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

Case No: CHG101076308

Sitting remotely using Microsoft Teams

Date: 19 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; warehouse and premises; rental evidence; comparable assessments; appeal dismissed.

Before:
MRS A FIELDER
MR A HUSSAIN

Between:

NEXT PLC — **Appellant**

- and -

KAREN GILES (VALUATION OFFICER) — **Respondent**

Regarding:
UNITS 1/2 VALENTINE RETAIL PARK, VALENTINE ROAD, LINCOLN, LN6 7BH
(the "subject property")

Mr Y Kee from GL Hearn, on behalf of the Appellant
Ms K Cockhill, on behalf of the Respondent

Hearing date: 2 May 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed.

2. The assessment was confirmed by the panel at rateable value (RV) £515,000 with effect from 1 April 2017.

Introduction

3. This was a 2017 rating list appeal. The RV of the subject property was entered into the rating list £525,000 from 1 April 2017, as retail warehouse and premises. As this was a compiled list entry, the material day for this appeal was the same date of 1 April 2017. A check had been submitted on 14 February 2023 and completed on 22 February 2023.

4. GL Hearn, on behalf of the appellant, submitted a Challenge proposal that was received by the valuation officer on 21 June 2023. The proposal sought a reduction in the subject property's assessment to £415,000 RV with effect from 1 April 2107.The valuation officer issued the Challenge Decision Notice on 5 August 2024 which stated that no change would be made to the assessment of the subject property. However, upon exchange of evidence, the valuation officer reduced the base rate from £180 per m² to £176 per m², in line with the TK Maxx unit. Therefore, the assessment of the subject property was reduced from £525,000 to £515,000 with effect from 1 April 2107.

5. As the assessment had not been altered in the manner sought in the proposal, an appeal was made to the Valuation Tribunal on 5 December 2024 on the grounds that the valuation for the subject property was not reasonable.

6. Mr Ke appeared on behalf of the appellant in a dual role capacity 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), Mr Ke confirmed that he was not instructed under a contingency fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether the evidence supported the client's case.

7. Ms Cockhill appeared on behalf of the respondent in a dual role capacity as both advocate and expert witness.

8. It was therefore appropriate for the panel hearing the evidence to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

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

Background

10. The subject property was a warehouse and premises with a total area of 2,713 m². and was located to the southwest of Lincoln City Centre off the A1192. The property forms part of a retail park with approximately 12 other units.

11. The disputed issue was the main space rate to be applied in the subject property's assessment. Originally, Mr Ke proposed an assessment of £382,500 RV based on a main space rate of £130 per m². However, he revised his proposed assessment to a base rate of £40 per m², which produced an RV of £415,000 with effect from 1 April 2107. The valuation officer' representative maintained that the revised rate of £176 per m², producing an assessment of £515,000 RV, with effect from 1 April 2107 was reasonable.

Relevant Law

12. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

> 2(1) 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.

13. 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). This common date was used to ensure that every property was treated in a consistent way.

14. The subject property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988).

15. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841), the date of the hypothetical rent was 1 April 2015 (the AVD). This common date was used to ensure that every property was treated in a consistent way.

16. The actual date of valuation is 1 April 2015, this being the AVD. As also noted above matters that affect the physical state or enjoyment of the property (termed hereditament) or the locality were to be taken as at 1 April 2017, the material day for this appeal. When assessing the RV of any hereditament, rating law also requires that it must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both its physical nature and mode or category of use.

17. Case law of the following was referred to within the evidence pack

(a) *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council* [1976] RA 141.
(b) *Orkney and Shetland Assessor v Beattie* [1988] RA 87
(c) *Edinburgh Assessor v Walls* [1972] RA 477
(d) *Lamb (VO) v Go Outdoors Limited* [2015] UKUT 0366 (LC) UT(LC)
(e) Futures London Ltd v Stratford (VO) [2006] RA 75K
(f) Shoe Shops Ltd v Hardy [1983] 1 WLR 1273;

Discussion

18. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

19. In this case, the subject property had been subject to a lease, which had commenced on 27 September 2010 for a period of 15 years. This had been set on an open market value at a commencing rent of £565,000 per annum. A rent review had taken place on 27 September 2015 with a nil increase in the rental figure. After consideration, the panel decided that little weight should be attached to the current rent passing of the subject, as it did not reflect an open market letting, as in 2015, it was a rent review.

20. *Lotus & Delta* also required consideration to be given to the rents of similar properties to confirm or otherwise the level of value indicated by the actual rent of the subject. Mr Ke had provided rental evidence of comparable properties situated on Valentine Road, Lincoln.

21. The DFS Unit was subject to a lease with effect from 30 September 2011 for a term on 15 years which had demanded a rent of £305,185 per annum. This figure had increased at a rent review that took place in 2016 to £356,004 per annum. Another rent review had taken place in 2021 with a nil increase. The RV of this property had been £257,500 and had a GIA of 1,874.68 m² with a base rate of £153 per m². The panel placed less weight onto the details of the rent, as it had been set circa 3.5 years prior to the AVD of 1 April 2015 and the rent review which took place in 2016 could not be considered as an open market rent, as it had been a rent review.

22. TK Maxx, Unit 10 Valentine Road was subject to a lease with effect from 9 January 2015 for a term of 14.5 years. This property had demanded a rent of £417,339 per annum. The panel was informed that the occupier received £417,339 as capital inducement to the lease. Mr Ke had analysed the rent to £185 per m². This property with an area of 1,882 m² was much smaller than the subject property.

23. Asda, Unit 8 Valentine Road was subject to a lease with effect from 16 August 2007 for a term of 15 years. The rent passing on this property had been £542,447 per annum and had been subject of a nil increase at a rent review, which had taken place in 2017. The panel placed less weight on the rental details of this property as the lease had commenced circa eight years prior to the AVD of 1 April 2015.

24. The Range, Unit 1 Valentine Park South which extended to 3,738 m² and was currently valued at £105 per m². Mr Ke argued for a quantum adjustment due to the size disparity. He cited the 2010 rating list relativities where a quantum allowance had been provided for the

subject property and The Range, but within the current list, the quantum allowance had not been provided with regards to the subject property. Therefore, Mr Ke claimed that the valuation officer had been inconsistent in his approach by allowing quantum for the comparable property of The Range but not for the subject property. The panel was aware that *Lotus v Delta and Lamb (VO) v Go Outdoors Limited* [2015] UKUT 0366 (LC) UT(LC), stressed each rating list must stand on its own merits. Therefore, it placed less weight on the statement by Mr Ke regarding the 2010 rating list relativities.

25. Mr Ke referred the panel to the retail park site map where he stated that The Range was not any less prominent than the subject property, as the main access to the park was on the Tritton / Valentine Road junction. The first unit visible upon entering the retail park was The Range, followed by the subject property. However, Ms Cockhill explained that once inside the retail park, The Range was not visible from the main car park. She asserted that the subject property occupied a superior location at the entrance to the retail park, while The Range was positioned in a less prominent, separate area with inferior visibility and car parking. The panel reviewed a sitemap, which corroborated Ms Cockhill's observations.

26. The issue in relation to quantum, Ms Cockhill stated that the rental evidence from DFS and TK Maxx supported £176 per m² and maintained that £176 per m² reflected both market evidence and a degree of quantum adjustment already. The panel noted that, although unit 10: TK Maxx was smaller than the subject property, there was no indication of a quantum adjustment being applied at the site. The analysed rental values supported the revised valuation of the subject property of a base rate of £176 per m².

27. The panel had been provided with further rental evidence for units 2 and 3 on Valentine Retail Park. They were retail warehouse and premises which areas of 998.78 m² and 510.15 m². The panel found that the rental figures for these two comparable properties would not reflect rents paid for much larger units, like the subject property. The panel also noted that the rents provided had been rent reviews and had taken place circa more than a year post AVD of 1 April 2015. As these were much smaller properties and the rental details provided had been in relation to rent reviews, the panel placed less weight on details provided.

28. The panel noted that unit 3, had also been settled at an adopted price of £210 per m². There had also been a settlement on unit 7 with an adopted price of £180 per m². Unit 7 was also much smaller in size than the subject property with an area of 910.77 m². The panel found that these two units, much smaller in size with their settled adopted values, supported the revised adopted price placed by the valuation officer on the subject property of £176 per m².

29. The panel found particularly the TK Maxx comparison, where the rental analysis had been valued at £185 per m². The panel acknowledged Mr Ke's quantum argument but found insufficient evidence to justify a rate as low as £140 per m². The Range's lower valuation was attributed not solely to size but also location and inferior setting.

30. The panel found the locations of The Range within the retail park, along with the adopted values applied to both The Range and TK Maxx compelling. The Range was the largest of the comparable properties with an area of 3,738 m². It had an adopted price of £105 per m². TK Maxx had an area of 1,881 m² with an adopted price of £185 per m². Therefore, the panel held that the subject property, with an area of 2,713 m² and an adopted price of £176 per m² fair and reasonable being situated in a more prominent position with the retail park.

Determination

31. In view of the above findings and conclusions, the appeal failed to meet the burden of proof. The panel found that the current base rate of £176 per m² was not excessive. Therefore, the appeal was dismissed.

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/.

Mrs A Fielder, Senior Member (Presiding)
Mr A Hussain, Senior Member

19 May 2025

Clerk to the Tribunal: Ms R Muller
Date issued to the parties: 19 May 2025