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

Case No: CHG101076681

Sitting remotely using Microsoft Teams

Date: 19 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 Rating List appeal; Restaurant and Premises; deletion of list entry sought following a fire; hereditament test; statutory repair assumptions; appeal dismissed.

Before:
MISS AM PRICE
MRS A TAYLOR

Between:

TAJAMAL HASSAN **Appellant**

- and -

NICOLA JOHNSON (VALUATION OFFICER) **Respondent**

Regarding:
GROUND FLOOR AND BASEMENT, 111-113 COMMERCIAL ROAD, LONDON E1 1RD
(the "subject property")

Mr Tajamal Hassan, the Appellant
Mr Barry Clarke, witness of fact for the **Appellant**
Mr Guljar Singh of the Valuation Office Agency for the **Respondent**

Hearing date: 15 May 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed, as despite the fire damage, the appeal property remained a hereditament that was capable of repair.

Introduction

2. The appeal property was a two-storey restaurant situated on Commercial Road which was in Whitechapel and was in close proximity to both the Aldgate and Aldgate East Underground stations.

3. Although the appeal property was described in the 2017 Rating List as a “Restaurant and Premises”, the ground floor was assessed on a retail basis at a Zone A rate of £1,000 per m². The basement restaurant area was assessed at £100 per m², the storage area and the public toilets were assessed at £50 per m². The existing assessment for the appeal property as a whole was £72,500 Rateable Value with effect from 1 April 2017.

4. On 21 June 2023, the Appellant served a proposal on the Valuation Officer seeking a deletion of the appeal property’s entry from the rating list with effect from 7 June 2018, this being the date when he became liable for the rates. Having considered the merits of the Appellant’s proposal, the Valuation Officer determined that it was not well founded and issued a decision notice on 27 March 2024. The Appellant subsequently appealed the Valuation Officer’s Challenge decision to the tribunal on 16 July 2024, in accordance with Regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. The appeal was made on the grounds that the valuation for the hereditament is not reasonable. However, given that the Appellant had proposed that the list entry be deleted, the grounds that should have been cited, when the appeal was made, was that the list is inaccurate in relation to the other hereditament (other than in relation to the valuation. The appeal was therefore treated as such and the Appellant suffered no prejudice as a result.

5. This appeal was previously heard remotely by another panel who sat on 23 December 2023. However, no decision was made by the previous panel before the presiding senior member resigned from the tribunal. The President therefore directed that the appeal be re-heard afresh before a different panel.

6. The material date for the purposes of this appeal was 7 June 2018, the effective date proposed by the Appellant for the deletion of the list entry.

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

Facts admitted or proved

8. There was a fire incident at the appeal property on 23 March 2013. The fire originated in the ground floor kitchen and spread to the dining area on the ground floor. There was some damage to the rest of the property.

9. Sometime after the fire, a waste pipe burst within the restaurant which meant that the appeal property was affected by waste water/sewage from the domestic accommodation above further worsening its condition. The exact date when the pipe burst was not established but it occurred before the Appellant regained possession of the property on 7 June 2018.

10. The appeal property was previously let to a tenant, Mr Sabir. Mr Sabir's lease also included the right to occupy the first floor flat above the restaurant.

11. The Appellant's tenant, Mr Sabir, entered into an arrangement to sell his business to A & W Investments Ltd who ran the restaurant business. An agreement was entered into on or around 31 December 2012 but formalities were not completed. However, A & W was running the restaurant when the fire occurred.

12. Following the fire, the Appellant's insurers, Allianz, appointed Davies Surveyors as loss adjusters and Harris Balcome were appointed assessors for his tenant. The latter provided an estimate for repairs from Stirling Property Services of £156,885. Allianz insurers also instructed Davies Surveyors to prepare a schedule of works. The appellant also received two estimates to do the reinstatement/repair works, one was from Jarrison Construction for £161,511 and another quote was received from Falcon for £203,731.

13. Ultimately, the Appellant's insurers agreed to settle his claim and paid out £275,000 but some of this pay out was compensation for loss of rent. The claim was settled in instalments, the final payment being made in 2016.

14. Mr Sabir was not successful with his insurance claim, as his insurance company Millburn Insurance went into administration. As a result, the Appellant did not receive any rent payments from Mr Sabir after the fire.

15. The Appellant was unable to undertake any repairs whilst the property was leased to Mr Sabir because he refused him access. The appeal property contained a number of the tenant's fixtures and fittings which the Appellant's contractors would have required him to remove to allow them full unhindered access to undertake the necessary works.

16. Mr Sabir was declared bankrupt on 8 May 2018 and the Official Receiver served notice on the Appellant to disclaim the lease as a result. The lease was then disclaimed and the Appellant regained possession of the property on 7 June 2018, thus becoming liable for the non-domestic rates.

17. The Appellant was advised not to start any programme of repair works, until a new tenant was found for the restaurant and their bespoke requirements, in terms of restaurant lay out, were known.

18. A new tenant, who was willing to take on the property was eventually found and a programme of works took place to facilitate the new tenant's occupation. The new tenant's tenancy commenced on 1 June 2019.

19. The appealed assessment was removed from the Rating List with effect from 1 June 2019 and the Valuation Officer assessed the basement (£26,250 RV) and the ground floor (£46,000 RV) accommodation separately until 25 November 2019, when the appeal property was re-assessed as a single hereditament at £72,500 Rateable Value again.

Relevant Law

20. The statutory definition of a hereditament was contained in section 64 of the Local Government Finance Act 1988 (the "1988 Act"). A hereditament was anything which, by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967 (the "1967

Act") would have been a hereditament for the purposes of that Act had this Act not been passed. Section 115(1) of the 1967 Act defined hereditament as follows:

> "hereditament" means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list;

21. The statutory hypothesis is contained in paragraph 2 of Schedule 6 to the 1988 Act. The statutory definition of rateable value is as follows;

> 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 nondomestic 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.

22. Although the rateable value is determined having regard to the antecedent valuation date the valuation must reflect physical facts relating to the property and its locality as at the time the date the assessment is made or amended (called the material day). Paragraph 2 (6) and 2(7) of Schedule 6 to the 1988 Act set out the matters which are relevant for this appeal:

> (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. (6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.
> (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) …………,
> (cc)…………,
> (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.

Discussion

23. In his evidence, Mr Hassan outlined the chronology of events post the fire. His expectation was that his tenant would have attended to the repairs and reinstate the restaurant after the fire. However, the tenant never had the financial means to pay for the necessary repairs and ultimately went bankrupt. The tenant’s financial woes were not helped by the fact that his insurance company went into administration. According to Mr Clarke, the tenant’s insurers were an off shore company and, in his opinion, the tenant was not properly insured.

24. Nevertheless, the tenant would not hand the property back to Mr Hassan because he wanted a financial contribution in lieu of the losses he had suffered.

25. With the help of Mr Clarke, the Appellant did receive a significant pay out in settlement of his claim from his insurers Allianz. Ultimately, Allianz agreed to pay out a total of £275,000 which included a contribution for loss of rent.

26. When Mr Hassan finally got the appeal property back, following the Official Receiver’s disclaimer of the lease, he became liable for the rates, The period for which he was held liable was 7 June 2018 to 31 May 2019 inclusive. Mr Hassan was of the opinion that it was unfair that he was liable to pay rates on a property that was incapable of use until the repairs were attended to. After he had contacted the billing authority for assistance, it put his liability on hold and advised him to contact the Valuation Officer to see if the property could be zero rated. Unfortunately for Mr Hassan, the Valuation Officer was not very receptive and one of the Valuation Officer’s earlier case workers was very dismissive about the merits of Mr Hassan’s case.

27. Mr Hassan therefore sought assistance from the tribunal to relieve him from his rates liability. He accepted that he was unfamiliar with rating law but even if the law was against him, he asked the tribunal to award him some relief, in the interests of fairness. Mr Hassan was, however, advised that the tribunal was required to follow and apply the relevant law as the legislation and the case law/authorities were binding upon it. As a corollary, the panel would only have been in a position to allow his appeal if it was justified in doing so, based on the evidence submitted before it and after applying the facts found to the relevant law. There was no discretionary element which would allow the panel to treat Mr Hussan as a special case and allow his appeal and release him from his rate burden, regardless of whether his substantive case had merit.

28. On behalf of the Valuation Officer, Mr Singh argued that, under the rating hypothesis, the appeal property had to be valued on the assumption that it was in a state of reasonable repair, unless the outstanding repairs were uneconomic for the landlord to undertake. In this instance, having regard to the competing contractors’ estimates for undertaking the repairs, it was apparent that the cost of the works was economic for the landlord to undertake. Moreover, in reality this was what had happened, and the property had since been re-occupied as a restaurant. In support of the Valuation Officer’s case, he referred the panel to the Upper Tribunal’s judgment in *Thomas & Davies (Merthyr Tydfil) Ltd v Denly (VO)* [2015] UKUT 0146 (LC).

29. Having heard the competing submissions from the parties and listened to Mr Clarke’s testimony, the first issue for the panel to decide was whether or not the appeal property continued to be a hereditament after the fire. If the appeal property remained a hereditament, the statutory assumptions, including that of reasonable repair, would not have been engaged. However, although the fire had caused significant damage to the property, which meant the restaurant was forced to close and was unable trade, the panel determined that it remained a hereditament. Having regard to the schedule of works required to reverse the damage, the

majority of the works involved the replacement of electrical items, lighting, wiring, smoke and heat detectors, the air conditioning system and fire alarm system. Fire doors needed replacing, as did skirting boards. The ladies and gentlemen's cloakroom areas needed stripping back and the works included installing with new toilets and new tiling. Also, general decoration was required throughout. When stripping back the lining of walls, the contractors would look for structural damage. However, the appeal property's structural integrity remained intact albeit the interior was left in a sorry state of affairs with the impact of the fire and problems caused by the waste pipe from the domestic accommodation leaking into the restaurant.

30. On the material day, there was no programme of works that had begun or were in progress which could have brought the case within the scope of the Supreme Court's judgment in *Newbigin (VO) v Monk* [2017] 1 WLR 851. Had there been a radical programme of works ongoing and as a result of those works the property was in transition or in the process of being converted into something different, the panel would have had to have to regard to *Monk.* However, the facts at play in this case were completely different to those that were involved in *Monk.*

31. In the case under consideration, whilst it was accepted that on the material day, the appeal property was incapable of use, it did not automatically mean that it was no longer a hereditament. Generally speaking, every time a tenant vacated a property, they left behind them outstanding repair issues that needed to be addressed before the property could be re-let to a new tenant. Under the rating hypothesis, if the incapability of use was the result of disrepair, this was where the statutory repair assumption was engaged and required that the property be valued on the assumption that it was in a reasonable state of repair. The only exception to the rule would be if those repairs were uneconomic for the landlord to undertake. However, that was not the case here as the landlord's investment in the repairs could easily have been recouped within 3 to 5 years and therefore the economic test was clearly met.

32. As previously stated, although the fire damage was significant, there was no radical alteration of the premises, the works required were in the main removing damaged items, replacing them with new and general decoration. This was the type of work that the rating hypothesis assumed would have been carried out by the hypothetical landlord, prior to the hypothetical tenancy commencing.

33. The other telling factor was that after a tenant was found and the repair works had been completed, the property was re-occupied as a restaurant. This was an indication that the fire damage had not altered the property's physical character, as the incoming tenant clearly saw its potential for restaurant use, despite the fact that the repair works had not begun at that stage.

Determination

34. In view of the above findings and conclusions, despite the fire damage, the appeal property remained a hereditament that had to be valued, in line with the statutory assumptions. Consequently, the appeal was dismissed.

Right of further appeal

35. 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.

36. 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/.

Miss AM Price, Senior Member

Mrs A Taylor, Member

19 May 2025

David Slater
Registrar & Chief Clerk
Date issued to the parties: 19 May 2025