IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 REGULATIO 38 APPEAL

Case No: CHG100898712

Sitting remotely using
Microsoft Teams

Date: 11 August 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating appeal; 2017 Rating List; Complied List appeal; shop and premises; allowance in dispute; appeal allowed in part.

Before:
MR A HUSSAIN
MR A IQBAL

Between:

BOOTS UK LIMITED **Appellant**

- and -

(VALUATION OFFICER) **Respondent**

Regarding:
BOOTS LTD WESTERN MALL (INC BROADGATE LINK), LIVERPOOL STREET STATION, LONDON EC2M 7PY
(the “subject hereditament”)

Mrs K Fieldhouse from GL Hearn for the Appellant
Mr A McKillop for the Respondent

Hearing date: 16 July 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was allowed in part.

2. The Tribunal held that an allowance of 7.5% should apply an allowance to the assessment of Boots Ltd Western Mall (Inc Broadgate Link), Liverpool Street Station, London EC2M 7PY (hereafter, known as the subject hereditament) to reflect the severity of the redevelopment works within the locality for the period 1 April 2017 to 12 January 2021.

Introduction

3. This was an appeal following a Challenge against the 2017 Rating List entry, on the basis that the tone of the assessment was too high and that the allowance of 15% within the 2010 Rating List for ongoing works within the immediate vicinity carry over into the 2017 Rating List.

4. Both Mrs Fieldhouse for the Appellant and Mr McKillop for the Respondent appeared as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mrs Fieldhouse's declaration included a statement that she was not instructed under a contingency or other success – based fee arrangement.

5. Mrs Fieldhouse also declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body regardless of whether or not the evidence supported the 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 Rateable Value (RV) of the subject hereditament had been entered into the Rating List £4,420,000 from 1 April 2017, as shop and premises. A check had been submitted on 15 September 2022 and completed on 21 September 2022 where the RV of the subject hereditament had been amended to £3,850,000 with effect from 1 April 2017. A challenge was submitted on 18 January 2023 and was completed on 9 April 2024. An appeal was received by the Tribunal on 5 August 2024.

9. Originally, the Zone A rate to be adopted to value the subject hereditament had been in dispute, however, this issue had been resolved prior to the hearing. Therefore, the only issue for the panel to consider was if the 15% allowance applied within the 2010 Rating List should be carried over to the 2017 Rating List. This allowance was applied due to disturbance caused by the redevelopment works at 100 Liverpool Street. The material day for this appeal with it being a complied List appeal was 1 April 2017.

10. Following the hearing, the panel sought comments from Mrs Fieldhouse and Mr McKillop regarding the potential application of Regulation 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269). Both parties

confirmed that this was appropriate and agreed that any allowance determined by the panel should apply solely for the duration of the disturbance. In accordance with Regulation 38(7), the original Rateable Value should be reinstated upon the cessation of the disturbance, which was identified as 12 January 2021.

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

Background

12. The subject hereditament was situated within the Octagon Arcade adjoining Liverpool Street Station at platform level. The hereditament occupied a corner unit with frontage along the Western Mall parade towards the Fulcrum and Eldon Street and along the North Mall parade.

13. 100 Liverpool Street and 8–12 Broadgate have undergone substantial redevelopment. Construction works within Octagon Mall (formerly Western Mall) and above the subject hereditament commenced in late December 2016, with practical completion achieved on 12 January 2021. The present case concerns the impact of these building works on the value of the subject hereditament as of 1 April 2017, in relation to the compiled list appeal for the 2017 Rating List.

14. Agreement has been reached on the unadjusted compiled list Rateable Value (RV), which is confirmed at £3,850,000. However, no agreement has been reached regarding the appropriateness of an allowance for ongoing building works at 100 Liverpool Street. The appellant's representative contends that a 15% allowance should be applied to reflect the impact of these works, resulting in a proposed revised RV of £3,270,000, effective from 1 April 2017.

15. Within the 2010 Rating List, an allowance of 15% had been applied to reflect redevelopment works at Octagon Mall (formerly Western Mall) and above the subject hereditament which had begun in December 2016. This 2010 List Appeal related to the development of 100 Liverpool Street, directly above the subject hereditament and commencing on 24 December 2016. The allowance had been determined at Valuation Tribunal on 16 November 2018 with an effective date of 24 December 2016.

16. The appellant observed that the subject hereditament had no allowance in the current assessment within the 2017 Rating List to reflect the redevelopment works which were still ongoing as of the material day of 1 April 2017.

17. The panel noted that in the 2018 decision of the Valuation Tribunal, where an 15% allowance had been granted, the Valuation Officer had been precluded from presenting evidence due to the submission of the evidence being served late. Mr McKillop was of the view that, had the Valuation Officer's evidence been admitted, the Tribunal's decision would likely have been different.

18. The appellant was of the opinion that the 15% allowance applied with regards to the 2010 Rating List should still apply for the 2017 Rating List. The respondent was originally, of the opinion that no allowance should be applied, but stated that a 5% allowance should be applied in respect of the subject hereditament due to the redevelopment works.

Preliminary issue

19. Mrs Fieldhouse, the day prior to the hearing, provided a video for the panel to view regarding the level of noise where the subject hereditament was situated in relation to the ongoing works with regards to the redevelopment. She also provided a statement of facts and details of case law detailed below.

    a) *Berrill v Hill (Valuation Officer)* [2000] RA 194
    b) *GPS (Great Britain) Ltd and others v Bird* [2013] UKUT 0527 (LC)
    c) *Burroughs Machines Ltd v Mooney (VO)* [1977] 1 EGLR 182
    d) *Clegg (VO) v H & J Cutlack Ltd* [1985] 1 EGLR 217
    e) *Dawkins (Valuation Officer) v Ash Brothers & Heaton Ltd* [1969]
    f) *Greenwood (Men's Wear) Ltd v Harrison (Valuation Officer)* [1985] RA 104

20. Mr McKillop raised no objections to the video or the statement of facts. However, he did object to the inclusion of the case law, asserting that its late submission was contrary to the provisions of the Consolidated Practice Statement and, therefore, should not be admitted. The parties had been advised prior to the hearing that case law is not classified as 'new evidence' and, as such, may be introduced at any stage during discussions or raised during a hearing.

Relevant Law

21. The term "Rateable Value" is defined in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 (the "1988 Act"):

22. 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 various assumptions.

23. Each appeal hereditament had to be valued, having regard to factual matters the relevant material day, in accordance with paragraphs 2 (6) and (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. *Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141* provides:

i) Where the subject hereditament is let, the rent should be taken as the starting point
ii) The more closely the rent accords with the rating hypothesis the more weight should be attached to it
iii) Where rents on similar properties are available, they too should be considered to confirm or otherwise the level of value indicated by the rent on the subject
iv) Assessments of comparable properties are also relevant
v) In the light of all the evidence an opinion can then be formed of the value of the appeal hereditament weighting the evidence as appropriate
vi) Where no rents are available on comparable properties a review of other assessments may be helpful, but in these circumstances, it would be difficult to reject the actual rent.

25. Regulation 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269

(7) Where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist, the order may require the alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances.

26. Two previous Valuation Tribunal decisions were also provided within the evidence documents:

(a) Gnd Flr Pt (& Bst Rr Pt) Rex Hse 4-12 Regent Street London SW1Y 4PE appeal number 599027781939/538N10

(b) Boots Ltd Western Mall (Inc Broadgate Link) Liverpool Street Station London EC2M 7PY appeal number 503028296836/538N10 (the subject hereditament 2010 Rating List appeal)

Discussion

27. The issue for the panel was to consider whether the subject hereditament had been affected by the redevelopment of 100 Liverpool Street, to the extent that it warranted an allowance. It was noted that both parties were in agreement that an allowance should be awarded to the subject hereditament due to the disruptions caused by the ongoing building works.

28. The task for the panel was to determine the Rateable Value for the subject hereditament, which represented a rent that a hypothetical landlord and tenant would have agreed, as at the antecedent valuation date (AVD) of 1 April 2015. In reaching its decision, the panel considered, would the redevelopment works affect the hypothetical tenant’s bid? In doing so, to what extent? Economic factors must be considered as at the AVD of 1 April 2015, whereas the physical factors are to be considered as they existed as at the material day of 1 April 2017.

29. There was an important date for rating appeals known as the ‘material day’. This was the date on which the physical factors had to be taken into account. The task for the panel was to determine the level of disturbance caused to the subject hereditament on the material day and the level of allowance which should be awarded.

30. The Rating hypothesis relates to a landlord and tenant who come fresh to the scene as on the material day. When looking at the impact of ongoing redevelopment works, the panel would have to take into account only future works that were ongoing and not works that had

already taken place and if the works as of the material day or any future works had affected future trade.

31. The panel was aware that both parties had agreed that an allowance should be granted. It was also agreed by both Mrs Fieldhouse and Mr McKillop that there had not been any reduction in rent with regards to the subject hereditament during the period of works.

32. Since January 2015, the appellant had occupied a larger retail unit measuring 1,793 m². The premises benefit from dual frontages: one facing Octagon Arcade (also known as Western Mall), with a maximum width of approximately 38 m and a maximum depth of 60 m; and another frontage onto Sun Passage (Broadgate Link), partially overlooking the station concourse. Octagon Arcade provides access to Broadgate, while Sun Passage leads to Exchange Square.

33. The panel referred to a site plan, which showed the approximate location of the subject hereditament within the Liverpool Street Station. The unit was situated at lower ground floor level, directly beneath the area of ongoing construction.

34. The development was a major undertaking spanning ten floors. All elements of the original office block were removed, with the exception of the structural frame. A new office block and retail mall were subsequently constructed above the subject hereditament. Throughout the duration of the works, the appellant continued to operate from the lower ground floor beneath the construction activity.

35. Works were also carried out within the mall where the subject hereditament was located, including a significant lowering of the floor level to the west of the unit. The extent of this change was illustrated by the repositioning of the large steel sculpture, the Fulcrum, which was lowered by 1.4 m at the end of the mall.

36. All other retail units within the Octagon Mall, with the exception of the subject hereditament, were either newly constructed, rebuilt, or reconfigured as part of the development. It was not disputed by either party that substantial redevelopment works had been undertaken and continued until practical completion on 12 January 2021. Photographic evidence covering the period from February 2018 to November 2020 demonstrated that construction activities were ongoing, including the presence of scaffolding and boarding directly above the subject hereditament. Additionally, ceiling framework and new structural supports were installed above the hereditament in 2019. A photograph dated July 2021 indicated that the redevelopment was nearing completion, with secondary phase works having commenced at Broadgate Circle, located to the left of the redevelopment site.

37. In determining the appropriate level of allowance to be awarded, the panel considered the surrounding properties adjacent to the redevelopment site. It was noted that Broadgate comprised various occupiers who had received allowances ranging from 2.9% to 5% in both the 2010 and 2017 Rating Lists. Specifically, Broadgate Circle, which includes a wine bar and a health club, had each been granted a 5% allowance. These two properties were situated in close proximity to the redevelopment site. Taking this into account, the panel concluded that the subject hereditament warranted a higher allowance due to its immediate proximity to the redevelopment site.

38. The panel also considered the trade figures submitted for the period from April 2015 to January 2020, which indicated an average decline in trade of 8.52%. It was observed that the figures for January 2020 reflected a significant drop in trade of 26.78%. Mrs Fieldhouse

suggested that this may have been influenced by the emerging effects of the Covid-19 pandemic. However, when excluding the January 2020 data, the figures for the period from 1 April 2017 to October 2019 demonstrated an average decline in trade of 6.99%.

39. The panel held that, as of January 2020, the full impact of Covid-19 on business activity had not yet materialised. Consequently, it was determined that the ongoing redevelopment works at that time likely contributed to the observed decline in trade. In light of this, the panel concluded that an allowance of 7.5% was appropriate for the assessment of the subject hereditament for the period from 1 April 2017 until the near completion of the works on 12 January 2021.

Determination

40. In view of the above findings and conclusions, the Tribunal panel was satisfied that the ongoing renovation works as detailed within the evidence provided were substantial and significant. The panel held that the works as of the material day of 1 April 2017 would still have had a great impact on the subject hereditament. The panel held the evidence provided did not support the higher allowance of 15% requested by Mrs Fieldhouse but determined that a temporary allowance of 7.5% should be applied for the period 1 April 2017 to 12 January 2021, reducing the assessment of the subject hereditament to £3,564,000 for the period in question. Therefore, the appeal was allowed in part.

Order

41. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall within two weeks, in respect of Boots Ltd Western Mall (Inc Broadgate Link), Liverpool Street Station, London EC2M 7PY include an allowance of 7.5% to the assessment within the 2017 Rating List with effect from 1 April 2017.

42. As the ground of the appeals has been made out, the appeal fees are to be refunded in full. This will take approximately six weeks to process.

Right of further appeal

43. 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.

44. 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 A Hussain, Senior Member (Presiding)

Mr A Iqbal, Senior Member

11 August 2025

Clerk to the Tribunal: Ms R Muller
Date issued to the parties: 11 August 2025