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

Case No: CHG100430160

Sitting remotely using Microsoft Teams

Date: 21 July 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — retail warehouse and premises; material change of circumstances; increased vacancy rate; reduced footfall; end allowance; appeal allowed-in part

Before:
MRS M CHRISTOPHER
MR A IQBAL

Between:

TRUSTEES OF PATRIZIA HANOVER PROPERTY UNIT TRUST **Appellant**

- and -

MS K GILES
(VALUATION OFFICER) **Respondent**

Regarding:
UNIT 9/1, THORP ARCH RETAIL PARK, THORP ARCH ESTATE, WETHERBY, LS23 7FE
(the “subject property”)

Mr T Munns (instructed by Wharfedale Property Management Ltd) for the **Appellant**
Mr J Willoughby for the **Respondent**

Hearing date: 9 July 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The appeal property's assessment was reduced from £14,750 Rateable Value (RV) to £11,750 RV, with effect from 1 July 2019.

Introduction

3. This appeal has been brought in respect of Unit 9/1 Thorp Arch Retail Park, Thorp Arch Estate, Wetherby, West Yorkshire, LS23 7FE which was entered into the 2017 rating list as 'retail warehouse and premises', at £29,750 RV with effect from 1 April 2017.

4. The challenge proposal was submitted on 20 October 2020. The challenge proposal sought a proposed RV of £0 with effect from 1 July 2019 on the grounds that the rateable value shown in the list for the hereditament was inaccurate as a result of a material change in circumstance (MCC).

5. As a result of the challenge proposal, the Valuation Officer awarded a 50% allowance and reduced the property's assessment to £14,750 RV with effect from 1 July 2019.

6. This challenge had been made alongside challenges for the other units on Thorp Arch Retail Park. The parties stated that this was a lead case for the challenges made by the Appellant. The same allowance had been awarded in respect of the other units.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the rateable value shown in the list for the hereditament was not reasonable.

8. The appeal was received by the Tribunal on 27 July 2022 following the Valuation Officer's challenge decision notice of 24 March 2022 in respect of the appeal property (hereditament).

9. An interested party in respect of this appeal had been registered. Go Home Direct Trading Ltd had been notified of the hearing and was sent a Microsoft Teams link, however the invitation was declined and no representative from the company attended the hearing.

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

<u>Background</u>

11. The subject hereditament is located on the Thorp Arch Retail Park alongside twelve other units. There was a mixture of ten retail units, one café, a garden centre and a public convenience block. The units were originally built in approximately 1941/1942 as a munitions factory, and each semi-underground concrete bunker formed a single retail unit. The retail park was part of an overall site across 20 acres, which included non-retail units owned by the Trust. The park was first opened as a retail park in 1960 and Mr Munns stated that this was the first out of town retail park. The units were spread apart within the site with a spine road running through the middle of the park which was originally a railway line running to each unit.

12. There was no dispute between the parties that there had been a material change event on 1 July 2019, however, the parties had not reached agreement over the extent of the reduction that was warranted.

13. The Appellant's representative was seeking a reduction to £0 with effect from 1 July 2019 on the basis that on this date there was a vacancy rate of 80% and rent reviews of two retail units on Thorp Arch Retail Park had been agreed at a peppercorn rent.

14. The Valuation Officer argued that the revised RV was not unreasonable having regard to other comparable assessment evidence.

15. The appeal had been previously listed to a hearing on 27 July 2023. On this occasion the Tribunal panel was unable to reach a decision, and the appeal was relisted to a hearing on 4 October 2023. The appeal was postponed on three occasions. One postponement was due to the unavailability of the Appellant's representative and two postponements were due to administrative reasons. The appeal was listed to this hearing and was reheard afresh by a differently constituted Tribunal panel.

16. The evidence submission before the panel was submitted in advance of the first hearing and comprised of all the evidence disclosed and exchanged during challenge. In advance of this hearing, Mr Munns submitted an additional document in relation to market evidence which he stated had been provided as part of the original challenge but had not been submitted to the Tribunal as part of the appeal. As the evidence was not new, he considered that it should be included. No objection had been raised by the respondent.

17. Mr Munns 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). He confirmed that he was not representing the appellant at the hearing on a contingency fee basis. He also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

18. Mr Willoughby, for the Valuation Officer, also appeared in a dual role of advocate and expert witness. He informed the panel that he had not been the caseworker when the decision was made.

19. During Mr Munns' presentation, Mrs Christopher's camera stopped working. After a short break to try and restore use of the camera, the parties rejoined on a new Microsoft Teams link, but the technical issue had not been resolved. The parties stated that they were happy to continue with Mrs Christopher appearing without her camera.

Relevant Law

20. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (the "1988 Act") (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; The term 'rateable value' is defined in paragraph 2(1_, Schedule 6 to the Local Government Finance Act 1988 (as amended):

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.

21. 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). The effective date, if the appeal was successful, was 1 July 2019.

22. The proposal was made under Regulation 4 (1)(b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) which was as follows;

the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled;

23. As the proposal was made on the grounds of a material change in the locality, regard had to be made to paragraphs 2(6) and 2(7) of Schedule 6 to the 1988 Act;

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are-

(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 or other substances in or extracted from the hereditament,

(cc) the quantity of refuse or waste material which is brought onto and permanently deposited on 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, and

(e) the use or occupation of other premises situated in the locality of the hereditament.

24. The material day (the date by which physical factors had to be taken into account) was provided by Regulation 3 (7)(b)(i) of the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. The parties considered that the material day in this case was 26 July 2019 when the check submission was acknowledged.

    (i) where the alteration is made in pursuance of a proposal, the date on which the VO received a confirmation under regulation 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as stated in an acknowledgement served by the VO under regulation 4D (1) of those Regulations).

Discussion

25. The parties were in agreement that a material reduction event had occurred on 1 July 2019. On 1 July 2019 only two of the ten principal retail units were occupied, along with the café. It was contended that the increase in vacancy rate to 80% should be reflected in an end allowance for the subject assessment. The Valuation Officer had agreed an allowance of 50% but the Appellant’s representative contended that the RV should be reduced to nil.

26. A tenancy schedule had been provided to demonstrate that on 1 April 2017 there were three vacant units and on 1 July 2019 there were nine vacant units after the vacation of Dreams Ltd and Power EC Ltd on 30 June 2019.

27. Mr Munns contended that in accordance with the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, the starting point for consideration was the actual rent passing on the appeal hereditament. He referred to two lease renewals of units at Thorp Arch Retail Park either side of the MCC date of 1 July 2019, which he considered to be the best evidence. The first lease renewal was in respect of Unit 9.6 for Steinhoff UK Group Properties Ltd (t/a Benson Beds) on 1 May 2019. The second rent review was in respect of Unit 9.3A for Buywell Interiors Ltd with effect from 1 August 2019. He argued that both renewals/reviews had been agreed at a peppercorn rent, with the tenants not prepared to pay rent. It was agreed that they were only responsible for the service charges, insurance and business rates. He stated that the properties could attract an occupier, but the landlord could not get a tenant to pay rent in respect of the unit.

28. Mr Munns further referred to Unit 9.7 which had been let to Decoporium Interiors Ltd. A 50% reduction of the rent had been accepted at £15,000 on 1 April 2017 however, this lease was forfeited on 25 September 2019 as the tenant could not afford to pay the rent and had incurred rent arrears. By 7 November 2019 no retail units were let, and the only remaining business was the café (BAW Catering Ltd). He argued that the two lease renewals before and after the MCC demonstrated that the units were not able to command a rent. Whilst there were vacant units, tenants were able to negotiate a peppercorn rent.

29. Prior to 2008, Mr Munns stated that there was barely a vacant unit. Following the 2008 financial crisis, various factors had resulted in the decline of the retail park. Works had been undertaken to try to reinvigorate the park and market the units.

30. The parties both referred to the previous rating lists where an allowance had been agreed. In respect of the 2005 rating list, the parties stated that there were three vacant units and a reduction of 30% had been agreed for all units on the retail park. This end allowance had been carried into the 2010 rating list. A 30% vacancy rate had resulted in a 30% reduction. At

the hearing, Mr Willoughby stated that the allowance had been taken off at the beginning of the 2017 rating list. As a result of the challenge, a 50% reduction had been awarded by the Valuation Officer. Mr Munns stated that this approach should not be adopted, and the rental evidence should be taken into account.

31. The Valuation Officer argued that it was necessary to determine the rent that a hypothetical tenant would pay with the level of vacancy at 80% on the AVD. He considered that the rent review/renewal was too far removed from this date. He argued that there had been much turbulence between 2015 and 2019. The impact of factors such as the referendum to leave the EU, the increase in online shopping and high street closures were factors which could not be considered. He argued that there was no evidence that the hypothetical landlord was prepared to accept £0 rent at the AVD.

32. Instead, the Valuation Officer had relied on the settlement evidence in the locality as guidance, which he considered to be the correct evaluation approach. In the absence of rental evidence at the AVD, valuer judgement was used.

33. Mr Willoughby referred to comparable evidence in respect of three properties where there were high vacancy rates.

    - Clarence Dock, Leeds LS10 1LU. This was a retail destination in 2008 which had failed to take off. In May 2009 there was a vacancy rate of 51.3% and an allowance of 40%. On 19 March 2010 the vacancy rate increased to 70% and an increase in the allowance from 40% to 50% was agreed.

    - Moor Allerton Centre, Leeds LS17 5NY. The MCC date was 16 December 2013. The Valuation Officer was aware of one unit being let on a rent free basis and the case was settled. An allowance of 25% was agreed for a vacancy rate of 55%.

    - Enterprise 5, Bradford Road, Idle, Bradford BD10 8EW. These were retail units to the side of a Morrisons store, which were completely vacant. Agreement of a 20% allowance was reached in 2009. Thorp Arch Estate and Clarence Dock had been used as comparable assessments when making this decision, which was based on other allowances adopted.

34. Mr Willoughby also contended that in accordance with the Lands Tribunal decision in *Jafton Properties Ltd v Prisk (VO)* [1997] the correct approach was to take the physical circumstances at the material day and relate them back to the AVD to estimate the likely rental bid with demand at that time. On the AVD there were only three vacant units, so there was demand for the units, and this level of demand could not be ignored.

35. Mr Munns argued that when the *Jafton* case had been heard, there was a different appeal process, without the cost of submitting an appeal. He argued that the Valuation Officer had not provided details of the economic factors that he was referring to, however he argued that he had provided inflation data to demonstrate that there had been a stable period of inflation, low interest rates and between 2015 and 2019 there had been a stable period in the economy.

36. Mr Munns stated that if the same physical circumstances had occurred on 1 April 2015 rather than on 1 July 2019 there was nothing to suggest that a tenant would pay rent at this time either.

37. Whilst the proposal referred to the reduced level of footfall, no evidence had been provided by the Appellant to demonstrate this. It was established at the hearing that across the whole site there was a total of around 250 buildings with approximately 2000 employees.

38. The panel noted the inconsistencies with the agreed allowances in relation to the vacancy rate and considered that each case should be taken on its own merit. In the case of the appeal property, the panel accepted that the retail park was unique and the vacancy level would have had an extremely detrimental effect. The comparable assessments, whilst helpful were understandably not of a similar character or age due to the uniqueness of the site.

39. The panel noted that no evidence had been provided by the Appellant to demonstrate that other retail parks where a peppercorn rent had been agreed, had an RV of £0. Even though Enterprise 5 had a vacancy rate of 100%, only a 20% allowance had been awarded in this case.

40. Whilst the panel considered that the vacancy rate would have had a considerable effect on the rental negotiations, it was not persuaded that sufficient evidence had been presented to demonstrate that on 1 April 2015, the hypothetical tenant would not have been prepared to pay any rent if the vacancy level had been the same. It had also not been demonstrated that the RV should be reduced to nil. On 1 April 2017 the annual rents ranged between £12,000 and £160,000 (for two units) whilst there were three vacant units. Thorp Arch Retail Park was not a traditional retail park, and the properties were not purpose-built. Taking into consideration the allowances demonstrated by the Valuation Officer, and the unique factors with the retail units, the panel considered that an additional allowance should be applied. On that basis it considered that 60% allowance was more appropriate and the appeal was therefore allowed-in-part.

Determination

41. In view of the above findings and conclusions, the Tribunal panel determined that the RV in respect of the subject hereditament was unreasonable, and that a 60% allowance was more reasonable. The panel calculated the revised valuation as shown below.

Hereditament Address					
9/1 Thorp Arch Retail Park, Thorp Arch Estate, Wetherby, LS23 7FE					
Ref	**Floor**	**Description**	**Area (m^2)**	**Price (£/m^2)**	**Value (£)**
1.1	Ground	Ground Floor Sales	1050.92	£28.50	£29,951
	Adjustments				
	MCC			-60%	
				Total Value	£11,980
				Rateable Value	£11,750
				Effective Date	1 July 2019

42. 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 reduce the entry in the rating list with respect to Unit 9/1 Thorp Arch Retail Park, Thorp Arch, Wetherby, West Yorkshire, LS23 7FE to £11,750 RV with effect from 1 July 2019.

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

44. As the grounds of the appeal have been partially made out, a refund of the fees paid in respect of the appeal 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

45. 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.

46. 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/.

Mrs M Christopher, Senior Member (Presiding)

Mr A Iqbal, Senior Member

21 July 2025

Mrs K Edhouse-Thomas
Clerk to the Tribunal
Date issued to the parties: 21 July 2025