in assessing the value of the Category B fit-out. Accordingly there is no point of law at issue in the present appeals; they are about valuation methodology and about evidence of value.
5. At the hearing of the appeal the VO was represented by Ms Jenny Wigley KC and Mr Aaron Walder. Expert evidence was given on the general operation of the office market by Mr Michael Brankin OBE MRICS; on rateable values for offices in Liverpool by Mr Greg Willetts MRICS and in Manchester by Mr Tim Brown MRICS IRRV (Hons), and on valuation by Mr Aidan Bailey MRICS. We are grateful to them all for their assistance. The respondents chose not to participate in the appeals.
6. Before the hearing we visited both properties accompanied by Mr Bailey of the VO, and by Mr Mark Hayes of CBRE who are rating advisors to the respondents. We also looked at the exteriors of the main comparables in Manchester and Liverpool.

7. In the paragraphs that follow we first summarise the legal and practical background, discussing how the legal requirements of the rating hypothesis are managed in the context of the market and explaining the decision in *Acenden*. We then describe the properties and the factual background and explain what was decided in the VTE. We set out the VO's case on appeal, examine the evidence, and explain our conclusion.

The legal and practical background

8. The statutory basis of valuation for rating is found in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988. A rateable value is an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on a date which in the present appeals is agreed to be 1 April 2015 (the antecedent valuation date, or AVD), on the assumption that the property is in a state of reasonable repair immediately prior to being let and on the basis that the tenant undertakes to pay all the usual tenant's rates and taxes and to bear the cost of the repairs, insurance and other expenses necessary to maintain the property in a state able to command that rent. By paragraph 2(6) and (7)(a) of Schedule 6 matters affecting "the physical state or physical enjoyment of the hereditament" are taken to be as they were on the "material day", which is the date on which the 2017 rating list came into effect or the date, if later, when the hereditament was entered into the rating list; accordingly, 1 April 2017 for the Mando Property and 6 June 2017 for the Shoosmiths Property.
9. The statute refers to assumptions, and those assumptions together constitute the "rating hypothesis". The authorities and legal principles relating to the rating hypothesis are well-established and we do not need to set them out. They were discussed in detail in *Acenden* in order to resolve the question of whether Category B fitting out works raised the rateable value of the property above its value when let in a Category A condition.
10. What makes that question difficult to answer is the fact that Grade A (i.e. high quality) offices are generally not let in a newly completed Category B condition. As explained in *Acenden* (see paragraph 2 above) the landlord will fit out the premises to Category A standard because each tenant has its own requirements for Category B fitting out; so the property will be marketed in Category A condition, leaving the tenant to make it his own. Thus at the Mando Property, we saw a large open plan working area with a couple of meetings rooms, small pods available for informal discussion spaces, and a well-equipped open plan kitchen with seating opening on to a very attractive roof terrace with tables. The Shoosmiths Property was much bigger and typical of a modern law firm, with open plan offices, meeting rooms, client spaces, a post room and so on.
11. Yet the rating hypothesis requires us to assume what does not happen in reality, namely that the premises are let by a willing landlord to a willing tenant in the physical state in which they were on the material day, i.e. fitted out to Category B standard, even though in the real world that may not be the way the deal is done; in *FR Evans (Leeds) Ltd v English Electric Co Ltd* (1977) 36 P & CR 185, Donaldson J explained that we are to imagine:

"a hypothetical person actively seeking premises to fulfil needs which these premises could fulfil. ... He is a willing lessee and is quite prepared to take the subject premises at the right price."

12. Importantly, the actual occupier is to be regarded as being in the market (*London County Council v Erith and West Ham (Churchwardens and Overseers)* [1893] AC 562). In summary, the rating hypothesis requires us to imagine that the landlord has fitted out the building to Category B standard in a way that meets the tenant's needs, so as to make the hypothetical tenant a willing tenant. And in circumstances where the Category B works would typically have cost a 6 or 7-figure sum, then of course the tenant would pay more for premises already fitted out to his requirements than he would pay for premises on which he was going to have to spend that sum.
13. Hence the decision in *Acenden*.
14. That decision was followed by the VTE. Although Miss Wigley KC and Mr Walder devoted a considerable proportion of their skeleton argument to supporting the principle decided in *Acenden*, namely that Category B fitting out work lifts the value of the property above its Category A value, we do not need to rehearse their arguments. There is no argument before us that we should depart from the principle in *Acenden*. We are not bound by it, but in the absence of argument that we should depart from it it would not be proper for us to do so, and even if we could we see no reason to do so.
15. The only issue therefore in the present appeals is how to put the *Acenden* principle into practice. How is the Category B uplift to be valued?
16. A practical difficulty highlighted by the Tribunal in *Acenden* was the absence of comparable evidence of value for properties let in Category B condition. It is well-established that comparable evidence should be used where possible; as the Tribunal (Mr Martin Rodger KC, Deputy Chamber President and Mr Peter D McCrea OBE FRICS FCI Arb) put it at paragraph 113 of (*Hughes (VO) v. York Museums and Gallery Trust* [2017] UKUT 200 (LC):

“The best evidence of rental value is provided by rents for comparable properties agreed in the open market. The greater the adjustments required to be made to mirror the statutory valuation assumption or other differences, the less reliable a guide the comparable may be, but valuation by the comparative method always has the advantage over other methods of being rooted in evidence of the behaviour of real landlords and tenants in the market in which it is to be assumed the subject premises are being let. Regard may also be had to evidence of comparable assessments, which in most cases are likely to be based on evidence of lettings in the market.”

17. Yet the rating hypothesis requires us to assume a situation that rarely happens in practice. Grade A offices let in Category B condition are generally sub-lettings, or lettings following a business failure where the property is back in the landlord's hands with the Category B fit-out still in place, and so properties relied upon as comparables have to be treated with caution. In such cases the Category B fitting out may be dated and not meet the precise requirements of the new occupier. In *Acenden* itself there was only really one useful Category B comparable; the Tribunal commented that it would have benefited from more evidence but as the appellant points out the nature of the rating hypothesis itself means that such comparables are unlikely to be available.

18. That is the position in the present appeals, and the issue of principle that we have to decide is whether, faced with an absence of comparables, the value of the Category B fitting out work can be assessed by looking at its cost, as reflected either in what a landlord has paid the tenant to do that work or in what the tenant has spent on it.

The properties and the VTE decision

The Shoosmiths Property

19. This property forms part of an eight-storey office building completed in 2016. It is located in the Spinningfields area of Manchester, on the western edge of the city centre near to the River Irwell. The building has a reception and restaurant on the ground floor and two levels of car parking in the basement. The total area occupied by Shoosmiths is 2,839.8m² split between the 5th floor at 1,062.4 m² and 6th floor which extends to 1,777.4 m².
20. The property was let in a shell condition and the fitting out was undertaken by Shoosmiths to their own specification. The landlord provided £1,091,169 towards the cost of the works to take the floorspace from shell condition to Category A together with a further sum of £97,220.50 for floor boxes and carpets. The landlord made an additional capital contribution of £1,673,171 but without specifying what it should be spent on. A further sum of £49,000 was provided to facilitate the construction of an internal staircase. The total spent by the tenant on fitting out was £2,766,583. Ms Wigley KC deducted from that sum the sum paid by the landlord for the Category A works, to give a figure of £1,675,414 paid by the tenant for the Category B works. Mr Bailey in his report subtracted, instead, the actual cost of the Category A fitting out which he took to be £1,168,613, which gives a figure of £1,597,970 for Category B. As we shall see, that difference in calculation does not matter so far as the VO is concerned because her argument is that the appropriate figure to use is the landlord's contribution.
21. The two floors are occupied under two 15-year leases which both commenced on 25 January 2017. There is a separate arrangement for car parking spaces. The respective headline rents for the Part 5th Floor and 6th Floor are £323,460 and £542,025 per annum. Both rents are subject to fixed increases at the 5th year of the lease to £357,124 and £598,435 per annum.
22. As an inducement to take the lease, the landlord granted 4 months' rent free followed by a rental discount of 50% for a period of three years.

The Mando Property

23. This property is the fourth floor of another eight-storey office building constructed in 2008. It is in Liverpool city centre about 500 metres east of the River Mersey and 1.0 km (0.6 miles) northwest of Lime Street station. The total area occupied is agreed at 493.5m².
24. Mando Group entered into an agreement for lease dated 9 May 2016 and the lease, for a ten-year term, commenced on 1 August 2016. The lease was on full repairing and insuring terms, and contained a break clause operable by the tenant at the fifth year without penalty. The commencing rent was £81,933 per annum with a 30-month rent free period. At the time

of the letting the property was already fitted to Category A specification. Mando Group undertook the fitting out to Category B standard at their own expense.

The VTE decision

25. The VTE (the President, Mr Gary Garland) allowed the ratepayer's appeals in relation to both properties. As to the Shoosmiths Property the VTE reduced the existing assessment of a rateable value of £640,000 to £595,000; the Mando Property assessment was reduced from £71,000 to £44,000. In arriving at these figures, the VTE decided that the Category A values were £195 per m² for the Shoosmiths Property and £80 per m² for the Mando Property, and adopted uplifts of £15 and £10 per m² respectively for the value of the tenants' Category B fitting out.

The VO's case in these appeals

26. The VO argues in the appeal that the VTE was wrong both in its assessment of the valuation of the properties in Category A condition and in the methodology it adopted in relation to the Category B fitting out, so that the assessment was too low in each case. In relation to the Shoosmiths Property, given that the 2017 List is closed the VO argues that the assessment of a rateable value of £640,000 should be restored but asks the Tribunal to decide whether its preferred methodology for the assessment of the value of the property in Category B condition is correct, and to say what that value should be. As to the Mando Property the VO submits that the assessment should be increased to a rateable value of £54,000 on the basis of its preferred methodology.
27. We can set that out in a little more detail as follows:

The Shoosmiths Property

28. The Shoosmiths Property was brought into the Rating List from 6 June 2017 with a rateable value of £640,000. The ratepayer argued for a rateable value of £179.02 per m², giving a rateable value of £510,000.
29. The VO's case is that in fact the 2017 entry is too low and that the property in Category A condition should be valued at least £230 per m² (equating to £656,052), even before an uplift for the Category B fitting out.
30. The VO's preferred way to assess the rateable value of the hereditament was to assume that the landlord's second main capital contribution of £1.6 million related to the Category B fit out works, since it was very close to the actual cost of those works to the tenant (paragraph 20 above). It was agreed between the parties before the VTE that the landlord's contribution to the Category A works was to be ignored - i.e. not discounted from the actual rent - in assessing the rateable value of the property in Category A condition. In the same way, the VO argued that the contribution for the Category B works should be ignored and that the analysed rent without deducting that contribution reflected the value of the hereditament including the value of the Category B fit out.

31. Alternatively the VO argued that the rateable value should be assessed by analysing the rent and comparables to arrive at a figure for Category A rent and then to add an amortisation of the actual Category B fit out costs.
32. The ratepayer argued that the Category B fit out was of no value to the hypothetical tenant in the rating hypothesis. The VTE rejected that argument on the basis of the authority of the *Acenden* decision. Since, as we have explained, we are neither able (in these appeals) nor minded to depart from the *Acenden* decision we say no more about the ratepayer's argument. The issue we have to decide is whether to accept the valuation methodology proposed by the VO.
33. The VTE did not accept the VO's proposed methodology; the President took the view that the cost of the Category B fit out did not equate to value. Instead he took as a ceiling his understanding that a figure of £25 per m² had been accepted in and around London to reflect the increased value from Category A to Category B, bore in mind that the cost of fitting out would be greater in London than in Manchester because manpower and materials were more expensive in London, and decided that the Category A rent for the Shoosmiths Property should be increased by £15 per m² to reflect the property in a Category B state. Having decided that the Category A rent was £195 per m² he determined the rateable value at £210 per m², i.e. £595,000.

The Mando Property

34. This is rather simpler. The property was let in Category A condition, and there was no capital contribution from the landlord. The VO therefore argued that the value of the property to the tenant is best seen – in the absence of appropriate Category B comparables – by taking the effective Category A rent (which the VO says is £80 per m²) and deriving an uplift of £30 per m² for the Category B fitting by annualising the actual cost of the Category B work which gives a rateable value of £110 per m² or £54,000.
35. Again the VTE rejected the ratepayer's argument that the Category B works added nothing to the rateable value; it agreed that the Category B works lifted the rateable value above the Category A rental, but did not accept the VO's approach to valuing that uplift. The President reasoned, again, from what he understood to be an agreed level of Category B uplift in London, and took the view that costs in Liverpool were lower than in London and also lower than in Manchester. He arrived at a Category A valuation of £80 per m² with an uplift of £10, giving a rateable value of £44,000.

The Tribunal's approach to valuation in these appeals

36. This is an appeal by way of re-hearing, not a review of the VTE's decision, so we do not need to discuss in detail the approach taken by the President to valuing the Category B uplift. There is no argument before us that we should follow it. We think it is right to observe that we agree with the VO's criticisms of the VTE's approach. The selection of £10 per m² and £15 per m² for Liverpool and Manchester respectively was arbitrary and un evidenced, and it is not an approach that should be adopted for the future.

37. Should we accept the argument for the VO that in the absence of useful comparables a realistic approach to the assessment of the value of the Category B fitting out work is to look at the cost of that work to the tenant, seen either in the landlord's contribution for that cost or in the tenant's actual expenditure? As counsel for the VO argued, a cost-based approach is already adopted where comparables are not available; it is the basis of the contractors' method, although that approach to valuation is far more sophisticated than simple amortisation.
38. The argument depends upon the proposition that true comparables will be rare. Mr Brankin alone among the expert witnesses had direct experience of the acquisition and fitting out of grade A office space. Between 2007 and 2021 he was the head of the VO corporate estate function with responsibility for a mixed, nationwide office estate comprising some 100,000m² of floorspace. During his time in that role he had completed about 30 acquisitions including one in Manchester (4 years ago) and another in Liverpool (10 years ago). His evidence was that typically the Grade A office market tends to trade in Category A fit outs, meaning that most buildings were offered to the market in that state. He said that this is especially the case with new buildings as landlords are unlikely to undertake speculative Category B fit outs other than for marketing purposes. Doing so would risk narrowing their market and involve more upfront investment, both of which would increase the landlord's risk exposure.
39. Mr Bailey gave evidence to the same effect:

“... around the AVD of 1 April 2015, newly fitted Category B office space has not been offered to the market in the traditional sense.

The only transactions have been of second hand space coming to the market following some unforeseen circumstance or business failure of the previous tenant who had undertaken the fit out or, as with the subject case in Manchester, the landlord and tenant have agreed a deal whereby the tenant has to organise the fit out albeit funded by landlord capital contributions typically specified for Category A works with a further sum sufficient to cover Category B works, although not specifically directed by the landlord to be for those works.”

40. Mr Brankin provided useful evidence about the typical letting process for Grade A properties. He pointed out that it makes sense to keep the pool of prospective tenants as wide as possible by the landlord providing only the generic Category A fittings that everyone wants, and then allowing the tenant itself do the work required to fit out the property to Category B standard – which as we saw at the two appeal properties will be designed for that tenant's own needs. Mr Brankin also said that from his perspective, having negotiated transactions involving different permutations of fitting out, he would always be concerned with the total cost of occupancy and that all inward and outward monetary flows would be factored in the business case for the project.
41. We accept the proposition that comparable market evidence for the value of the Category B uplift in newly fitted Grade A offices is necessarily going to be difficult, if not impossible, to find. None was found in the present appeals. It cannot be impossible to find realistic comparables but we accept that there will typically be far fewer than would be available for Category A lettings.

42. Having accepted that, we have no difficulty in also accepting that the amortised cost to the tenant of doing the Category B fitting out work itself may be the best, or at least very significant, evidence of the annual value to the tenant of the property in Category B condition.
43. This is easier to see in relation to the Mando Property, where the property was let in Category A condition and the ratepayer did the Category B fit out. What the tenant was prepared to pay for the property was the Category A rent plus the cost of fitting out to Category B standard. If that cost is amortised, at a rate reflecting the cost of capital over the estimated useful life of the fitting out or the term of the lease (whichever is shorter), then we can see the true rental cost of the property in Category B condition.
44. The Shoosmith's property is a little more complicated because the tenant did the Category A works itself but the landlord made a capital payment that was intended to cover their cost; the same happened, according to the VO, for the Category B works. The ratepayer agreed that the way to find the Category A rental was to take the actual rent (adjusted to account for rent free periods) and not to follow the usual process of discounting the landlord's contribution for the Category A works. According to the VO the same exercise can be done with the landlord's second main capital contribution which is likely to have been for the Category B works (being very close to what the tenant actually spent, see paragraph 20 above). Alternatively, the Category A rent can be calculated with reference to comparables and then the cost of the Category B works amortised.
45. Accordingly, having accepted the VO's argument in principle we turn to the market and valuation evidence. We look at the two properties separately, and consider for each first the VO's calculation of rateable value by reference to the cost of the Category B fitting out work, and then the use of comparable evidence.

The Shoosmiths Property in Manchester

Did the landlord pay for the Category B fit out?

46. Because the VO's argument rests upon the use of the landlord's contributions as a measure of the value of fitting-out work, we have to decide first one issue of fact which is specific to this property: is the landlord's second main capital contribution of £1,673,172 (paragraph 20 above) to be regarded as being for the Category B works? The ratepayer said it should not, but should be regarded as an unallocated incentive.
47. Mr Brankin said it should. In his experience contributions from a landlord would be used towards fitting out. He did not agree that an unallocated contribution, not tied to a particular aspect of the project, would be used to offset and reduce the Category A rental. In his view a landlord will not allocate the contribution to Category B fitting out because he will want to receive the property back at the end of the lease in Category A condition in order that it is ready for remarketing, and that involves having clarity over who owns the fit out and is liable for dilapidations. Additionally, the rent review will be based on a Category A level for which there is ample evidence, and the complication of a landlord's contribution is avoided by it being unallocated.

48. We accept Mr Brankin's evidence, so far as this case is concerned, largely because of the obvious near-equivalence between the contribution and what was spent on the Category B works. The contribution was ready cash that the tenant could apply to what most immediately needed to be done to the property to make it useable. In making that decision we are not setting out a principle, merely taking what seems to us to be the more probable interpretation of the facts in relation to this particular property.
49. Mr Brankin in his report expressed the view that the costs of Category B works might be similar to both landlord and tenant but that if the landlord were to aggregate both Category A and Category B works in to a single project it is likely that overall costs would be reduced. At the hearing, in response to a question from the Tribunal he put the saving at 'no more than 5%'.

The rateable value of the Shoosmiths Property calculated by reference to the landlord's payment for the cost of the Category B fitting out work

50. Mr Bailey is a Lead Valuer in the Rating Valuation Unit South of the Valuation Office Agency based in the Folkestone Office, and was the VO's expert witness in *Acenden* and has worked on the backlog of cases relating to fitting out that were stayed pending the *Acenden* decision. He set out the VO's primary case by providing clear and helpful calculations. He started from the headline rent for the Shoosmith's property and made appropriate and conventional adjustments to derive the present value of the future rent in order, first, to calculate the rental value of the property in a shell state (with neither Category A nor Category B fitting in place), for the property fitted out to Category A condition, and for the Category B condition.
51. The value of the property in a shell state is seen by taking the rent adjusted for the rental concessions and then subtracting the landlord's capital contributions. This is the state in which the tenant takes the property, and its value in that state is what the tenant pays less what he receives. Mr Bailey's figure for the property in this condition was £168 per m².
52. To calculate the rental value of the property in Category A condition Mr Bailey added back in the capital contributions made for the Category A works and for other named items. This was an approach agreed with the ratepayer at the VTE; at this point in his calculation therefore Mr Bailey had first subtracted these contributions and then added them back again, the net result being that these contributions are ignored. His figure for the property in Category A condition was £216 per m². However, he commented that whilst that figure is derived from "the deal the actual tenant and landlord have agreed", he pointed out that the tenant still has to do the Category A fitting out work itself; a "DIY" category A property is rather less valuable than a "turn-key" version where the work is already done. But he did not put a figure on that extra value.
53. Finally, Mr Bailey added back in the remaining contribution of £1,673,172, which we have agreed represented the landlord's payment for the Category B fitting out works, and arrived at £281 per m²; he then adjusted his figures to £208 for Category A and to £271 for Category B by making a 3.5% reduction (being 2.5% to take account of there having been two leases whereas the rating hypothesis requires just one. and a 1% per month adjustment to account for the rent being agreed one month after the AVD). He said that therefore the uplift from

Category A was £63 per m². Mr Bailey noted that this was considerably higher than the uplift in the *Acenden* case, and accounted for that by the fact that the Shoosmith's property has a more cellular and therefore more expensive layout, being a legal practice rather than the offices of a finance broker. We observe that if the actual cost of the work were used instead the uplift would be lower; the VO's argument is that the landlord's contribution should be used, and for the reasons given below we do not have to decide which is correct.

Mr Brown's calculation of the Category A value

54. Mr Brown is a Lead Valuer in the RVU North section of the VO and is based in the Manchester office. He joined the VO in 2022 after 40 years in private practice.
55. Mr Brown did not give us his view about the Category B value; he undertook much the same calculation as Mr Bailey but stopped at Category A. His calculation yielded the figure of £209 per m²; it differed from Mr Bailey's because he allowed for 6 rather than 3 months' rent free period, made a deduction (or "toning back allowance") of 1.5% to reflect the fact that the rent was agreed on 14 May 2015, 1.5 months after the AVD. He also deducted 2.5% because there were in fact two leases and the rating hypothesis requires just one. Before the VTE the ratepayer argued that, instead, a 7.5% discount was required for "quantum" – namely the argument that the more space a tenant takes, the less it would pay per square metre. The VTE accepted that. In the appeal the VO argued that the total area let is already factored into the agreed rent, and that a further 7.5% discount would have an unrealistically dramatic effect on the rent. We agree that a 7.5% discount for "quantum" is inappropriate.
56. We heard argument about whether the adjustment for time should be done using the date the rent was agreed rather than the date the lease was completed, and we agree that the date on which the rent was agreed is the right date because this rent represents what the market was saying at that date.
57. However, Mr Brown then observed that the property was let in a shell state and was not as valuable as a "true turn-key Category A". This is the same point as Mr Bailey made, but Mr Brown put a figure on it; in light of the comparable evidence which we discuss below he took the view that the true Category A value of the Shoosmiths Property would be £230 per m².
58. If that was right, and a £63 or £65 uplift were applied to it, the Category B value would obviously be rather higher than Mr Bailey's figure of £281 per m².
59. Counsel for the VO argued for that £230 per m² figure. The Shoosmith's property was entered into the rating list at £225 per m², or £640,000. If that £230 per m² is correct then that is as far as the VO needs to go, or can go, to be successful in this appeal because the 2017 list is closed and so whatever our view of the Category B value it cannot be entered in the list at a higher value than £640,000. And if £225 per m² is in fact less than the Category A value of the property then £640,000 is obviously an undervaluation even of the property in Category A condition, let alone at Category B condition, yet is as high as the rateable value can go, and so must be restored.

60. Mr Brown's £230 per m² was based on the available comparable evidence for Category A lettings of Grade A office space in Manchester. Both he and Mr Bailey looked at the comparables and we turn to them now.

The comparable evidence for Category A lettings of Grade A office space in Manchester

61. Mr Brown said that the 2017 List tone for grade A office space in Manchester was largely unagreed. He looked at a number of similar properties in the immediate locality, making the same adjustments as he did for the Shoosmiths building itself for the time when the rent was agreed ("toning back" by 1% per month if the rent was agreed after the AVD, but adding 1% per month for rents agreed earlier). Values ranged from £196 per m² to £290 per m² and included values of £222, £242 and £266 per m². Some higher values had been agreed following rent review, and we attach little weight to them because the assumptions applicable on a rent review will be different from the rating hypothesis. But even excluding the rent review figures, Mr Brown's reaction to the calculated value of £209 per m² for the Shoosmith's property in Category A condition is understandable; that figure would put it very much at the lower end of the market, and that may well be because it was let in a shell state rather than as a "turn-key" Category A property.
62. Mr Bailey looked at a similar range of comparables and reported a similar range of values. He set the properties out in order of value, ranging from £182 per m² to £244 per m² when adjusted for distance from the AVD, and found that the Shoosmiths building sits towards the bottom of the table of 6 properties let in Category A condition. He thought that that would be because of the "DIY" nature of the Category A fitting out.
63. None of this amounts to clear evidence for the Category A value of the Shoosmith's property, and we are hampered by the fact that Mr Bailey and Mr Brown put different figures on it. We can say that we have some confidence in the agreed method of calculating the Category A value by ignoring the landlord's contribution, but by reference to the comparables we take the view that the figure of £230 per m² is more likely to be correct than £216 per m². For the reasons explained above we do not need to go further and determine a precise figure.

The comparable evidence for Category B lettings of Grade A office space in Manchester

64. Mr Brown did not discuss Category B values. Mr Bailey could produce no new letting of a property fitted out by the landlord in Category B condition for the first tenant on a lease. This was consistent with his view that such lettings are rare. Mr Bailey suggested that his Category A comparables could be converted to equivalent Category B rents by adding an amortised cost that a tenant might typically incur in fitting the offices out to Category B standard. He used the cost of fitting out seen in the *Acenden* decision, at £350 per m² and adjusted it for location and for a three-month rent-free period for fitting out, and derived values from £236 per m² to £312 per m², from which he concluded that his calculation of £271 for the Shoosmiths Property was reasonable.

Our conclusions about the Shoosmiths Property

65. We have no hesitation in deciding that the appeal succeeds and the property is to be listed at a rateable value of £640,000. We say that because even if Mr Bailey's £216 per m² for the Category A value is correct the Category B value will be well over £225 per m²,
66. We have not determined the value of the property in Category B condition, despite the VO's request. To do so would have no legal effect since the list is closed. It would have very little persuasive effect in the absence both of consistent expert evidence from the VO and of argument from the ratepayer. We prefer not to muddy the waters by making a judgment that would necessarily be inexact. It is not obvious to us, for example, that where a landlord has paid for the Category B fitting out by making a capital payment to the tenant, that figure should be used in preference to the actual cost incurred by the tenant where that is known. Without argument on that point it is not appropriate for us to comment, and indeed the answer may differ depending upon the facts. That issue will have to await a case where it makes a difference to the outcome, which is not the case here.

The Mando Property in Liverpool

67. To re-cap: the VO's case as set out in counsel's skeleton argument was that the evidence shows what the actual tenants were prepared to pay for the value of their beneficial occupation, namely the effective Category A rent plus the cost of fit out. It is argued that, once cross-checked with Category A comparables and once the capital fit out cost element is appropriately annualised and added, this is a direct route to the annualised price of the beneficial occupation to the existing occupier and the key piece of evidence in assessing the rateable value, which is the annual value of that beneficial occupation to the existing occupier.
68. If the VO's approach is correct then the only data needed in a simple case of this kind are the effective Category A rent for the property, category A comparables by way of a cross-check, and the cost of the Category B fitting out works.
69. Both Mr Bailey and Mr Willetts gave evidence about the Mando Property; Mr Willetts is a Lead Valuer in the Regional Valuation Unit North of the Valuation Office Agency, based in the Manchester office. Only Mr Willetts examined the Category A rental market in Liverpool and the effective Category A rent for the property; Mr Bailey largely relied upon Mr Willetts' evidence in that respect. Both considered the available evidence of Category B lettings, which we agree is remarkably sparse.

The Category A rental market in Liverpool and the effective Category A rent for the Mando Property

70. In his report Mr Willetts explained that the market for Grade A offices in Liverpool was, at the AVD, characterised by lettings in Category A condition but with substantial inducements. Typically, leases were for a term of ten years but with a rent-free period of around two years. Most contained break clauses at the fifth year. The letting to Mando Group largely fitted this profile although the rent free period was longer.
71. Mr Willetts analysed the Category A rent for the Mando Property letting at £79.45 per m² using the methodology deployed by Mr Brown for the Manchester rents. He assumed that

Mando Group had activated the break clause and he therefore spread the rental incentive over five years even though in reality the break was not exercised. We accept that that is the appropriate methodology, approved in *Acenden* (see paragraphs 50 to 58 of *Acenden*).

72. Mr Willetts analysed seven other Category A transactions which ranged between £74.60 per m² and £110.88 per m², a high degree of variance. On the basis that the VO argues for a value at the low end of the range we are content to accept, as did the VTE, a figure of £80 for the effective category A rent for the Mando Property. Mr Bailey agreed with Mr Willetts; he commented that in the Grade A markets with which he was familiar (we assume in the south of England) Category A rents are generally in excess of £150 per m², and that the Liverpool Grade A market has unusually low rents.

The amortised cost of the Category B fitting out at the Mando Property

73. The next step in the VO's argument is to use the amortised cost of the Category B fitting out work to determine the value of the property in Category B condition. Ms Wigley KC referred in her skeleton argument to a figure of £224,000 spent by the Mando Group on rateable (Category B) fitting out. The source of this number appears to be the ratepayers Challenge document, where it was said that £395,000 was spent on fitting out; the figure of £224,000 results from subtracting furniture and suchlike. Mr Willetts in his expert report before the VTE, but not in his report in the appeal, cited a figure of £126,343 said to be taken from the contract with the fitting out contractor.
74. However, rather than using that either of those figures Mr Willetts worked on the basis that fitting out to Category B standard would cost £220 per m². "as advised by the VO Building Surveyors". Mr Willetts calculated that the Category B addition in *Acenden*, which he put at £42 per m² was the equivalent of a capital cost of £214.65 per m²; he was not able to explain why the cost would be higher in Liverpool than in Maidenhead. Assuming that the cost of capital would be 4.5% he arrived at a figure of £133 per m² for the Property in a Category B state. That would be a £54 per m² uplift from Category A. Mr Willetts acknowledged that that is unrealistically high; and we agree, bearing in mind that the uplift in *Acenden*, in Maidenhead rather than Liverpool, was £46 per m².
75. Using the same method of calculation, had Mr Willetts taken the cost of the Category B fit-out to be £126,343 the amortised cost over five years would be £62.50 per m² and over ten years to £32.00 per m². If the cost were treated as £224,000, on the other hand, and again using the same method, the amortised cost over 5 years would be £111 per m². When added to the Category A value of £80 per m² that would generate a rateable value so unreasonably high that that it is easy to see why Mr Willetts did not use that figure.
76. It seems to us that if amortised costs are to be used as a means of deriving a rental uplift for Category B works then a rate of 4.5% is reasonable. Mr Brankin said that his acquisition calculations were based on a cost of capital of 3.5% but he also remarked that the Government could borrow at favourable rates.

The Category B comparables

77. Mr Willetts and Mr Bailey both look at a limited range of what they referred to as Category B rents in the Liverpool area. None were bespoke Category B lettings as required by the rating hypothesis. The comparables were as follows:

(i) part 3rd and 4th Floors at 4 St Paul's Square.

78. This property was let in Category A condition in 2013, with inducements from the landlord in the form of a capital contribution of £654,380 and a service charge holiday worth approximately £120,000. Mr Willetts and Mr Bailey agreed that the effective rent was £111 per m². The floor area for this property is 2,080 m².

(ii) 13th Floor of 20 Chapel Street.

79. Mr Willetts referred to this as a new Category B letting in 2015; but we would regard it as a "second-hand" Category B letting where the fitting out was done by the previous tenant in 2008 (seven years prior to the AVD). In 2015 the landlord paid a capital contribution of £96,000 and the tenant spent £89,450 on bespoke works. The lease was for 5 years 1 month but a 25-month rent free period was granted. Mr Bailey and Mr Willetts agreed that the Category B rent was £98 per m², ignoring the 2015 inducement but taking account of the rent free period. The only conclusion that we are able to draw is that a dated Category B fitting out which required expenditure could be acquired in a building of similar quality to 5 St Paul's Square for about £19.00 per m² over the prevailing Category A level. The floor area extends to 589 m².

(iii) 3rd and 4th floors 1st Paul's Square

80. This property of 3,170 m² was acquired as two sub-lettings in 2017 as part of a business takeover between Keoghs and Hill Dickinson, two firms of solicitors. The space had been fitted out to Category B condition but it is not clear exactly when these works took place. Mr Bailey and Mr Willetts agreed that the aggregated Category B rent was £141 per m².

(iv) 7th floor, 20 Chapel Street.

81. This was another "second-hand" Category B letting in December 2018, when the fitting-out was two years old £210,000 was paid by the outgoing tenant to the incoming one. The rent analyses to £106 per m² on a floor area of 564.9 m².

The witnesses' conclusions

82. Mr Bailey concluded from the available Category B comparables for Liverpool that the evidence showed a £30 per m² uplift for Category B fitted space over the level of approximately £80 per m² for Category A lettings. In coming to that conclusion he relied principally upon the letting of 3rd & 4th floors, 4 St Paul's Square although he did acknowledge that the tenant in that case would still have the issue of arranging the fitting out works. Mr Willetts' conclusion was, first, that the VTE figure of £90 per m² for the Category B value was incorrect, and second that the VO's figure of £110 was "not unreasonable".

The Tribunal's conclusion about the Mando Property

83. It will be apparent from our presentation of the evidence that we have not found it entirely helpful.
84. We agree that the Liverpool market in Grade A office accommodation generally takes the form of Category A lettings, and that the available comparables as well as the analysed rent for the Mando Property indicate that its effective Category A rent is £80 per m². Beyond that the waters are very muddy indeed.
85. The Category B comparables are few and do not inspire confidence. But they are not non-existent. We would have preferred better Category B rental evidence and we understand the VO's reluctance to draw conclusions from it. However, even taking its obvious limitations into account we still prefer to use it as our primary means of valuation rather than rely on the alternative of a Category A rent with the addition of amortised costs, where that calculation is unexplained and appears to yield too high a figure on either the calculation used by Mr Willetts or the figure for fitting out accepted by the VO.
86. Turning then to the comparables, such as they are, we attach the most weight to the first two of the transactions set out above. As comparables they were both likely to be known about by the hypothetical tenant at the AVD but there are obvious limitations to their usability.
87. The 3rd and 4th floors at 4 St Paul's Square is a complex letting involving three separate demises and considerable contributions from the landlord. In terms of floor area it is four times the size of the Mando Property but neither Mr Willetts nor Mr Bailey made any adjustment for the additional size. Allowing 5% for the difference in size, for example, would change the analysis to £116.03 per m². At the hearing and in response to a question from the Tribunal Mr Bailey said that he thought that the adjustment between a scenario where the tenant has to organise the works and the hypothetical tenancy where the landlord has done all the works and the property is complete immediately before the letting, would be in the range of 2.5 to 5%. In other words, the tenant faced with the burden of procuring the fit out would pay more to be relieved of it. Adding 2.5% would take the hypothetical analysis to £118.93 per m². The position adopted by the witnesses is therefore reasonable, if not a little generous.
88. The value of the second hand fitting out the 13th floor of 20 Chapel Street provides a baseline above which the new Category B fitting at the Mando Property must sit. It is much nearer in size but beyond that it is of little assistance.
89. The sublettings at 3rd and 4th floor 1 St Paul's Square were part of a wider transaction involving the acquisition of a business. We simply do not have enough information to enable a proper analysis.
90. It might be said that the letting at the 7th floor of 20 Chapel Street with relatively new fitting out provides a degree of corroboration between 3rd and 4th floors at 4 St Paul's Square and the 13th floor of 20 Chapel Street. The analysis sits just below the level of the new fitting out at the former and is 8.4% higher than the latter. We would have been assisted by Mr Bailey's analysis of this assignment especially as there was a substantial inducement,

equivalent to two years rent, which was said to be the outgoing tenant's liability under the lease.

91. More generally, we have next to no detail about the quality of the individual fitting out or the specifications of the buildings involved. The common parts of 5 St Paul's Square for instance, appeared to us to not have been upgraded since there were originally installed. We have no idea whether this is the case at 1 St Paul's Square or at 20 Chapel Street. The analyses contain no adjustments for value significant lease terms other than any break clauses and it has been assumed therefore that the comparables are all let on similar terms, which is unlikely to have been the case.
92. We are therefore left in the position of having to do the best we can with the information to hand.
93. Our judgement is that the comparables point towards a £30 per m² uplift for the Category B fitting out at the Mando Property, so that the rateable value should be based on £110 per m². That happens to correspond to the figure arrived at by amortising, not the figure used by Mr Willetts in his report in the appeal nor by the figure of £224,000 adopted by counsel but by the amortisation of a contract price, referred to by Mr Willetts before the VTE but not in the appeal and amortised over ten years not five. That corroboration may be coincidental. One further point in favour of the £30 uplift is that it is appropriately less than the Tribunal's figure in *Acenden*.

Conclusion

94. As to the issue of principle in these two appeals, we agree with the VO that where the available comparables are of no assistance then cost is the only appropriate measure of value. We can go no further than that. The state of the evidence and the available argument did not enable us to determine the Category B rateable value for the Shoosmith's property in circumstances where to do so would have had no effect on the rating list. As to the Mando Property, in this case we derived more assistance from the comparables than from the expert witness's calculation of the amortised cost.
95. As to the appeals themselves, both succeed. As to the Shoosmiths Property the ratable value of £640,000 is to be restored. As to the Mando Property the assessment is arrived at by the product of an area of 493.5 m² and a rate of £110 per m². By our calculation that figure is rateable value £54,285 which we round to £54,000.

Mr Mark Higgin FRICS FIRR V

Upper Tribunal Judge Elizabeth Cooke
9 July 2025

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.