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

Case No: CHG101112707

Sitting remotely using Microsoft Teams

Date: 10 June 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — deletion; programme of works; appeal dismissed.

Before:
MRS L MCDERMOTT
MRS F DUGGAN

Between:

ORCHARD STREET INVESTMENT MANAGEMENT LLP **Appellant**

- and -

MS L DYER
(VALUATION OFFICER) **Respondent**

Regarding:
UNIT 2C ALBANY PARK, FRIMLEY ROAD, CAMBERLEY, GU16 7PL
(the "subject property")

Mr M Harkin (instructed by Ryan Property Tax UK Services Ltd) for the **Appellant**
Mr D Alford for the **Respondent**

Hearing date: 20 May 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal finds that the entry for the subject property in the 2017 rating list should not be deleted as the hereditament continued to exist.

Introduction

3. The appellant made a proposal on 17 August 2023 to challenge the entry in the 2017 rating list of £47,000 rateable value (RV) with effect from 11 November 2021. The proposal sought a deletion of this entry from the rating list with effect from 3 May 2022. The Valuation Officer did not find the proposal to be well founded and a Challenge decision was issued on 2 September 2024 maintaining the existing entry in the rating list. An appeal against that decision was received by the Tribunal on 16 December 2024.

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

Background

5. The subject hereditament was an industrial unit of standard steel portal frame construction. It was built in 1982 and was located on Albany Park, Frimley. The total area was 594m^2 (gross internal area), which included ancillary office space. The appeal property originally formed part of Units 2A, 2B and 2C. However, that hereditament was split into two. Units 2A and 2B formed one hereditament and Unit 2C, the appeal property because a separate hereditament. The appeal property had entered the rating list as warehouse and premises on 11 November 2021.

6. The evidence submission before the panel comprised of all the evidence disclosed and exchanged during challenge which included the parties' respective case submissions, schedule of works and photographs of the appeal property. In addition, to assist the panel, the parties had provided a document of agreed facts, which was relied on by both parties.

7. In advance of the hearing, Mr Alford made an application for the admission of new evidence, which included photographs of the subject property which had been taken at the time of his inspection on 27 March 2025. At the hearing, Mr Harkin stated that he had no objection to its inclusion. Mr Harkin had also provided a copy of an email which had been sent to him by the previous caseworker in August 2024, which had been omitted from the evidence submission. Mr Alford stated that he had no objection to this inclusion either.

8. Mr Harkin appeared on behalf of the Appellant as both advocate and expert witness. He stated that his company was being paid on a contingency fee basis but was aware that in giving expert evidence his responsibility was to the Tribunal. He informed the panel that he was representing the Appellant, however he had not compiled the evidence submission.

9. The panel accepted this expert witness evidence on the above basis, as 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 in England). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. Mr Alford, for the Valuation Officer, also appeared in a dual role of advocate and expert witness.

Issue and Relevant Law

11. The issue before the panel was to determine whether the subject property should be deleted from the 2017 rating list with effect from 3 May 2022 as proposed by the appellant's representative.

12. Whilst the rateable value is determined having regard to the antecedent valuation date (1 April 2015), the valuation must reflect the physical facts relating to the subject property and its locality on the date the determination is made or amended (the material day). In this appeal the material day was 3 May 2022, this being the date the appellant had sought a deletion of the subject property from the rating list. Paragraphs 2(6), 2(7) and 2(8) of Schedule 6 to the Local Government Finance Act 1988 are relevant:

> *(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)…..*
> *(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.*
>
> *(8A) For the purposes of this paragraph the state of repair of a hereditament at any time relevant for the purposes of a list shall be assumed to be the state of repair in which, under sub-paragraph (1) above, it is assumed to be immediately before the assumed tenancy begins.*

13. The parties referred to the following case law:

- *Newbigin (VO) v Monk* [2017] UKSC 14
- *Jackson (VO) v Canary Wharf Limited* [2019] UKUT 136 (LC)
- *BNPPDS(J) Limited and BCI Limited (as Trustees of the Blackrock Industrial Trust) v Hitchings (VO)* [2025] UKUT 104 (LC)

Discussion

14. Prior to the material day, the subject property had formed part of a single hereditament with Units 2A and 2B and had been let to a single occupier. The landlord had taken back control of Unit 2C on 11 November 2021, in order to undertake a scheme of redevelopment works.

On the material day, the property was vacant, and the Appellant's representative contended that a schedule of comprehensive refurbishment and redevelopment works had commenced, which had put the property into a condition which meant that it was incapable of beneficial occupation and should be deleted from the rating list. A certificate of practical completion had been issued on 15 July 2022 to show that the works specified on the schedule had been completed by this date. The subject property was then let to a new tenant (Amazon Filters Ltd) with effect from 1 September 2022. Further work was undertaken by the new tenant to fit it out to its specification and the property was occupied from 17 October 2022.

15. At the hearing, Mr Harkin referred to an email from the original caseworker dated 23 August 2024. In this email, the caseworker accepted that the works were substantial, however he was planning to issue a decision notice to disagree with the deletion to enable the Tribunal to use its discretionary powers under Regulation 38(7) of the Valuation Tribunal Procedure Regulations 2009 to end-date any deletion to 15 July 2022, that being the date of the certificate of practical completion of the schedule of works. Mr Harkin argued that the date of 15 July 2022 was premature as the property was not yet ready for occupation on this date. He argued that if the Valuation Officer had accepted the end date of 17 October 2022 there would be no need for the hearing.

16. Mr Alford disagreed with Mr Harkin's opinion that the appeal property ceased to be a hereditament, he contended that any works undertaken were no more than the usual end of tenancy repair works ready for re-letting by the landlord. The works did not make the whole of the hereditament incapable of occupation.

17. In respect of the email from the previous caseworker, Mr Alford stated that he had taken over the case during the challenge stage, and the earlier discussions had taken place between the parties, but the Appellant's representative had rejected the proposed end date. When writing the decision notice, after reviewing the facts in the case, he formed the opinion that the hereditament should not be deleted, and the Valuation Officer stood by that decision.

18. The proposal had not been made immediately following the start of the works, it was delayed until after the new tenant had already re-fitted and occupied the property. The respondent was therefore unable to inspect the property whilst it was unoccupied.

19. Given the difference in opinion between the two parties, the panel scrutinised the evidence closely in order to find facts. In the proposal the Appellant had referred to a more extensive schedule of works. Mr Harkin had provided a copy of the schedule of works and photographs showing the subject property before the works had been undertaken, and whilst the the works were ongoing. The panel noted that the photographs were undated. At the hearing, Mr Harkin stated that the 'before' photographs had been taken in November 2021. He stated that he was not aware of any works undertaken by the outgoing tenant, prior to these photographs being taken. The 'during the works' photographs had been taken between 17 May 2022 and 1 June 2022. The document of agreed facts provided in advance of the hearing detailed the summary of the works undertaken. With the exception of the levelling of the warehouse floor, and application of epoxy floor covering all listed works referred to the removal and/or replacement of the following items:

- Roller shutter door, including guides and electrical supply.
- Windows in front elevation.
- Light fitting in the warehouse, together with containment trays and piping.
- Lighting to the offices and W/Cs using existing cabling and switching.

- Wall mounted convection heaters in offices and W/Cs and replaced with one new above-head wall mounted heater in each office and W/C.
- Tea point cupboard and worksurface in the ground floor corridor.
- Tiling, floor coverings, taps and extractor fans in the W/Cs.
- Removal of internal and glazed partitioning in first floor offices to create open plan.
- Removal of data cabling in first floor offices including in the ceiling void areas.
- Ceiling tiles in the first-floor office keeping existing grid.
- Doors to ground and first floors, W/C.

20. At the hearing, Mr Harkin referred to the photographs in conjunction with the schedule of works. Mr Alford had argued that there was no new electrical supply within the warehouse, however Mr Harkin stated that the photographs showed the installation of a new power socket and cabling at the back of the warehouse, which had not been separately listed on the evidence from the contractor. However, he was unable to categorically confirm that this was added during the refurbishment, he stated that on the balance of probabilities it had been. The photographs also showed a new air conditioning unit on the wall of the property which required extra electrical supply to that part of the office. Externally, there had been works for a new EV charging point with external cabling alongside the installation.

21. Having scrutinised the schedule of works, the panel noted that the site set up was due to take place on the first day, 3 May 2022. The panel asked the Appellant’s representative when he considered that the hereditament ceased to exist. He stated that the overall programme of works commenced on 3 May 2022, with strip out works appearing to start on 4 May 2022. On that basis he stated that this date may be more appropriate. He did not know when the services were isolated and capped off, however, he considered that the electrical works were likely to have taken place from the start of the schedule of works commencing.

22. Mr Alford contended that much of the work related to the replacement of existing features with the modern equivalent. The lighting in the office had been upgraded but the existing cabling and switching had been used. The wall mounted convection heaters had been replaced with new heaters in the office but there had been no heating in the warehouse before or after the works. With regard to the W/Cs, the actual WC, sinks and pipework all stayed as they were. The data cabling was superfluous with the change to wi-fi, and the ceiling tiles in the first-floor office were pop out ceiling tiles. Mr Alford argued that most of this work would have been done piecemeal, with the exception of the levelling of the warehouse floor, which would have taken longer.

23. Mr Harkin contended that the works in this case were extensive, costing a total of £183,634.50 which was four times the rateable value of the property. The panel was referred to the recent Upper Tribunal decision of *BNPPDS(J) Limited and BCI Limited (as Trustees of the Blackrock Industrial Trust) v Hitchings (VO) (“the Blackrock case”).* He submitted that the Upper Tribunal had found that in the *Blackrock case* that the property should be deleted while undergoing works, and that works must be looked at objectively as to whether they caused the property to be incapable of occupation. In the *Blackrock case*, the Counsel for the Appellant argued that the lack of electrical fittings meant that the property could not be beneficially occupied. Mr Harkin also referred to paragraph 47 of the *Blackrock* judgment in which he stated that the change of use had no bearing on the outcome of that case, as it was not part of the Valuation Officer’s submissions on the day.

24. Mr Alford had inspected the property on 27 March 2025 as a result of the Upper Tribunal findings in the *Blackrock* case. *In Blackrock* the Upper Tribunal had decided that the new

tenant's fit out should be viewed as one singular set of works along with the landlord's repairs. In the case under consideration, Mr Alford stated that the new tenant had only undertaken minor alterations to suit their occupation. The internal parts included the installation of racking in the warehouse area, a light-weight roller screen between the ground floor office and the warehouse, and the manager's office had been partitioned off on the first floor. In this case, there was no change in the mode or category of occupation between tenants.

25. The panel noted that both *Canary Wharf* and *Monk* concerned offices and therefore were not directly comparable to a warehouse unit. The *Blackrock* case concerned a warehouse which underwent a programme of works to strip out the space in preparation for a new letting to McDonalds for use as a delivery kitchen. The panel considered that in *Blackrock* the nature of the works was different, as the strip out was done by the landlord in preparation for a change of use. The works also involved items that were stripped out and not replaced. The works in that case lasted from November 2022 until McDonald's lease began in March 2023.

26. The panel further noted that in the case before it, the schedule of works began on 3 May 2022 and were completed by 15 July 2022, a period of less than 11 weeks. Unlike the *Blackrock* case, the works did not result in a change of use. Following the works, the appeal property's mode or category of occupation remained a warehouse and premises. Furthermore, the time period of the works indicated that they were not extensive in nature and were what one would expect to facilitate a new tenant's occupation.

27. The panel considered the three-stage test that was endorsed by the Supreme Court in *Monk* as follows:

I. *First, is the hereditament capable of rateable occupation at all? If not, it is not a hereditament;*

The panel found that the appeal property remained a hereditament on the material day because it was capable of rateable occupation, once the repairs which the statutory assumptions assumed that the landlord would undertake, prior to the tenancy commencing, were completed.

II. *Secondly, if it is so capable, what is its mode or category of occupation?*

It was a warehouse.

III. *Is the hereditament in a state of reasonable repair for use consistent with that mode or category?*

Again, any disrepair issues were assumed to have been addressed by the landlord unless they were uneconomic to undertake. The fact that the landlord carried out the works, within a short time scale showed that the repairs were economic.

28. In view of the foregoing, the panel rejected the Appellant's case. This was a clear case where the statutory repair assumptions, where the landlord was assumed to undertake the necessary repairs to put the property in a reasonable state of repair before re-letting the property, triumphed over reality. Moreover, if Mr Harkin's opinion of the law was correct, the statutory assumptions would seldom, if ever, be engaged. Every time a tenant vacated a property, disrepair issues were left behind. A programme of works which took place to remedy those repairs would not, by itself, be grounds to justify a deletion. This was not the

case where the programme of works involved a property in transition being converted to something different. In this case, unlike *Blackrock,* there was no change of use and items that were stripped out were replaced.

Determination

29. In view of the above findings and conclusions, the Tribunal is satisfied that the subject property's entry should remain in the 2017 rating list. The appeal was therefore dismissed.

Right of further appeal

30. 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.

31. 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 L McDermott, Senior Member (Presiding)

Mrs F Duggan, Member

10 June 2025

Mrs K Edhouse-Thomas
Clerk to the Tribunal
Date issued to the parties: 10 June 2025