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

Case No: CHG100847402

Sitting remotely using Microsoft Teams

Date: 27 June 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating; 2017 list appeal; restaurant and premises; Material change in circumstances; cladding works; Local Government Finance Act 1988, comparable properties; tonal evidence; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed in part.

Before:
MS A VERMA
MR SM HOOBERMAN

Between:

MARISO HOLDINGS LTD T/A ITIHASS — **Appellant**

- and -

Lucy Formela-Osbourne MRICS
(VALUATION OFFICER) — **Respondent**

Regarding:
18 FLEET STREET, BIRMINGHAM B3 1JL
(the "subject property")

Appearances:
Joe McCarthy of Aitchison Raffety, for the Appellant
Moses Adepoju, for the Respondent

Hearing date: 29 May 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part. The panel found that the subject property was over assessed and confirmed an unadjusted rate of £90/m^2 and 10% allowance for the material change in circumstances.

Introduction

2. This appeal has been brought in respect of the following: 18 Fleet Street, Birmingham B3 1LJ which was shown in the 2017 Rating List as ‘restaurant and premises’ at £54,000 RV effective from 1 July 2020.

3. A challenge was submitted on 30 August 2022 which disputed the determination of the Rateable Value (RV). The appellant sought a 17.5% allowance with effect from 1 April 2021 due to a material change in circumstances (MCC) and a reduction in tone to £90/m^2.

4. The respondent, within the challenge decision, proposed an allowance of 10% and a reduction from £175/m^2 to £150/m^2. This reduced the RV to £42,250. The appellant’s representative was not satisfied with this and maintained his position in line with the original proposal. The challenged decision was therefore appealed to this Tribunal.

5. Mr Moses Adepoju, for the respondent, appeared as advocate. Mr McCarthy, for the appellant, appeared in a dual role of advocate and expert witness. He provided a statement which declared that he understood that his duty as expert witness was to the Valuation Tribunal and overrides any duty to those instructing him. He confirmed that he was not instructed on contingency fee basis.

6. The hearing of this appeal was conducted via Microsoft Teams. The panel member, Mr Hooberman, had a technical issue with his microphone. He could hear everyone present and if he had any questions during the hearing, it was agreed he would contribute by communicating via the clerk. The parties agreed to this and the panel was satisfied that the hearing could proceed with a full panel and no issues arose throughout.

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

Issues & Relevant Law

8. There were two issues for the panel to consider. This issues concerned the RV of the subject property and, specifically, the extent to which the assessment was affected by the MCC and whether there should be a reduction in tone.

9. Matters which constitute a MCC are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988:

> (7) The matters are—
>
> (a) matters affecting the physical state or physical enjoyment of the hereditament,
>
> …….

[(d) matters affecting the physical state of the locality in which the hereditament is situated,

(da) matters which, though not affecting the physical state of the locality in which the hereditament is situated, are nonetheless physically manifest there, and]

…..'

10. When valuing having regard to the material day, the valuation arrived to has to conform with the rateable value definition provided in paragraph 2(1) to Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999:

> "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

11. There was no dispute between the parties that an MCC had occurred. In accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268), the material day is the date on which the ratepayer confirms the accuracy (or otherwise) of the information included in check. Both parties agreed the material day of 26 April 2022. As this panel could only consider issues with the same material and effective date, and the challenge was made on the grounds of a MCC, the tone to be applied was also considered based on how it stood at the material day of 26 April 2022 and carried the same effective date of 1 April 2021 (as opposed to the date it entered the list). Both parties were aware of this and no opposing arguments/submissions were made in this regard. Whilst the physical state of the subject property and its locality were considered as they stood at the material day, economic factors are as at the antecedent valuation date of 1 April 2015.

<u>Tone</u>

12. The panel firstly considered the dispute regarding the tone. The subject property was a restaurant accommodation arranged over the ground and lower ground floors of a ten storey building built in the early 2000's. The challenge decision confirmed that the respondent had

agreed to reduce the tone to £150/m^2 whereas the appellant considered £90/m^2 to be supported. In reaching its decision, 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.

13. In accordance with *Lotus*, the starting point is to consider the rent passing on the subject property. However, in this case, both parties agreed that the subject rent was not helpful. The panel agreed with this position as the rent was arranged between connected parties and was too far removed from the antecedent valuation date. The panel therefore examined the basket of evidence brought before it.

14. The appellant referred to five assessments all of which had an adjusted rate of £90/m^2. The appellant's contention was that the best comparable properties were that of Fleet Street Kitchen at 12 Fleet Street and Opheem at 45-59 Summer Row.

15. 12 Fleet Street is comparable in terms of age, construction and style. The photograph provided demonstrated that it was visually similar to the subject property. It occupies a pitch at the opposite end of Fleet Street to the subject property, where Fleet Street meets Summer Row and the B4135. The parties were in disagreement in respect of which location was superior. The appellant submitted that 12 Fleet Street location on the B4135 which means it is located on the main road which links the A4400 and A4540, two of the main roads that provide access to Birmingham City Centre. Further to this the restaurant is located next to University College Birmingham with its large concentration of students. Owing to its location this restaurant benefits from larger footfall and exposure than the subject property, which is located at a quieter end of Fleet Street. The opposing argument from the respondent was that Fleet Street is a one way system accessed from either Newhall Steet or the B4135 and at times access from the B4135 is blocked off by pedestrian calming measures. Furthermore, the respondent submitted Newhall Street (which the subject property borders) would be the likely for access for pedestrians coming from either trains station (Snow Hill and New Street) or bus stops.

16. The panel found that both restaurants were on the same road and their positioning could be argued either way as to which was in a superior location. The panel heard that the one way system did not provide access directly from Newhall Street, as the respondent had suggested, it would need to go via two other streets. The panel was therefore not convinced that the differences evidenced why the subject property was assessed much higher. The panel found 12 Fleet Street to be strong evidence in support of £90/m^2 given its comparability in terms of age, construction, style and locality.

17. The panel found Opheem at 45-59 Summer Row to also be good evidence in support of the £90/m^2. It was located opposite Fleet Street Kitchen so within the immediate locality and similar access. It spanned a length of 40metres so had a prominent presence on the street, which visually appeared to be more attractive than the subject property.

18. As the subject property borders Newhall Street the appellant had also referred to three restaurants on Newhall Street. All three were valued at a base price of £90/m^2. The panel found that these had a better position as they were closer to the city centre and main restaurant pitch in the triangle created by Temple Street, Stephenson Street and Waterloo Street. Little weight was given to the respondent's contention that there was an element of

quantum. Whilst 12-22 Newhall Street was much larger than the subject property (743m^2), 58 Newhall was smaller at 282m^2 and 58 Newhall Street was similar size to the subject property. They were all valued at the same rate of £90/m^2 so one would question why there would be a difference owing to quantum between 12-22 Newhall Street and the subject but not between the other smaller restaurants.

19. The respondent had reduced the rate to £150/m^2 but there was no compelling evidence to support this figure. The respondent had considered the rent on Unit 1 5/11 Fleet Street. This was an older building with rent agreed at £40,000 from August 2015. This had been devalued to £150 which was the reason for the 15% reduction from £175/m^2 to £150/m^2 on the subject. It was stated that this reduction fits the trend of agreements at other locations around the city.

20. The panel did not place significant weight on this rental evidence. The appellant had not been able to verify the terms of the lease agreement, and nor could the panel. Based on the limited information the appellant did have, it had been analysed to a lower figure. Notwithstanding the potential doubts over the analysis and potential incentives the rental agreement may encompass, the panel was not minded to place all weight to one post AVD rent when the basket of evidence suggested the rate applied to the subject property was excessive. At this stage of the list (closed list), the tone of the list is established and, ultimately, the appellant proved that there was an established tone of £90/m^2 for restaurants in this locality. The £150/m^2 applied to the subject property was excessive when there were restaurants, in arguably superior positions, assessed at a lower rate. For the reasons stated, the panel placed greater weight to Fleet Street Kitchen as it was the most comparable but the basket of evidence strongly supported a rate of £90/m^2.

MCC

21. In reaching its decision in respect of the allowance for the MCC, the panel considered whether the MCC would affect the hypothetical tenant's bid. The MCC in question was major re-cladding works following the identification of unsafe cladding in 2020. To allow for these works to be carried out the erection of substantial scaffolding around the whole building was needed. As a result of these works, it was submitted by the appellant that the subject property had been completely engulfed by scaffolding and the heavy nature of the works have caused significant disruption and inconvenience by way of nuisance including noise, dust, dirt, vibrations and unwanted odours caused by the re-cladding. It was submitted that due to the scaffolding it had lost its presence on the road and had suffered cancellations due to the noise and disturbance caused by the works.

22. The panel found that the photographs provided demonstrated that the scaffolding was significant and could deter passing trade. Furthermore, the photograph from the inside of the restaurant showed that it was dark and the view to customers dining inside would be scaffolding. The photographs were not dated and, when asked, the appellant could not say for certain when they were taken. The panel was mindful that the material date was 26 April 2022, so photographs should show the panel what the position was at this time. The works were scheduled from 2021 to 2023 so, as at the material date, the works were potentially half way through and the panel would have preferred photographs and evidence to show the situation as at this date.

23. The appellant submitted that a 17.5% allowance was previously awarded to the subject property for disturbance for cladding works adjacent to the property. It therefore follows that,

when the disturbance is physically affecting the subject property, you would expect a higher allowance, so the 17.5% was supported.

24. The respondent had stated that the 17.5% had been given due to major work at Paradise Circus which had major impact on the roads around the area and given the duration large allowances were given. 10% was given for the de-cladding works on the adjacent property not 17.5%. The respondent therefore was prepared to grant a 10% allowance.

25. The panel placed weight on the 10% allowance previously given for cladding works. Whilst it accepted the appellant's point that the works were on the subject property itself and therefore should be more, there was no strong evidence to support a further reduction. There was clearly a disturbance and it was reasonable to conclude this would have impacted passing trade, but the panel was not persuaded that this warranted an allowance greater than 10%. At the material date, the hypothetical tenant would have the end date in its mind, which was 2023. Furthermore, there was no evidence provided to support a reduction in trade/footfall nor was there evidence of rent reductions. Whilst this is not always necessary, the panel concluded that, to award a 17.5% allowance, there would need to be more convincing evidence, especially given that there was no clear evidence of the position as at the material date.

26. In conclusion, the 17.5% previously agreed was on a different MCC so did not persuade the panel that same should be adopted here and, in the absence of compelling evidence to the contrary, it found the 10% agreed by the respondent to be reasonable.

27. Applying the £90/m^2 and 10% allowance both with an effective date of 1 April 2021 results in a reduction in the RV to £26,000 as set out below:

Floor	**Description**	**Area m2/Unit**	**£ per m2/unit**	**Value**
Ground	Restaurant	143.56	90.00	12920.40
Lower Ground	Restaurant	121.35	63.00	7645.05
Lower Ground	Kitchen	69.10	63.00	4353.30
Lower Ground	Office	12.72	63.00	801.36
Lower Ground	Public toilets	27.67	45.00	1245.15
Lower Ground	Internal storage	2.00	45.00	90.00
	Air conditioning System	264.91	7.00	1854.37
			Valuation sub-total	28909.63
	Cladding works	-10%		2890.96
			Total	**26018.67**

Determination

28. In view of the above findings and conclusions, the appeal is allowed in part.

29. 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 rating list to show the following:

18 Fleet Street, Birmingham B3 1JL
£26,000 RV effective from 1 April 2021

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

31. 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

32. 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.

33. 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 A Verma, Senior Member (Presiding)

Mr SM Hooberman, Member

27 June 2025

Mrs C McAvoy
Clerk to the Tribunal
Date issued to the parties: 27 June 2025