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

Case No: CHG101092842

Sitting remotely using
Microsoft Teams

Date: 2 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — shop and premises; Zone A price per m^2 in dispute; rental evidence; comparable assessments; settlement evidence; appeal dismissed.

Before:
MRS O ROBSON
MR A HUSSAIN

Between:

BARCLAYS BANK PLC — **Appellant**

- and -

LUCY FORMELA-OSBOURNE
(VALUATION OFFICER) — **Respondent**

Regarding:
BARCLAYS, 81 HIGH STREET, BIRMINGHAM, B4 7TE
(the “subject property”)

Mr J Fendick from JLL representing the Appellant
Mr Z Asghar representing the Respondent>>

Hearing date: 17 April 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that the present Zone A price of £2,300 per m^2 is reasonable. The rateable value (RV) is confirmed at £445,000 with effect from 30 June 2020.

Introduction

3. This is a 2017 rating list appeal, made in response to a Valuation Officer's notice which had altered the RV of Barclays, 81 High Street, Birmingham, B4 7TE (the appeal property) to £445,000 with effect from 30 June 2020.

4. The challenge proposal was submitted by JLL on behalf of Barclays Bank PLC, and was received by the Valuation Officer on 19 July 2023. It had been made on the grounds that the RV shown in the rating list was incorrect. A revised RV of £258,000 was proposed with effect from 30 June 2020.

5. The Valuation Officer issued a challenge case decision notice on 17 June 2024, which disagreed with the proposed alteration, and stated that the rating list entry was reasonable based upon the evidence and information available.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 16 October 2024, in which the appellant's representative sought an alteration to £258,000 RV, based upon an adopted Zone A price of £1,320 per m^2.

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

8. 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. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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

Relevant Law

10. Rateable value is to be determined in accordance with paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988, which provides:

    "(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.

11. 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).

12. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 30 June 2020.

Discussion

13. The subject hereditament is a retail unit located on High Street, one of the main shopping locations in Birmingham city centre. It has a total significant area of 1,328.61m^2, or 196.35m^2 in terms of Zone A (ITZA), with retail space on the ground and first floors, and stores on the basement level. The property is held leasehold at a passing rent of £600,000 effective from 21 April 2014.

14. The case for the appellant is that the present Zone A price of £2,300 per m^2 is excessive in light of the subject rent and local rental evidence. He proposed a revised Zone A price of £1,320 per m^2, highlighting the rental analysis in respect of 79-84 High Street (£1,957.59 per m^2, effective 8 July 2015) and 41 High Street (£1,319.41 per m^2, effective 22 December 2015). He submitted that less weight should be attached to the respondent's rental evidence and settlement evidence.

15. The respondent defended the present Zone A price of £2,300 per m^2 with reference to local rental evidence, comparable assessments and settlement evidence. The respondent relied upon the rental analysis of 39-40 High Street (£2,161.65 per m^2 effective from 20 June 2014), and 79 High Street (£2,950.86 per m^2 effective from 12 October 2014). In the absence of rental evidence which gives a clear indication of AVD values, the respondent argued that evidence of comparable assessments should be considered. Mr Asghar stated that there were 24 assessments located on High Street that had not been challenged during the life of the list, 17 of which were assessed at the same Zone A price of £2,300 per m^2. Two assessments had been challenged, but the tone of £2,300 per m^2 had been confirmed (Metro Bank, 85-88 High Street and 46 Pavilion Central, High Street).

16. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, a leading judgment which had set out six propositions to be followed when considering the weighting of evidence.

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 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 differing types of evidence depending on the one hand 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.

17. The subject rent of £600,000 was effective from the start of the lease in 2009. It had been reviewed in 2014 and 2019 on upward only terms at nil increases. Consequently, both parties attached little weight to the subject rent.

18. In support of the contention that a Zone A price of £2,300 per m^2 was excessive, Mr Fendick cited the following rental transactions:

79-84 High Street, B4 7TE

A retail unit of 229.91 m^2 ITZA, occupied on a 10 year lease from 8 July 2010, at a rent of £450,000 per annum. It had been subject to an upward only rent review on 8 July 2015 and had been settled at a nil increase. The rent devalued to £1,957.29 per m^2. While the nil increase did not provide an exact rental value around the AVD, Mr Fendick highlighted that the analysed rent was significantly below the adopted Zone A price of £2,300 per m^2.

Mr Asghar confirmed that the Valuation Officer did not hold a form of return for this property, but a lease had been provided during discussions. As the review was at a nil increase, he attached limited weight to this evidence.

41 High Street, B4 7SL

A retail unit of 123.86m^2 ITZA, subject to a new 10 year lease from 25 January 2016 at a rent of £175,000 per annum. Taking into account a six months rent free period, Mr Fendick analysed the rent at £1,319.41 per m^2, which was significantly below the adopted basic price of £2,300 per m^2. Given the proximity to the AVD and as an open market transaction, Mr Fendick submitted that it provided strong evidence as to the appropriate levels of value for retail units in High Street around the AVD.

As a post AVD rental transaction, Mr Asghar argued that little to no weighting should be applied.

19. In support of the present adopted price of £2,300 per m^2, the Valuation Officer scheduled the following rental transactions:

39-40 High Street, B4 7SL

A retail unit of 344.20 m^2 (total area), subject to a rent review at nil increase, effective from 20 June 2014. The passing rent of £200,500 per annum adjusted for a capital sum, external repairs and insurance analysed at £2,161.65 per m^2. Mr Asghar submitted that some to little weight should be attached to this transaction in consideration of the adjustments required and the fact that it was a smaller property.

Mr Fendick submitted that this transaction carried little weight as it was a reversionary lease agreed in 2010.

79 High Street, B4 7TE

A retail unit of 114.15m^2 (total area), subject to a rent review at nil increase, effective from 12 October 2014. The passing rent of £215,000 analysed at £2,950.86 per m^2.

The parties were in agreement that only limited weight could be applied to this transaction, as it was another nil increase agreement, so not representative of a new rent at the AVD.

20. In consideration of the available rents, the panel found no compelling evidence of the likely rental value as at 1 April 2015, as the analysed rents ranged from £1,319.41 per m^2 to £2,950.86. Little weight could be attached to the rental evidence, which was mainly derived from nil increase reviews, together with a post AVD transaction. In line with *Lotus and Delta*, the panel turned to the evidence of comparable assessments.

21. The Valuation Officer's assessment summary scheduled 24 retail units located on High Street. The subject was one of 17 properties assessed at a Zone A price of £2,300 per m^2. It had been a point made by Mr Asghar that the majority of those assessments had remained unchallenged, which, he considered, demonstrated an acceptance of the tone. In addition, the fact that there had been two challenges made in respect of Metro Bank and 46 Pavilion Central, with no change to the Zone A price, further supported the tone.

22. In support of the relevance of the comparable assessments, Mr Asghar referred to the following extract from *O'Brien v Harwood VO [2003]* UTLC RA 22 2002:

> "There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, entries will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation.
>
> Over time assessments will be challenged and agreed or determined by a valuation tribunal or this tribunal or accepted by lack of challenge.
>
> Finally, a stage is reached where enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled. Rents will be largely subsumed into assessments. At that stage rating surveyors will have little regard to rents and pay considerable attention to assessments.

The position regarding tone of the list at any particular time is a question of fact. Where an assessment is challenged before a Tribunal the correct time for deciding whether a tone of the list has been established is immediately before the hearing."

23. He further cited *Futures London Ltd v Stratford (VO)* [2006] RA 75:

"Before the list had settled the rent would have carried much greater weight but at this later stage rents can now be taken to be subsumed into assessments."

24. In response to the comparable assessment evidence, Mr Fendick argued that there were mitigating factors to consider. He attached little weight to the settlement for 46 Pavilion Central, as the ratepayer (Thorntons) was in well documented financial troubles at the time; Colliers had not been instructed to pursue an appeal due to the financial costs involved. He described Metro Bank as a bespoke unit for which the ratepayer paid a premium rent in 2018, and submitted that the agent was not aware of any rental evidence.

25. Mr Fendick considered that the lack of challenges was as a result of significant retail relief schemes in place in 2019 and 2020, which had reduced rates liability, and so there was a reduced focus put on RV reviews. He put forward the principle established in *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* [1932] 2 KB 679, that correctness must not be sacrificed for uniformity. That being, if the rental evidence is suggesting the existing level of value is incorrect, then that must not be overlooked because there has been a lack of challenges or challenges that have not been appealed.

26. The panel had found that the basket of rental evidence was wide ranging, and therefore was not persuaded that the rental evidence demonstrated that the existing level of value was incorrect. The panel decided to attach most weight to the 17 comparable assessments at £2,300 per m^2 which had remained unchallenged, together with the two pieces of settlement evidence. The panel was not persuaded that the settlement evidence carried little weight for the reasons outlined by Mr Fendick. Ultimately, they had been subject to challenge, and no alteration had been made to the adopted price of £2,300 per m^2.

Determination

27. In view of the above findings, the panel concluded that the appellant's representative had failed to support a revised Zone A price of £1,320 per m^2. The panel was satisfied that the adopted Zone A price of £2,300 per m^2 was reasonable, and confirmed the present assessment of £445,000 RV, with effect from 30 June 2020. The appeal was therefore dismissed.

Right of further appeal

28. 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.

29. 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 O Robson, Senior Member (Presiding)

Mr A Hussain, Senior Member

2 May 2025

Mrs L Horne
Clerk to the Tribunal
Date issued to the parties: 2 May 2025

Decision reissued on 7 May 2025 in accordance with Regulation 39 of the Tribunal Procedure Regulations to correct the following clerical error: in paragraph 3, "Listing Officer's notice" is substituted with "Valuation Officer's notice".