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

Case No: CHG100386363

Sitting remotely using
Microsoft Teams on
11 May 2026

Date: 8 June 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 Rating list appeal; Local Government Finance Act 1988; occupation of whole for use of part use; reality principle; Telereal Trillium Ltd v Hewitt [2019] UKSC 23; *Sheil v Borg-Warner Ltd [1984] 2 EGLR 211; demand for smaller offices within the locality; appeal allowed in part.*

Before:

MS S BAINS
MRS A GRAHAM

Between:

DEVON COUNTY COUNCIL **Appellant**

- and -

LUCY FORMELA-OSBORNE
(VALUATION OFFICER) **Respondent**

Regarding:

OFFICES, NORTH WALK, BARNSTAPLE, DEVON EX31 1EA
(the “subject property”)

Appearances:
T Hancock of Norse Group, for the appellant
S Maxfield, for the respondent

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is allowed-in-part.

2. The Tribunal finds that the hereditament continues to attract a positive rateable value, but that the allowance adopted by the respondent is insufficient to reflect the exceptional disadvantages affecting the property and found a 60% allowance was appropriate reducing the £56,500 from 1 April 2017.

STATEMENT OF REASONS

Introduction

3. This appeal is brought in respect of the 2017 rating list entry for Office, North Walk, Barnstable Devon EX31 1EA. It was shown in the 2017 rating list as £347,500 ratable value with effect from 1 April 2017. The rateable value was challenged on 19 August 2020.

4. A challenge decision was issued on 5 October 2021 which reduced the rateable value from £347,500 to £77,500 effective 1 April 2017 based on a rate of £26.50/m^2 and a 45% allowance to reflect the multitude of issues specific to this assessment.

5. The appellant appealed that decision, disagreeing with the respondent's decision that the subject property carried value based on occupation of the whole for use of part. It was the appellant's position that the subject property would not attract a tenant based on its condition and running costs and therefore requested the rateable value be reduced to £1.

6. The subject hereditament is a large, dated, nine-storey office building extending to approximately 5,641.77 m^2. Following the refurbishment of adjacent accommodation (Taw View) and the demolition of a connecting link in 2016, the property became a stand-alone tower and was subsequently vacated. These changes resulted in the hereditament being split. Although the alteration to the rating list was not made until December 2019, it was effective from 1 April 2017.

7. The proposal was made on the grounds of a material change of circumstances arising in 2016, however, the body of the proposal addressed the correctness of the new assessment and the parties therefore agreed this was essentially challenging the entry effective from 1 April 2017. The parties agreed that the appropriate date at which to consider the hereditament was 1 April 2017.

8. Both the respondent's and appellant's representatives appeared in dual roles of advocate and expert witness. Mr Hancock, for the appellant, declared that he was not instructed under a conditional fee.

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

Issue & Relevant Law

10. The issue before the panel was the correct rateable value of the hereditament with effect from 1 April 2017 and, in particular, whether the hypothetical letting required by statute would result in a nominal value on the basis of no demand, or whether a reduced but positive value should be adopted, reflecting limited demand and the circumstances of the property.

11. The term ‘rateable value’ as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “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.”

Discussion

12. The appellant’s principal argument is that there is no demand whatsoever for the hereditament and that it should therefore be valued at £1. The building is said to be a “white elephant”, being significantly oversized for the local market, poorly located, outdated, and burdened with substantial repair and running costs. It is argued that no hypothetical tenant would agree to take on the whole building in order to use only part of it, given the disproportionate liabilities and operational inefficiencies. The appellant argued that the ‘occupation of whole for use of part’ approach by the respondent is unrealistic and contrary to the principle of reality. Reliance was placed on *Sheil v Borg-Warner Ltd* [1984] 2 EGLR 211, and the observation that:

> “Without the actuality of a tenant, the extent and value of such use remain a hypothesis, and the further one departs from reality the less certain the result. I have some doubt on the available evidence that a tenant could be found to occupy the premises……”

13. The respondent accepted that there is no demand for the hereditament as a single unit of over 5,000 square metres. However, it was contended that there remains demand in the locality for office accommodation on a smaller scale supported by evidence of occupation of buildings such as Princess House, an office and premises in the locality measuring 2172.40m^2. On that basis, the respondent had valued the hereditament by reference to a reduced level of demand, effectively treating part of the building as usable and allowing for the surplus accommodation with substantial deductions. Furthermore, it pointed out that there was a tenant as at 1 April 2017.

14. In considering these submissions, the panel had regard to the decision of the Supreme Court in *Telereal Trillium Ltd v Hewitt* [2019] UKSC 23. That case makes clear that the correct approach is to consider whether there is general demand for the type of hereditament in question rather than focusing solely on whether the particular property is redundant or

unlikely to be occupied in its entirety. A nil or nominal value will only arise where there is no demand at all for that class of property. The fact that a building may be oversized, obsolete, or surplus to requirements does not of itself justify a nil value if there remains some level of demand for the use in question.

15. The panel accepted that this case shares some similarities with *Sheil v Borg*, in that the hereditament is large, dated, unsuited to modern requirements, and that demand for occupation as whole may be absent. The panel also accepted that the force of the observation that a valuation based on use of part can become increasingly artificial where there is no real prospect of a tenant. However, the panel did not consider that this is a case in which the hereditament has reached the end of its economic life such that it has no annual value whatsoever, as was contemplated on the facts of *Sheil*. Unlike that case, there remains evidence of demand in the locality for office accommodation, albeit at a significantly smaller scale.

16. Applying those principles, the panel finds that whilst there is no effective demand for a single occupier of a building of this size in Barnstaple, there is nevertheless evidence of continued occupation of office accommodation within the locality. The appellant has therefore not established that this is a case where demand has entirely disappeared.

17. The panel considered the appellant's argument that the respondent's 'occupation of whole for use of part' approach is unrealistic and contrary to the principle of reality. The panel accepts that such an approach departs from typical market behaviour and creates a degree of artificiality. However, the rating hypothesis is itself a statutory construct and does not require the hypothetical tenancy to mirror actual commercial arrangements. The panel found that this approach is a permissible means of reflecting the presence of surplus accommodation and limited demand, provided that proper and substantial allowances are made.

18. The panel found that the hereditament suffers from significant disadvantages relating to its size, age, layout, and overall quality. The evidence relating to the building's condition, including the summary of the 2007 survey and the presence of scaffolding, demonstrates that it is an unattractive proposition in the market. However, the statutory assumption of reasonable repair applies, and the panel was not satisfied that the works required would render the property incapable of beneficial occupation or fall wholly outside that assumption.

19. The appellant made great play of the fact that a potential tenant would consider the business rates payable and explained the effects of transitional arrangements. Whilst the panel understood the point the appellant was making, transitional phasing impacts the liability and payments of rates, not rental value. Having regard to the definition of rateable value such matters do not form part of the valuation exercise for determining rateable value under the statutory assumptions. However, the panel did agree that the costs associated with the hereditament would be substantial and a hypothetical tenant would face disproportionate liabilities in respect of repair, insurance, and running costs. The panel found these matters would influence the rent which could be achieved.

20. However, the panel was not persuaded that these matters reduce the rent to a purely nominal sum, accordingly this is not a case where demand has wholly disappeared. Rather, it is a case where demand is limited and where any hypothetical tenant would be in a strong negotiating position.

21. Standing back and considering all the evidence brought before it, the panel found that the respondent's existing allowance does not adequately reflect the cumulative effect of the hereditament's exceptional disadvantages, including the scale of surplus accommodation.

22. The panel concluded that a greater allowance was required. While the appellant has not established that a nominal value of £1 is appropriate, the valuation must be adjusted further to reflect the severe constraints affecting the property.

23. The panel found that an allowance of 60% is appropriate. This properly reflects the limited level of demand, the extent of surplus space and the significant operational and structural disadvantages of the hereditament while remaining consistent with the principles set out in *Telereal Trillium*.

24. The panel therefore determined that the ratable value should be reduced to £56,500 in line with the below valuation:

Description	**Area m²/unit**	**£ per m²/unit**	**Value**
Basement floor store	212	£3.34	£708
Ground floor office	432.97	£10.60	£4,589
Ground floor office	86.5	£10.08	£872
First floor office	549.7	£10.60	£5,827
First floor office	247.1	£10.60	£2,619
Second floor office	523.5	£10.60	£5,549
Third floor office	533.8	£10.60	£5,658
Fourth floor office	533.8	£10.60	£5,658
Fifth floor office	533.8	£10.60	£5,658
Sixth floor office	533.8	£10.60	£5,658
Seventh floor office	533.8	£10.60	£5,658
Eighth floor office	532.9	£10.60	£5,649
Ninth floor store	337.1	£6.70	£2,259
Ground floor loading bay	22.7	£1.01	£23
Ground floor office	28.3	£10.07	£285
Total	**5,641.77**		**£56,671**

	Valuation
Total value	£56,671
Rateable value (rounded down)	**£56,500**

Conclusion

25. In view of the above findings and conclusions, the Tribunal is satisfied that the ratable value is unreasonable and a 60% allowance should be awarded. The appeal is therefore allowed in part.

26. Accordingly, under the provisions of regulations 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 reduce the entry in the 2017 rating list in respect of the subject property to £56,500 with effect from 1 April 2017.

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

28. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

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) using Form T385 (Notice of appeal) within **four weeks** of the date this decision and statement of reasons was 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/.

Ms S Bains, Senior Member (Chair)
Mrs A Graham, Senior Member
8 June 2026

Mrs C McAvoy
Clerk to the Tribunal
Date issued to the parties: 8 June 2026