IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG100074884

Sitting remotely using Microsoft Teams

Date: 24 September 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating; 2017 Rating List appeal; office and premises; base rate in dispute; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO); appeal allowed.

Before:
MR SP WOOD
MR SM HOOBERMAN

Between:

ISLAND FITNESS LTD — **Appellant**

- and -

NICOLA JOHNSON (VALUATION OFFICER) — **Respondent**

Regarding:
GND & PT 1ST FLR, 114 VALLANCE ROAD, LONDON E1 5BL
(the "subject property")

Mr M Morrison of Ryan Property Tax Services UK Limited (as advocate and expert witness on behalf of the appellant)
Ms Axup (as advocate only on behalf of the respondent)

Hearing date: 22 July 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The panel determined a revised rateable value (RV) of £85,000 with effect from 15 January 2018.

Introduction

3. This is a 2017 rating list appeal for Gnd & 1st Flr, 114 Vallance Road, London E1 5BL (the subject property) which was entered in the 2017 rating list as 'gymnasium and premises' at an RV of £116,000 with effect from 15 January 2018. The challenge proposal was submitted on 18 February 2019. The challenge sought a revised assessment of £85,000 RV with effect from 18 February 2018. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice on 13 August 2020 which stated that, based upon the evidence and information available, the rating list entry of £116,000 RV was reasonable.

4. This appeal was received in accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

5. Mr Morrison appeared on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Morrison confirmed that he was instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported his client's case.

6. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

7. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

8. The subject property consisted of a 1960's former two storey painted block, former light industrial building now used as a basic gymnasium. The property is located on Vallance Road in close proximity to Shoreditch over ground station and Bethnal Green railway station. It has undergone a mode and category change from an office to a gymnasium class D2 of the Town and Country Planning (Use Classes) Order on 14 December 2015. Structural changes were made in order for it to be used as a basic gymnasium and cannot now be used as offices. It is however currently assessed as an office although is listed as a gymnasium and premises. It had an area of $683.21m^2$ but was later extended to $911.67m^2$.

9. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Issue

10. The issue between the parties is should the appeal property be valued at the unadjusted base rate of £125/m^2, in line with the rent on other gymnasiums in the locality, or at the existing rate of £170/m^2, in line with office rate.

Relevant Law

11. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

> 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. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

13. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 15 January 2018, being the date the subject property entered the rating list.

14. The panel must consider the subject property 'vacant and to let' and what the mode or category of occupation was at the material date. The issue of valuing a property *rebus sic stantibus* was considered by the Court of Appeal in the judgment of *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)*. In the *Scottish & Newcastle* case there were two public houses in a shopping centre in Milton Keynes. The Court of Appeal found that the subject premises must be valued *rebus sic stantibus* in connection with the actual mode or category of occupation. It was held that the works required to strip the subject premises back to a shell in order for them be let as retail units were not minor works. The hypothetical tenant would not consider this when determining a rental bid for the subject property. The court held that the two public houses were not in the same mode or category of occupation as the shops and restaurants the VO relied upon and the premises which were valued as public houses and premises.

Discussion

15. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015.

16. Mr Morrison explained that the subject property was an office until 2015 when its use was changed by a planning application to D2 and substantial construction work was undertaken to transform the subject property into a gym. Mr Morrison submitted that it should no longer be assessed as an office as the subject property was a gym and under the principle of *rebus sic stantibus* it should be assessed as a gymnasium. On that basis this meant that the subject property had a significantly higher UAR than the other gyms in the area. The panel noted in the photographs included in the evidence bundle that the subject property was a gym with all the necessary conversion carried out to make it a functioning gym.

17. Ms Axup submitted that the appeal related to the reasonableness of the rateable value (RV) and was not concerned with the class the assessment had been placed in. The panel found that the appellant had obtained planning permission under class D2 and had carried out structural works to create the gym. The panel therefore determined that vacant and to let the subject property would be a gymnasium as reflected in the description ‘gymnasium and premises’ in the rating list.

18. In connection with the reasonableness of the current RV the panel turned to the six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 which was binding on this panel. The first two propositions are:

> (1)Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.
>
> (2)The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

19. The panel noted that the subject property was held under a lease commencing in January 2018 which was for a term of 28 years. This was stated by Ms Axup to be the first and strongest evidence as in the case of *Lotus and Delta*. The lease commenced on 9 June 2016 with a rent of £155,880 per annum. It had five yearly rent reviews, was on FRI terms and it had a six months rent free period. The tenant’s improvements to make the structural alterations to change it into a gym cost £200,000 as of 1 March 2016. There was a further extension to the subject property which increased the floor area to 911.67m^2. The panel noted the submission by the VO that taking the lease on the subject property into account it did conform with the statutory definition and required a minimal adjustment. The rent analysed to £179/m^2 which supported the adopted rate of £170/m^2. The panel put weight on the fact that the lease was agreed and commenced after the planning permission had been granted to convert it into a gym. It therefore found that the rent was negotiated based on the subject

property being a gym and not an office. As this was rental evidence on the subject property itself the panel put weight on this evidence

20. The panel then looked to the comparable properties provided by both parties. The third and fourth propositions set out in *Lotus and Delta* were considered by the panel in regard to the comparable properties put into evidence by both parties:

> (3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
>
> (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the valuation officer.

21. The panel took into account the comparable property The Pill Box, 115 Coventry Road London put into evidence by Mr Morrison. This was a gym in close proximity to the subject property which had its base rate changed at the challenge stage from a UAR based on it being an office of £340/m^2 to that of a gym at £130m^2. The panel noted that Mr Morrison submitted that this gym was in a superior location to the subject property. It had a significantly higher catchment area and footfall than the subject property as it has residential complexes including student accommodation around it. He also referred the panel to Unit 2 at The Martial Arts Place which had an agreed rate of £80/m^2 which was significantly lower than the UAR on the subject property. The panel noted the nine further comparable properties put into evidence by Mr Morrison of which five had received a reduction in the UAR two of which were as a result of them being previously in an office scheme. The areas of the properties were between 176m^2 to 671.72m^2 and now had UAR's of between £80/m^2 to 192.50/m^2 which seven had a current UAR lower than that on the subject property.

22. The panel was also aware that there was an agreed scheme for gyms within the Greater London area. This scheme was based on a comprehensive basket of rental evidence on a large number of gyms in the Greater London area. The subject property was on the borders of Inner and outer London so it was a matter for the panel to determine whether this valuation scheme should be applied to the subject property. The scheme had six bands dependent on the quality of the gym. The panel noted that Mr Morrison submitted that in his opinion the subject property would fall within band five as it was an older poorer quality conversion. The value for level five was up to £140/m^2 which the panel found supported that the current UARs was unreasonable and put weight on this evidence.

23. The panel then turned to the comparable properties put into evidence by the VO. Ms Axup put forward the property 6 Cygnet which has an ITMS of 112.53m^2 and was let on 1 August 2014 close to the AVD for a rent of £12,000 with an analysed rent of £234/m^2 with an uplift of 10% for fit out analysing to £258.06/m^2. The adopted rate of that property was £187/m^2 .The other comparable property is The Pill Box which has an ITMS of 671.72m^2. This property was also referred to by the appellant. The rental evidence on that property is that of a new lease on 7 July 2014 being close to the AVD. It has a rent of £85,690 which analyses to 134.32/m^2 which after adding 10% for fit out costs analyses to £147.75/m^2 which supports the UAR of £130/m^2. The panel found 6 Cygnet was significantly smaller than the subject property being 570.68m^2 smaller and so put little weight on this evidence. The subject property had an ITMS of 683.21m^2 with a rent of £155,880 on 1 February 2016, ten months after the AVD. This analysed to £201.75/m^2 which after a 10% uplift for fit out would analyse to £221.92/m^2. The Pill Box however was almost the same size as the subject property but was in a superior

location and yet had an adopted rate of £130/m^2 which was £40/m^2 lower than the subject property. The panel put weight on this evidence.

24. The panel now turned to the fifth and sixth propositions from *Lotus and Delta*, namely:

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.
(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

25. The panel noted the rental evidence on the subject property was close to the AVD but having examined all the comparable properties found that the rent was an outlier. It therefore had to consider the comparable properties as outlined in *Lotus and Delta*. The panel found Pill Box the most persuasive particularly as both sides considered the property as a good comparable property. The UAR on that property was £130/m^2. In the agreed VO scheme for gyms within the Greater London area the panel found that the Pill Box fell at the top end of band 4 where the subject property fell into band five. This valuation scheme set an adopted rate of below £140/m^2 as for the subject property. The Pill Box had a UAR of £130/m^2 and so the panel found that to take into account the inferior location a UAR of £125/m^2 was reasonable and so allowed the appeal.

Determination

26. In view of the above findings and conclusions, the Tribunal finds that the subject property should be valued as a gymnasium and not placed in the office scheme. Further the panel found that it should take into account the agreed valuation scheme when setting the UAR for the subject property. The panel therefore found that the UAR for the subject property was £125/m^2 leading to an RV of £85,000. The panel therefore allowed the appeal.

Floor	**Description**	**Area m/^{2}**	**£/m^2**	**Value (£)**
Ground	Total Floor Area-dry leisure clubs	465.25	125	58,156.25
First	Total Floor Area-dry leisure clubs	143.80	125	17,975.00
First	Total Floor Area-dry leisure clubs	14.82	125	1,852.50
First	Total Floor Area-dry leisure clubs	4.52	125	565.00
First	Total Floor Area-dry leisure clubs	13.81	125	1,726.25
First	Total Floor Area-dry leisure clubs	41.01	125	5,126.25
			Total	85,401.25
Say £85,000 Rateable Value, with effect from 15 January 2018.				

Order

27. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list to rateable value £85,000 with effect from 15 January 2018.

28. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Right of further appeal

29. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

30. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mr SP Wood, Senior Member (Presiding)

Mr SM Hooberman, Member

24 September 2025

Miss F Willson
Clerk to the Tribunal
Date issued to the parties: 22 August 2025 (re-issued 24 September 2025)

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. Paragraph 26 is amended to substitute "18 January 2018" for "1 April 2023".