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

Case No: CHG100750017

Sitting remotely using Microsoft Teams

Date: 29 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating; 2017 list appeal; restaurant and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; subject rent; comparable properties; appeal dismissed.

Before:
MR PA JENNINGS
MR N DE FREITAS

Between:

CHICKEN CABINS LIMITED **Appellant**

- and -

KAREN GILES (VALUATION OFFICER) **Respondent**

Regarding:
UNIT 3, GREEN PARK, COAL ROAD, LEEDS, LS14 1FB
(the "subject property")

Appearances:
Mr Andrew Stacey of Colliers, for the **appellant**
Mr Callum Preston for the **Respondent**

Hearing date: 12 May 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel found the current Rateable Value (RV) to be reasonable.

Introduction

3. This appeal has been brought in respect of the following: Unit 3, Green Park, Coal Road, Leeds, LS14 1FB which was entered in the 2017 Rating List as ‘restaurant and premises’ at £74,000 RV effective from 8 May 2017.

4. A challenge was submitted on 13 October 2021 which disputed the determination of the RV. The current RV of £74,000 is based on main space rate of £305/m^2, this valuation was upheld in the respondent’s challenge decision which was subsequently appealed to this Tribunal. The appellant’s representative originally proposed a reduction to £220/m^2 but at appeal stage it was confirmed that the appellant was seeking a reduction to £273.50/m^2.

5. Both Mr Preston, for the respondent and Mr Stacey, for the appellant, appeared in a dual role of advocate and expert witness, both confirmed that they accepted and understood that their overriding duty was to the Tribunal. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Stacey declared that he was not instructed under a conditional fee.

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

Issue Relevant Law

7. The issue between the parties concerned the RV of the subject property, specifically, the main space rate per m^2 that should apply. The current rate was £305/m^2 the appellant was seeking a reduction to £273.50/m^2.

8. 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;
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> 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."

9. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. In accordance with the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 8 May 2017.

10. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

'(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(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. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed 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 such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

Discussion

11. In deciding this appeal, bearing the six propositions from *Lotus & Delta* in mind, the panel acknowledged that the starting point was the actual rent passing on the subject property. The subject property was a modern detached single storey drive-thru restaurant unit with an area of 239.58m^2 (in terms of main space). It was constructed in 2017 so did not exist at the AVD. The rental information provided for the subject property was that there was a twenty year full repairing and insurance (FRI) lease agreed with effect from 3 April 2017. The passing rent was £65,000 per annum with five yearly rent reviews (the 2022 review was not implemented) and a tenant break option at fifteen years. There was a nine month rent free period granted from the start of the lease so rent commenced from 3 January 2018.

12. When analysing the rent, both parties agreed that the period to amortise it was up to the tenant's break option in year fifteen of the term. The panel was aware that this approach was confirmed in the Upper Tribunal Judgment *Bunyan (VO) v Acenden Ltd* [2023] UKUT 17 (LC). They also agreed that a 10% addition should be made to the analysed rent to reflect the rateable fit. The parties did not agree on the treatment of the rent-free period. The respondent's analysis disregarded three months rent-free, which he stated was the standard for fit out. The appellant's representative argued that the fit out period was known (and agreed) at 5-6 weeks, therefore the actual fit out period was excluded within his analysis.

13. The question therefore was whether, for the purpose of the rental analysis, should the actual fit out period of six weeks or the notional three months be adopted. The panel preferred the respondent's adoption of the standard three months. Whilst with the benefit of hindsight the actual fit out period was known, a different tenant may have taken longer, and the panel was considering the hypothetical tenant. The panel was mindful that as this was the standard period, the respondent would have used this approach when analysing and comparing the basket of rents. Mr Preston also referred to *Morrison E F (GP) Ltd v Central Scotland Assessor* [2004] RA 76 in support of the use of the notional three month period.

14. In any case, the panel would point out that the difference between the parties rental analysis was somewhat insignificant. The respondent had analysed to £283.30/m^2 and the respondent had analysed to £279.32/m^2. So whilst great play had been made regarding which approach should be used, the panel found that the minor difference between the analyses would have little effect on the outcome of this appeal.

15. The panel considered that, as per *Lotus v Delta*, the subject rent was the starting point, not necessarily the best evidence. The panel found that the subject rent was good evidence being a new lease on FRI terms, however, it was mindful that it was agreed two years post AVD. The panel was therefore not persuaded that this sole rent should be relied on found it necessary to examine rents passing on comparable properties. It considered the correct approach in this appeal was to examine the whole 'basket of evidence'.

16. There was discussion regarding the comparability of the other properties referred to, and in particular their situation. The subject property was situated immediately east of the main orbital Ring Road (A6120) surrounding the city of Leeds. The unit is accessed off Coal Road, which has direct access to the A6120. The appellant submitted that it was not in a prominent position. It was a stand-alone restaurant/drive thru surrounded by industrial properties. He referred to photographs to support his assertion that the subject property is barely visible as you approach the site.

17. The properties presented as comparable were other restaurants situated in Leeds. In the agreed evidence bundle, seven properties had been referred to as assessment evidence and the adopted rates ranged between £275/m^2 to £340/m^2. Five of the seven assessments were also referred to as rental evidence. Excluding McDonalds on Low Road, the parties had agreed the rental analysis on each. The panel did not attribute great weight to the rental evidence for McDonalds on Low Road as there was a premium paid by the tenant and both parties agreed that the analysis appeared excessive and out of kilter. In respect of the remaining four properties, the rents had been analysed to figures ranging between £280.05/m^2 to £394.41/m^2 which included an addition for tenants improvements.

18. Less weight was attributed to the Pizza Hut on Stile Hill as it was not a drive thru and therefore less comparable to the subject property. The rent for KFC on Cardigan Fields Leisure Park was agreed closest to the AVD. This was a new letting so held greater weight. It was a twenty year lease with passing rent of £83,622 per annum which was agreed with effect from 9 February 2016. It was constructed in 2016 so was a new build when the rent was agreed, as was the subject property. The rent was analysed to £394.41/m^2. The subject property was very similar to this comparable in terms of the building envelope and the internal fit out but the subject property was built one year later. The rent was agreed ten months post AVD so provided a better indication of the economic factors closer to this date. The panel accepted that this property benefitted from being situated on a leisure park with at least fourteen other occupiers including other restaurants and a Vue cinema. However, the subject property was assessed at £25/m^2 less.

19. KFC and McDonalds situated on Stile Way had rents agreed in 2013 and 2018. The passing rent as at the 2013 rent reviews were £73,312 per annum and £90,130 per annum respectively. There was seemingly limited information available in respect of the terms of the McDonalds lease which put its reliability into question, consequently, the panel placed less weight on this analysis. The 2013 rent on the KFC on Stile Way had been analysed to £319.51/m^2. This property was assessed at £332.50/m^2 (reduced from £340/m^2 following a challenge against the rating list entry). The panel accepted that there were slight differences in the immediate locality, as this had more units surrounding it, however, this property and the subject property were bounded by the same road and both had limited visibility from the road. The subject property was assessed at £305/m^2 so the panel was satisfied that differences in location had been accounted for. Furthermore, locality was not the only consideration, the KFC at Stile Way was fourteen years older than the subject property.

20. Having regard to the totality of the evidence presented, the panel was not persuaded that the subject property's RV was unreasonable. It sat towards the lower end of the range of assessment evidence and the rental evidence closer to the AVD analysed to a figure much higher than the rate adopted.

21. In conclusion, the panel was not persuaded to attribute most weight to the subject rent, especially given that it was not agreed on or close to the AVD. The basket of evidence presented supported that the subject property's current rate of £305/m^2 was reasonable.

Determination

22. In view of the above findings and conclusions, the panel confirmed the current main space rate of £305/m^2 and the appeal was dismissed.

Right of further appeal

23. 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.

24. 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 PA Jennings, Senior Member (Presiding)

Mr N De Freitas, Senior Member

29 May 2025

Mrs C McAvoy
Clerk to the Tribunal
Date issued to the parties: 29 May 2025