

# The 'fit out' case and what it tells us



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## *Bunyan (VO) v. Acenden Limited* [2023] UKUT 17 (LC)

- What was the case all about?
- What happened?
- Why is it interesting?



# What was the case all about?

- Large modern high quality office building on a Maidenhead business park;
- Let in 'Cat A' state, with tenant's 'Cat B' works (at cost of £3.4M) undertaken subsequently;
- Issue: how do those Cat B works affect rateable value?
- Not just a niche point – A test case



## Typical Cat A / Cat B

Cat A: Raised floors, suspended ceilings, basic M & E services, lighting, aircon, fire detection and basic internal finishes.

Cat B: Installation of kitchens, tea points, partitioning, rerouting of air con, power points and addition of IT infrastructure.



## Positions of the Parties

- VTE: £875,000 (£180/m<sup>2</sup>)
- Appellant VO: £1,100,000 (£230/m<sup>2</sup>)
- Respondent Ratepayer: £810,000 (£166/m<sup>2</sup>)
- UT: ???



## Appellant VO:

“Where a tenant undertakes fit out works which turn premises into a hereditament suitable for occupation as offices, the value effect of those works must be assessed and will materially increase the rental value of the property over one incapable of such use. That increase in rental value of the property should properly be reflected in the rateable value of the hereditament”



## Respondent Ratepayer:

The fit out works carried out at Ascot House (at a cost of £3.4M, in addition to the landlord's refurbishment) make zero difference to value. The rent paid when it is in unfitted 'Cat A' state is representative of the rateable value of the property when it has been fitted out by the tenant at a very significant cost.



## What did the UT decide?

- Firmly rejected the proposition that a building in Cat B condition is worth no more than a building in Cat A condition;
- Valued at £1,000,000 - £212/m<sup>2</sup>;
- Awarded full costs to VO





## Why is it interesting?

- Raises some fundamental questions;
- Really useful reminder of basic principles;
- Makes new law;
- Provides key guidance on evidential matters.



# What is to be valued?

- Need a hereditament - *Porter (VO) v. Gladman Sipps*;
- Reality principle – but....
- Assume vacant and to let with no tenant's (unratable) fixtures;
- Can allow for the possibility of minor alterations – *Williams (VO) v. Scottish & Newcastle*



## Too bespoke? A fundamental point

- Concept of 'general appeal' necessary?
- But actual tenant is in the market
- And must assume hereditament meets the needs of the hypothetical successful bidder who is willing to take it at market rent without requiring inducement [84]
- Effect of higgling of the market [25]



## Evidential Issues (1)

- Analysis of rents (to deal with rent free periods)
- Paucity of Cat B lettings
- Relevance of lease renewals and rent reviews
- Danger of relying too much on forms of return



## Evidential Issues (2)

- Caution re expert witnesses trying too hard to support their client's case, being seen to be partisan can backfire! [42]
- Smaller basket of higher quality evidence better than wider, lower quality trawl (one high quality comparable can swing the case) [109]
- Back up info from FOR by info from parties to transaction, use disclosure orders or witness summons if needed [45]



# Amortisation of Fit Out Costs

- Ratepayer argued for use of statutory de-cap rate (4%) in perpetuity, rather than 7% over lease term or to break
- Was this required by the Non-Domestic Rating (Misc Provisions) (No.2) Regs 1989 (as amended)?
- Is the rateable value of the hereditament (or part of it) “being ascertained using the contractor’s basis of valuation”?



## Amortisation of Fit Out Costs (2)





- Mandatory use of stat de-cap rate depends on valuation of all or part of hereditament by using the contractor's basis 'in full'
- That was not the case here – e.g stage 3 omitted, actual rather than proxy cost
- Also, 'part' has to be capable of being a hereditament in its own right
- UT declined to follow Dorothy Perkins



# Thank you

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