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

Case No: CHG101094029

Sitting remotely using Microsoft Teams

Date: 9 March 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — leisure centre and premises; proposal to delete; whether repairs were uneconomic to undertake; appeal allowed.

Before:
MS LA OWUSU-AFRIYIE
MS LS MARSHALL

Between:

PURE GYM LIMITED **Appellant**

- and -

ANDREW MOULAND (VALUATION OFFICER) **Respondent**

Regarding:
4-10 AVEBURY AVENUE, TONBRIDGE, TN9 1TF
(the "subject property")

Mr A Waller from G L Hearn for the Appellant
Mr W Cox for the Respondent

Hearing date: 13 February 2026

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is allowed.

2. The Tribunal determined that the subject property should be deleted from the rating list with effect from 21 June 2021.

STATEMENT OF REASONS

Introduction

3. This is a 2017 rating list appeal. 4-10 Avebury Avenue, Tonbridge, TN9 1TF (the subject property) had been entered in the 2017 rating list as ‘leisure centre and premises’ at £72,000 rateable value (RV) with effect from 29 November 2017.

4. A challenge proposal was submitted by G L Hearn on behalf of Pure Gym Limited and was received by the Valuation Officer on 20 July 2023. It had been made on the following grounds:

   “The subject premises should be deleted with effect from 21 June 2001 following works to the premises including removal of the roof of the property and related damage and inability to occupy the premises as a result.”

5. The Valuation Officer issued a challenge case decision notice on 13 May 2025, which disagreed with the proposed alteration of the list, and confirmed that the entry would remain at £72,000 RV with effect from 29 November 2017.

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 list is inaccurate as the subject property is incapable of beneficial occupation. On behalf of the appellant, a deletion from the list or a reduction to £0 RV was requested.

7. Mr Waller 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 on a conditional fee, and 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 (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

9. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

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

Preliminary issue

11. The clerk sought clarification from the Valuation Officer as to the circumstances surrounding the deletion of the subject property from the rating list with effect from 1 April 2023, as this had not been provided in the Valuation Officer’s submission.

12. Mr Cox explained that the deletion was actioned following a Billing Authority report. He confirmed that the property had not been inspected on 1 April 2023, but he had inspected in January 2025.

Relevant Law

13. 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.

14. 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.

15. It was a point raised by Mr Cox at the hearing that the appellant’s representative had sought either a deletion of the subject property from the rating list, or an alteration to £0 RV in his challenge submission. As this involved consideration of the material day as at two different dates, he sought clarification of whether a deletion was proposed, or a £0 RV. In response, Mr Waller confirmed that he was seeking a deletion with effect from 21 June 2021.

16. In respect of the subject appeal, the material day is 21 June 2021, the effective date sought for deletion.

17. The parties cited the following judgments:

    - *Barber (VO) v Cerep III TW SARL* [2015] UKUT 251
    - *BNPPDS(J) Ltd and BCI Ltd (as Trustees of the Blackrock Industrial Trust) v Hitchings (VO)* [2025] UKUT 104 (LC)
    - *Carey Group Plc v Ricketts (VO)* [2024] UKUT 356 (LC)
    - *Ciecierski v Lock (VO)* [1968] RA 435

- *Coppin (VO) v The East Midlands Airport Joint Committee* [1970] RRC Vol 16 386
- *Jackson (VO) v Canary Wharf Ltd* [2019] UKUT 136 (LC)
- *John Rylands and Jehu Horrocks v Thomas Fletcher* [1868] LR 3 HL 330
- *Leakey and Others v National Trust for Places of Historic Interest or Natural Beauty* [1977] L No 285
- *Merlin Entertainments Group Limited v Wayne Cox (VO)* [2018] UKUT 406 (LC)
- *Newbigin (VO) v S J & J Monk* [2017] UKSC 14
- *Thomas & Davies (Merthyr Tydfil) Ltd and Susan Jennifer Denly* [2014] UKUT 0146 (LC)
- *White Brothers v South Stoneham Assessment Committee* [1914] KBD 1 KB 103

Discussion

18. The subject property comprised the ground floor of a former retail unit which had been in use and occupied as a gym since 2012. The appellant entered into a 15 year lease from 29 November 2017 at a passing rent of £90,000 per annum. The parties were in agreement regarding the physical facts.

19. The landlord of the ground and first floors had commenced works to redevelop the upper floor. Those works included the removal of the roof, which resulted in water ingress and flooding to the ground floor. A timeline of events had been provided by Mr Waller as follows:

24 May 2021

- Water ingress through ceiling of Pure Gym.
- Email to client to confirm water ingress into the gym – multiple leaks pouring into gym confirming contractors had not made upstairs watertight and with heavy rain over the last couple of days water has flooded the unit about and works its way into the gym.
- Gym manager confirmed floor tiles ruined and will need to be replaced and extensive ceiling repairs as well. Email includes photos of ceiling water ingress, video of water pouring through.

17 June 2021

- Email from Gym Manager confirming substantial flooding of gym leading to closure of gym. Video showing leaking in several locations. Photos showing several locations affected by water ingress and damage leading from it.
- Floor tiles siting on concrete floor – water will pool and cause tiles to expand and lift – smell coming from the pooled stagnant water possibly causing more mould growth than normally expected for Tonbridge. Smells from wet carpet.
- Email confirms weather forecast for the week (further rain).

21 June 2021

- Date check submitted seeking assessment should be deleted/reduced to £0.

12 August 2021

- Building survey inspection confirms main roof still missing.
- No temp works to protect building from elements.

- Complete strip out of Pure Gym unit back to bare shell. Photos show water ingress still.
- Scaffolders on site completing remaining sections of support structure for temp roof and advised that works to be completed that day.

20 August 2021

- Client correspondence with appointed building surveyor shows still trying to engage with Landlord on roof covering costs/waterproofing arrangement/compensation costs.

September 2022

- Addendum award to Pure Gym with landlord confirming shall be at liberty if it so chooses but shall be under no obligation to carry out the following works:
  a) Provide and maintain a weathering layer comprising of a tin hat scaffold temporary roof (with enclosure formed by corrugated metal sheeting and reinforced plastic vertical sheeting to all sides) all to facilitate further site works and prevent ongoing water ingress through the party structure. Permanent waterproofing finishes to the structure and the 100 balconies is to be provided at a later date but before the removal of adaptation of the Tin Hat.

29 August 2022

- Start date on the copy of programme of works for remedial works to the property including commencement of installation of Tin Hat (temp roof).

29 May 2023

- Programme of works due to finish.

5 June 2023

- Appointment of Landlord receiver – Evelyn Partners LLP

July 2023

- Google Streetview shows 'Tin Hat' in situ and scaffolding around building.

11 October 2023

- Confirmation from Pure Gym contractors regarding putting the unit into a 'white box' standard fit out ahead of PG's standard fit out. Email confirms roofing and external elevation will be covered by the main contract works: "Unfortunately, it looks much like the previous developer is unable to claim on any insurances so in all likelihood, the cost of this work will need to fall to the Funder / Receiver so any opportunity to mitigate scope and cost will be much appreciated."

7 January 2025

- Photos from VO Wayne Cox dated shows that scaffolding and tin hat has been removed.
- Client confirmed property not watertight.

4 March 2025

- Developer has gone into receivership; property is being marketed for sale as a part complete residential development opportunity.
- Local online news articles show property was being marketed in December 2024. Photos in marketing brochure suggests property is not wind nor watertight. Brochure says development works commenced April 2021 and with original completed date of April 2022, but project was delayed and works halted midway through 2023. Link to drone videos from marketing brochure showing building – does not appear wind nor water tight.

20. The case for the appellant as stated in the challenge submission was that the scheme of works affecting the subject property was similar to the works considered in the case of *Newbigin (VO) v S J & J Monk*. The Supreme Court had determined that in cases where significant reconstruction works were being undertaken on the material day, preventing beneficial occupation, the correct approach is to amend the rating list to reflect that reality.

21. Further reliance was placed on the case of *Jackson (VO) v Canary Wharf*. In that case, the Valuation Officer contended that if there was not a scheme of works being undertaken it could not be shown that the building was under reconstruction. The Valuation Officer's appeal was dismissed as being contrary to the decision in *Newbigin (VO) v S J & J Monk*. Paragraph 35 highlighted that before applying the repair assumption, there was a logically prior question as to whether the appeal property is capable of beneficial occupation, and can therefore represent a hereditament.

22. In the Valuation Officer's decision notice, it was asserted that this was a matter of disrepair and that *Monk* was not engaged. There was no scheme of redevelopment to the subject property, nor any intention to change its mode or category. The Valuation Officer referred to paragraph 39 of *Carey Group Plc v Ricketts (VO)* which stated that *Canary Wharf*

"goes no further than Monk and does not assist when considering the role of the repair assumption where premises are incapable of occupation because they are in disrepair."

23. At the material day the hereditament had been put into disrepair by water ingress. It was therefore the Valuation Officer's opinion that the only test required was that in paragraph 2(1) of the Local Government Finance Act 1988:

> *"the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from the assumption any repairs which a reasonable landlord would consider uneconomic."*

24. While Mr Cox contended that there was no evidence to show that the repairs were uneconomic, it was clear that some evidence of costs had been provided by the appellant's representative:

- Tonbridge Rebuild Costs - £986,162
- Pure Gym original fit-out costs 2018 - £392,532.22
- Installation and removal of the temporary roof installation – estimated between £150,000 and £200,000

25. In the absence of further clarification, Mr Cox had been unable to agree that the repair costs would exceed £360,000, i.e. five times the RV of £72,000.

26. Mr Waller accepted at the hearing that the issue central to the appeal was that of repair, but he disputed the Valuation Officer's approach in his consideration of whether the repairs would be considered economic to undertake. Mr Waller argued that a reasonable landlord would not undertake the repairs to the subject property knowing that the building was without a roof. The relevance of the Valuation Officer's reliance on Landlord and Tenant cases was disputed, and Mr Waller submitted that the repairing assumption did not extend to the roof of the building, which was not part of the subject hereditament. In support, he referred to the cases of *Ciecierski v Lock (VO)* and *White Brothers v South Stoneham Assessment Committee.*

27. The panel noted that in the Valuation Officer's decision notice, it was agreed that the second assumption in the definition of RV only relates to the hereditament – the ground floor occupation by the appellant. The Valuation Officer goes on to say that even if the second assumption is applied, and the economic test is met,

    "no hypothetical landlord of the subject property would be minded to put the property into repair, whilst it's still at the mercy of the floors above that are not watertight, and with the upper floor being a separate hereditament it cannot be assumed that the hypothetical landlord of the ground floor is necessarily the hypothetical landlord of the first floor."

28. It therefore appeared to the panel from that statement that the Valuation Officer supported the appellant's contentions. However, the Valuation Officer then proceeded to argue that the law of nuisance places an obligation on an actual landlord to minimize damage to a neighbouring property following their actions. The Valuation Officer submitted that the external landlord would be under an obligation to put the roof (outside the hereditament) in repair, which would then allow the landlord of the subject property to undertake worthwhile repairs.

29. On this issue, the panel was not persuaded that the law of nuisance was relevant to rating law. The treatment of works external to the hereditament is discussed in section 11 of the Valuation Officer's Rating Manual, which was included in the bundle:

    11.1 Works external to the hereditament are not covered by the provisions of the 1999 Act and no assumptions in respect of these can therefore be imported by virtue of the provisions of this Act. The condition of areas external to the hereditament should generally be considered as they actually are at the Material Day.

    11.7 Works to other hereditaments or to the common parts of the building containing the hereditament being considered do not fall under the repairing assumption of the hypothetical tenancy. They represent real world physical changes in the locality and should be considered as being as they are at the Material Day. Their likelihood of completion is also something to be taken into account as they are not subject to the rebus sic stantibus rule.

30. Consequently, the panel supported Mr Waller's argument that a reasonable landlord would not undertake repairs, regardless of the cost, as it could not be assumed that an issue external to the hereditament would be repaired.

31. The panel also took into account the fact that the Valuation Officer had deleted the subject property with effect from 1 April 2023, as it was accepted that it was incapable of beneficial

occupation. Mr Waller had highlighted that no changes had been made since the emergency measures carried out to the first floor and stripping out of the subject property during July and August 2021. As such, the property was as incapable of beneficial occupation on the material day as it was on 1 April 2023.

32. In his closing submissions, Mr Cox suggested that it was open to the panel to delete the subject property from a later date, as was the case in *Colour Weddings v Roberts (VO)* [2018] RA 12. Given that the subject property had been stripped back to shell in August 2021, the panel considered that it would have been reasonable at the challenge stage for the Valuation Officer to have deleted from that date, in line with *Monk* and *Canary Wharf*.

33. In the subject appeal, the panel was restricted to the consideration of the physical circumstances as at 21 June 2021. Having been satisfied that the subject property could not be assumed to be in a state of reasonable repair, as a result of the water ingress and lack of a roof, the panel concluded that the property should be deleted with effect from 21 June 2021.

Conclusion

34. In view of the above findings and conclusions, the appeal was allowed.

Order

35. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to delete the entry in the 2017 rating list with effect from 21 June 2021.

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

Refund of appeal fee

37. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Right of further appeal

38. 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) using Form T385 (Notice of appeal) within **four weeks** of the date this decision and statement of reasons was issued.

39. 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 L Owusu-Afriyie, Senior Member (Presiding)
Ms L Marshall, Senior Member
9 March 2026

Mrs L Horne
Clerk to the Tribunal
Date issued to the parties: 9 March 2026